



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: IA323582014

THE IMMIGRATION ACTS

**Heard at City Centre Tower, Decision & Reasons
Birmingham On 25th April 2016 Promulgated On 25th May 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE RENTON

Between

**ANNAH KAPALA SLOANE
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss P Solanki, Counsel instructed by Braitch Solicitors
For the Respondent: Mr M Diwnycz, Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The Appellant is a female citizen of Zimbabwe born on 24th January 1954. She was first granted leave to enter the United Kingdom as a visitor sometime in 2002, and thereafter she was granted leave to remain as a student until 31st August 2006. Thereafter she made various unsuccessful

applications for further leave to remain until she was granted discretionary leave to remain for a period of three years from 21st August 2009. On 7th July 2009 the Appellant married a British citizen, Peter Sloane. He died on 26th May 2010. On 20th March 2014 the Appellant applied for indefinite leave to remain as a bereaved partner. That application was refused for the reasons set out in the Respondent's letter of 23rd July 2014. The Appellant appealed, and her appeal was heard by Judge of the First-tier Tribunal P Holmes (the Judge) sitting at Stoke-on-Trent on 4th February 2015. He decided to dismiss the appeal under the Immigration Rules and on human rights grounds for the reasons given in his Decision dated 3rd March 2015. The Appellant sought leave to appeal that decision, and on 12th May 2015 such permission was granted.

Error of Law

2. I must first decide if the decision of the Judge contained an error on a point of law so that it should be set aside.
3. The Appellant's application for indefinite leave to remain was refused under paragraph BPILR.1.1(d) of Appendix FM of the Statement of Changes in Immigration Rules HC 395. This was because the Appellant did not satisfy the requirements of paragraph E-BPILR.1.2 in that the Appellant's last grant of limited leave was not as a partner of a British citizen or a person settled in the UK; or a bereaved partner. The Judge dismissed the appeal because it was not clear from the letter of the Respondent dated 21st August 2009 on what basis the Appellant had been granted her least leave to remain. However, there was before the Judge an extract from the Respondent's computer file stating that "the Applicant was granted DL to continue her studies and as the spouse of a UK citizen". The Judge decided that on a true interpretation of the relevant paragraph, this was insufficient to meet the requirement that the Appellant's last grant of limited leave was as a partner. It established only that "the fact that the applicant was married to a British citizen was taken into account as part of the reasons for the exercise of discretion in her favour." At the hearing, Miss Solanki argued that the Judge had erred in law in coming to this conclusion. There was ample evidence before the Judge that the Appellant had last been granted limited leave at least in part as the spouse of a British citizen. The relevant paragraph did not require the Appellant to have been granted limited leave under Appendix FM of the Immigration Rules, nor that such leave had to be granted exclusively as a partner. It was beyond dispute that the Appellant had last been granted leave for a limited period, and was therefore limited leave, and it did not matter if that leave was granted on a discretionary basis.
4. Mr Diwnycz did not argue to the contrary, and I find that the Judge's interpretation of paragraph E-BPILR.1.2(a) amounted to an error of law. The Judge found that the requirement of that paragraph was limited in a way not expressly stated nor implied by the paragraph itself. In my view nothing in law requires the paragraph to be restricted in meaning as found by the Judge. The simple facts of the matter are that the Appellant was

married to a British citizen, and the information from the Respondent's computer file informs me that she was last granted limited leave to remain at least in part as his spouse. I therefore set aside the decision of the Judge.

Remade Decision

5. Having set aside the decision of the Judge, I decided to proceed to remake the decision in the appeal. It was not necessary for me to hear any further evidence, nor submissions from the representatives. The Appellant had been refused indefinite leave to remain on the sole narrow issue provided by paragraph E-BPILR.1.2 of Appendix FM. For reasons already given, I find that requirement to be satisfied, in which event I find that the Appellant meets the requirements of paragraph BPILR.1.1 of Appendix FM. That being the case, the appeal is allowed.

Notice of Decision

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside that decision.

I remake the decision in the appeal by allowing it.

Anonymity

The First-tier Tribunal did not make an order for anonymity. I was not asked to do so, and indeed find no reason to do so.

Signed

Date 25 May 2016

Deputy Upper Tribunal Judge Renton

TO THE RESPONDENT FEE AWARD

No fee was paid or is payable and therefore there can be no fee award.

Signed

Date 25 May 2016

Deputy Upper Tribunal Judge Renton

