



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

Appeal Number: OA/02986/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 30 June 2016**

**Decision &
Promulgated
On 7 July 2016**

Reasons

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

**MS OZELIA BORGES DA CRUZ
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

ENTRY CLEARANCE OFFICER - RIO DE JANEIRO

Respondent

Representation:

For the Appellant: Mr. D. Chirico, Counsel instructed by Bindmans LLP
For the Respondent: Ms Z. Ahmed, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Rowlands, promulgated on 23 September 2015, in which he dismissed the Appellant's appeal against the Respondent's decision to refuse entry clearance as a dependant relative.

2. Permission to appeal was granted on the basis that all of the grounds presented were arguable. Ground 1 submits that the First-tier Tribunal misdirected itself as to the case which was put before it and/or failed to engage with the case before it, failed to determine matters put to it and had regard to matters which were not put to it and were irrelevant. In paragraph 15 of the grounds of appeal seeking permission from the First-tier Tribunal it states that the statement that the Appellant had conceded her case under the Immigration Rules was wrong.
3. At the hearing I heard submissions on this ground, following which I announced that I found that the decision contained an error of law and should be set aside. My reasons are set out below.

Error of law

4. In paragraph 14 of the decision the judge states:

“So far as the requirements to show the unavailability of care in Brazil, clearly that has not been met. In fact the representations seem to accept that was the case. I am satisfied that they have failed to show that the required level of care is either unavailable or unaffordable in Brazil. I am satisfied that this Appellant does not fulfil the immigration rules so far as leave to enter the United Kingdom as the parent of a person present and settled in the United Kingdom.”
5. I was referred by Mr. Chirico to the skeleton argument from the hearing in the First-tier Tribunal. At paragraph 14 it set out the relevant immigration rule. There then follow submissions under the heading “Submissions in respect of the immigration rules”. In paragraphs 17 to 19 the skeleton argument sets out how it is submitted that the Appellant meets the requirements of the immigration rules. It is clear from this skeleton argument, which was before the First-tier Tribunal, that the Appellant did not concede that she could not meet the requirements of the immigration rules. At paragraph 19 of the skeleton argument it states: “The Tribunal is invited to allow this appeal under the Immigration Rules”. No such submission would have been made had the Appellant conceded that she did not meet the requirements of the rules.
6. In the decision of the First-tier Tribunal there is no record of the submissions, but it is clear that in reliance on the skeleton argument the Appellant submitted that she met the requirements of the immigration rules. As a result of wrongly considering that a concession had been made, the judge did not fully consider whether or not the Appellant could meet the requirements of the immigration rules. The only discussion of the immigration rules is in relation to care arrangements, paragraph 13. The notice of decision also refused the application with reference to the financial requirements, which was not conceded in the Entry Clearance Manager’s review. There is no consideration of this aspect of the immigration rules.

7. I find that the judge misdirected himself by stating that the Appellant had conceded that she did not meet the requirements of the immigration rules. He therefore did not go on to consider whether or not the Appellant met the requirements of the immigration rules. Even if he had found that she could not meet these requirements, the extent to which she met them would have been relevant to the proportionality assessment under Article 8.
8. It was helpfully accepted by Ms Ahmed at the hearing that, were I to be in agreement with Mr. Chirico that no concession had been made by reference to the skeleton argument, and that the judge had misdirected himself, she could go no further with her submissions. She also accepted that the Rule 24 response had been drafted without sight of the grounds of appeal seeking permission to appeal to the First-tier Tribunal, and without sight of the file. It was therefore of limited use.
9. I find that the decision involves the making of an error of law by way of the judge's misdirection that a concession had been made in relation to the appeal under the immigration rules. As a result, I find that inadequate reasons have been given for why the Appellant does not meet the requirements of the immigration rules. As set out above, these findings would also have been material to the consideration of the appeal under Article 8.
10. Given that I found there to be an error of law in respect of this ground such that the decision should be set aside, I have not proceeded to consider the other grounds.
11. I have taken account of the Practice Statement dated 10 February 2010, paragraph 7.2. This contemplates that an appeal may be remitted to the First-tier Tribunal where the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for the party's case to be put to and considered by the First-tier Tribunal. I note that there was no Home Office Presenting Officer at the hearing in the First-tier Tribunal. Given the nature and extent of the fact-finding necessary to enable this appeal to be remade, and having regard to the overriding objective, I find that it is appropriate to remit this case to the First-tier Tribunal, as was agreed by Ms Ahmed and Mr. Chirico at the hearing.

Notice of Decision

12. The decision of the First-tier Tribunal involved the making of a material error of law and is set aside. No findings are preserved.
13. The appeal is remitted to the First-tier Tribunal for re-hearing.

Directions

1. Given that the application was made in 2013, as accepted by Ms Ahmed, the appeal should be listed for hearing as soon as possible.
2. The appeal is remitted to Taylor House. Judge Rowlands is excluded.
3. The availability of Mr. Chirico is to be confirmed in advance with his clerk on [].

No anonymity direction is made.

Signed

Date 6 July 2016

Deputy Upper Tribunal Judge Chamberlain