



IAC-AH-DN-V1

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

Appeal Number: VA/03413/2014

THE IMMIGRATION ACTS

**Heard at Bradford
On 2nd December 2015**

**Decision & Reasons Promulgated
On 13th January 2016**

Before

UPPER TRIBUNAL JUDGE D E TAYLOR

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**SILLAH MAJULA
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr Diwncyz, Home Office Presenting Officer
For the Respondent: Mr Christian Simo of Alpha Shindara Legal

DECISION AND REASONS

1. This is the Secretary of State's appeal against the decision of Judge McGrade made following a hearing at Glasgow on 29th April 2015.

Background

2. The claimant is a citizen of the Gambia. She applied for entry clearance to come to the UK as a visitor to see her fiancé but was refused on 28th May 2014 on the grounds that the Entry Clearance Officer was not satisfied that she was genuinely seeking

entry as a visitor for a limited period as stated by her nor that she intended to leave the UK at the end of the period of the visit.

3. The claimant is a 20 year old student who worked in a bar in the Gambia where she met her sponsor Mr Tattersall who was on holiday. Mr Tattersall is 70 years old and a widower and therefore 50 years her senior. The Entry Clearance Officer was not satisfied that there was a genuine relationship between them.
4. The judge concluded that the couple, as at the date of decision, were engaged and planned to marry. In fact, since the decision was made, they have married and Mr Tattersall is presently in the Gambia.
5. The judge said that it was entirely understandable that the claimant wanted to visit the UK in order to meet her fiancé's friend and family and to get a better understanding of his life here. He was satisfied that she met the substantive requirements of the Rules relating to visit visas, and accepted that she wanted to return to the Gambia in order to complete her studies. He noted that the sponsor had around £350,000 in savings. He allowed the appeal on human rights grounds.

The Grounds of Application

6. The Entry Clearance Officer sought permission to appeal on the grounds that the judge had not adequately reasoned his finding that family life existed between the claimant and sponsor. The couple had only lived together for six months and there was a 50 year age gap. Even if family life were to be accepted there was no reason why the sponsor could not visit the claimant. The Entry Clearance Officer's decision does nothing to change the status quo.

Submissions

7. Mr Diwnycz relied on his grounds.
8. Mr Simo submitted that the judge was entitled to reach the decision that he did. He relied on the decision in Mostafa (Article 8 in entry clearance) [2015] UKUT 00112 which held in paragraph 24:

"It is the very essence of Article 8 that it lays down fundamental values that have to be considered in all relevant cases. It would therefore be extremely foolish to attempt to be prescriptive, given the intensely factual and contextual sensitivity of every case ...

If a person's circumstances do satisfy the Immigration Rules and they have not acted in a way that undermines the system of immigration control, a refusal of entry clearance is liable to infringe Article 8."

9. The claimant clearly met the requirements of the Immigration Rules since she provided evidence in her application that she was seeking entry clearance to come to the UK for a period of three months only during the student holidays. She intended to leave the UK at the end and provided relevant documentary evidence.

Findings and Conclusions

10. Given the age gap between the couple it is not surprising that the Entry Clearance Officer had some doubts about the strength of the relationship. However the judge dealt with the specific points raised in the refusal decision, observing that it was unsurprising that there was little documentary evidence of the relationship since it had only lasted for six months and for most of that period the couple were together in the Gambia. He was satisfied that she had an incentive to return, namely to complete her studies, and that her sponsor had more than sufficient funds to pay for her. There was also a good reason for the visit, namely the claimant's desire to meet the sponsor's family. Those matters are all relevant to a decision under paragraph 41 of the immigration rules, but challenges to those decisions cannot be made by way of an appeal to the tribunal. The only ground upon which an appeal may be brought is that the decision infringes the appellant's rights under the ECHR.
11. The first question to be addressed is whether Article 8 of the ECHR is engaged at all. If not the Tribunal has no jurisdiction to embark upon an assessment of the decision of the ECO under the Rules and should not do so (Adjei (visit visas – Article 8) [2015] UKUT 0261). Accordingly the decision in Mostafa will only be relevant in assessing the issue of proportionality should that stage be reached.
12. The question of whether family life exists in this case is a question of fact and depends on the real existence of close personal ties. The stability and length of the relationship need to be assessed together with the parties' intentions. Cohabitation is normally although not necessarily a requirement.
13. The sponsor and claimant met in November 2013 where she was employed as a bar attendant. They began a relationship and he met her family. He said in his statement that he was told by the claimant's mother that he had to marry her before they could live together. He then proposed to her and invited her to come to the UK during her school holiday period. They submitted the application for the visit visa when the sponsor was in Gambia. When he returned to the UK he kept in contact with her and sent her money. As at the date of his witness statement, in March 2015 they were still engaged, but they have since married.
14. As at the date of the Entry Clearance Officer's decision the relationship was in its infancy. The couple had only met some six months previously and it is not at all clear whether they were living together during that period.
15. Although the relationship had started, and the couple have since married, at that point it could not properly be said that the relationship equated to the status of husband and wife.
16. The judge was entitled to come to a different view to the Entry Clearance Officer as to the genuineness of the relationship, and indeed subsequent events appear to have proved him right, but that does not equate to a proper finding that as at the date of the Entry Clearance Officer's decision Article 8 was engaged on the basis that the couple enjoyed family life together. The judge appears to have concentrated on

whether the relationship was a genuine one rather than on whether the couple enjoyed family life at the date of the refusal.

17. Accordingly the judge was not entitled to allow the appeal on Article 8 grounds since family life was not established. The situation has clearly changed in that the couple do now appear to have married and accordingly on a re-application Article 8 would be engaged. Moreover on the judge's findings it may well be that on a second application an Entry Clearance Officer would find that the substantive requirements of the Immigration Rules with respect to visitors would be met.

Decision

The original judge erred in law. His decision is set aside. The following decision is substituted. The appeal is dismissed.

No anonymity direction is made.

Signed

Date

Upper Tribunal Judge Taylor