



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

Appeal Number: IA/23817/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 24 August 2015**

**Decision and Reasons
Promulgated
On 21 September 2015**

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL ARCHER

Between

MISS KASAMBA MURAMBIWA TEMBO

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Ishan Dave, Counsel, instructed by Greenland LLP
For the Respondent: Mr Stephen Whitwell, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. This appeal is not subject to an anonymity order by the First-tier Tribunal pursuant to rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014. Neither party has invited me to make an anonymity order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) and I have not done so.
2. The appellant appeals against the decision of the First-tier Tribunal (Judge Bart-Stewart) dismissing the appellant's appeal against a decision taken

on 9 May 2014 to refuse to grant further leave to remain in the UK and to remove her from the UK.

Introduction

3. The appellant first arrived in the UK on 21 January 2001 with entry clearance as a visitor until 20 March 2002. She returned in 2003 as a visitor, was granted a South African Diplomatic permit from 2003 to 2006 and then entered on 12 July 2006 with a student visa valid until 31 July 2007. Various applications for further leave to remain were made; the last submissions being made on the appellant's behalf by her representatives on 30 April 2014.
4. The Secretary of State decided that the appellant did not meet the requirements of the Immigration Rules and treatment for her sporadic medical condition was available in Zambia, if needed. There was no evidence of a genuine and subsisting relationship with her new partner. They were not living together and had no children. The appellant was financially supported from the UK and that support could continue in Zambia.

The Appeal

5. The appellant appealed to the First-tier Tribunal and attended an oral hearing at Taylor House on 20 February 2015. She was represented by Mr Dave. The First-tier Tribunal found that the appellant had been in the UK since 2006 and had been receiving NHS treatment. However, her condition (tuberous sclerosis and epilepsy) was stable and she was doing quite well. She was fit to travel but not to play sport. The appellant's husband was hesitant in answering questions about her medical condition and had never attended any medical appointments with her despite claiming to have been in a relationship since 2012. That demonstrated that the relationship was not as claimed and the appellant had not established a family life in the UK. There were no compelling circumstances to justify a successful Article 8 claim.

The Appeal to the Upper Tribunal

6. The appellant sought permission on 7 April 2015 to appeal to the Upper Tribunal on the basis that the First-tier Tribunal had erred in law. The judge had failed to apply the law in relation to genuine and subsisting marriage and did not attach sufficient weight to the evidence of the appellant, her husband and the witnesses. One independent witness gave unchallenged evidence. There was also a marriage certificate and numerous photographs.
7. Permission to appeal was granted by First-tier Tribunal Judge Landes on 21 May 2015. The judge did not give adequate reasons for finding the evidence not to be credible. The judge reached her credibility findings

solely on the basis of the husband not attending medical appointments and the lack of evidence from other family members, in particular the mother. The judge failed to give reasons for rejecting the other consistent evidence given. The appellant's case might not be a strong one in any event because the relationship was formed when the appellant was in the UK without leave but the appeal would not inevitably have been dismissed if the judge had found the relationship to be genuine.

8. Thus, the appeal came before me

Discussion

9. Mr Dave submitted that the judge had not given sufficient weight to the evidence of a real and genuine relationship. There was unchallenged evidence as to how the appellant and her husband met, how they began dating and their decision to live together after blessing from the church. The parties have lived together since 30 August 2014. They were cross examined at length and gave consistent answers. There is an arguable case under Article 8. The appeal should succeed on the basis that the case has been proved or a re-hearing should be ordered.
10. Mr Whitwell conformed that there was no Rule 24 response but there was no error in the approach to case law. The reasons for the findings are set out at paragraphs 27 and 28 of the decision. Weight is a matter for the judge. The parties could relocate to Zambia. The refusal letter states that the application failed under the suitability criteria and was therefore never substantively considered under Appendix FM. The only option if a material error of law is found is to order a rehearing.
11. It is common ground between the parties that the appeal could not succeed under the Immigration Rules and there is nothing in the decision about the Article 8 rights of anyone except the appellant. That appears to be because the judge found that the appellant did not have family life with anyone in the UK.
12. I have carefully considered the reasons given by the judge at paragraphs 27 to 28 of the decision. I am satisfied that they are inadequate because there is no reference to the substantial body of evidence that supported the claim of a genuine and subsisting marriage. In particular, there is no analysis of the oral evidence or findings in relation to that evidence. Inadequate reasons and failure to make findings on core evidence are material errors of law.
13. Thus, the First-tier Tribunal's decision to dismiss the appellant's appeal involved the making of an error of law and its decision cannot stand.

Decision

14. Both representatives invited me to order a rehearing in the First-tier Tribunal if I set aside the judge's decision. Bearing in mind paragraph 7.2

of the *Senior President's Practice Statements* I consider that an appropriate course of action. I find that the errors of law infect the decision as a whole and therefore the re-hearing will be *de novo* with all issues to be considered again by the First-tier Tribunal. If the relationship is found to be genuine then a number of legal issues will fall to be resolved.

15. Consequently, I set aside the decision of the First-tier Tribunal. I order the appeal to be heard again in the First-Tier Tribunal to be determined *de novo* by a judge other than the previous First-tier judge.

Signed 

Date 18 September 2015

Judge Archer
Deputy Judge of the Upper Tribunal