



IAC-FH-CK-V1

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

Appeal Number: HU/00270/2015

THE IMMIGRATION ACTS

Heard at Field House

On 5 October 2017

**Decision & Reasons
Promulgated**

On 31 October 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE J M HOLMES

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MRS AKUA KYERAA
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr Clarke, Home Office Presenting Officer

For the Respondent: Miss D Ofei-Kwatia

DECISION AND REASONS

1. The Appellant applied for entry clearance as the partner of Mr Ofori Nyarko on 13 March 2015 and she was interviewed on 5 May 2015 in connection with that application. Presumably as a result of the answers that she gave at that interview the Entry Clearance Officer decided on 6 May 2015 to refuse that application on the basis that he was not satisfied that the relationship with the sponsor was genuine and subsisting. The Appellant duly appealed and although the decision was reviewed by an Entry Clearance Manager on 11 August 2015 it was maintained.

2. The appeal came before Judge Bradshaw in the First-tier Tribunal on 16 December 2016. She reviewed the record of the interview and the written evidence of the Appellant. She also had the benefit of oral evidence from the sponsor, who she records having been cross-examined at some length. Whilst there were questions raised about the evidence the two individuals had given and whether it was entirely consistent, in the end, after assessing that evidence, she came to the conclusion that they were telling the truth and that they had been in the relationship that was the basis for the entry clearance application for the length of time that they had described. In my judgment she gave entirely adequate reasons for that conclusion and indeed I note that the Respondent in this application for permission to appeal to the Upper Tribunal does not suggest otherwise. So those findings of fact in relation to the relationship must stand and indeed I confirm that.
3. The Respondent's challenge to Judge Bradshaw's decision, however, takes the fundamental point that the right of appeal to the First-tier Tribunal was one that was statutorily limited by Section 84 of the 2002 Act to one of lawfulness by reference to Section 6 of the Human Rights Act and indeed Judge Bradshaw did fall into that error. It is quite clear that she stopped short at the point of concluding that the relationship was genuine and subsisting, and simply sought to allow the appeal under the Immigration Rules. That was a route that was not open to her and both parties before me today are agreed that that is the case.
4. Were the Upper Tribunal to go on to deal with the appeal today it is however now also considered that the outcome of the human rights appeal is one that is clear and I am invited by both parties to reach that conclusion, and I do. Building on Judge Bradshaw's findings of fact in relation to the relationship it is clear that the Article 8 rights of both the Appellant, and the sponsor, are engaged by the decision under appeal. It is clear that the Entry Clearance Officer offered no other reason for refusing the entry clearance application other than his doubt over the relationship and Mr Clarke accepts that before me. Having had regard to section 117A-B it is difficult, indeed impossible, to identify any good reason how the public interest could lie in maintaining the refusal. The public has no interest in a case such as this as far as I can see in doing so. Indeed in my judgement, the public interest in maintaining a coherent and effective and predictable scheme for immigration must lie in the appeal being allowed. Accordingly, I set aside Judge Bradshaw's decision to allow the appeal under the Immigration Rules because she had no jurisdiction to do so, and I remake the decision on the appeal so as to allow it on Article 8 grounds.

Notice of decision

The Decision of the First Tier Tribunal which was promulgated on 6 January 2017 did involve the making of an error of law that requires the decision to allow the appeal under the Immigration Rules to be set aside.

I remake the decision upon the appeal so as to allow the Article 8 appeal.

No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge J M Holmes

To the Respondent

Fee award

The fee award made by the First tier Tribunal is confirmed.

Signed

Date

Deputy Upper Tribunal Judge J M Holmes