



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: OA/15507/2012

THE IMMIGRATION ACTS

Heard at Field House
On 6th August 2013

Determination Promulgated
On 16th August 2013
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Before

DEPUTY UPPER TRIBUNAL JUDGE J G MACDONALD

Between

MR GABRIEL AMOFAH MARFO

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms K Fursdon, Solicitor of Fursdon Knapper Solicitors
For the Respondent: Mr Nath, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellant is a citizen of Ghana whose appeal to be allowed to enter the United Kingdom under paragraph 281 of the Immigration Rules was refused by the Entry

Clearance Officer and his subsequent appeal under the immigration Rules allowed by First-tier Tribunal Judge Walker in a determination promulgated on 4th June 2013. Given that the appeal was being allowed under the Rules the judge said it was not necessary for him to consider further Article 8 ECHR. The grounds of application were lodged essentially on the basis that the judge had taken into account post-decision evidence when he considered the IELTS test result. Permission to appeal was therefore granted.

2. Before me Ms Fursdon stated that she had appeared at the hearing before the First-tier Tribunal Judge and had asked him *not* to allow the case under the Immigration Rules because the Appellant as at the date of decision – the critical date – was not rule compliant, in that he had not passed the English language test. Accordingly she acknowledged that the judge had fallen into error in allowing the appeal under the Rules.
3. The parties were in agreement that there was an error of law in the judge’s decision and therefore that the decision had to be set aside and remade.
4. Ms Fursdon urged me to allow the appeal under Article 8 ECHR. The Appellant now met the requirements of paragraph 281 of the Rules. Reference was made to the skeleton argument. This was an Appellant who had worked for the British army from 2007 to 2009. His wife was pregnant and due to give birth on 21st August 2013. No useful purpose would be served in refusing the appeal.
5. For the Home Office Mr Nath said that there was arguably a lack of information in relation to Article 8.
6. I reserved my decision.

Conclusions

7. None of the facts are in dispute. The application of the Appellant is now compliant with the Rules and his wife is about to give birth. It seems to be that no useful purpose can be identified in requiring the Appellant to reapply for entry clearance to the United Kingdom when he now fulfils all the requirements of paragraph 281 and where his wife is heavily pregnant with their child. In her circumstances it is manifestly unreasonable to expect her to travel to Ghana. It is accepted that the marriage is genuine and subsisting.
8. On these facts it therefore seems to me to be disproportionate in terms of Article 8 ECHR to refuse the Appellant entry to the United Kingdom. No legitimate public end can be achieved by compelling the Appellant to start the application process afresh. For these reasons the appeal is allowed.

Decision

9. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.
10. I set aside the decision.
11. I remake the decision in the appeal by allowing it on human rights grounds, namely Article 8 ECHR.

Signed

Date

Deputy Upper Tribunal Judge J G Macdonald