



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: OA/18480/2012

THE IMMIGRATION ACTS

Heard at Field House
On 5 September 2013

Determination Promulgated
On 10 September 2013

Before

UPPER TRIBUNAL JUDGE MOULDEN

Between

ENTRY CLEARANCE OFFICER - PRETORIA

Appellant

and

MRS BRENDA MURINGAYI

Respondent

Representation:

For the Appellant: Mr G Saunders a Senior Home Office Presenting Officer

For the Respondent: the sponsor, Mr H F Spinks

DETERMINATION AND REASONS

1. The appellant is the Entry Clearance Officer in Pretoria. The respondent is a citizen of Zimbabwe who was born on 30 August 1985. I will refer to them as the ECO and the claimant respectively. On 31 August 2012 the ECO refused the claimant's application for leave to settle in the United Kingdom as the spouse of her husband and sponsor, Mr Spinks.
2. The ECO refused the application under the provisions of Appendix FM of the Immigration Rules, concluding that the claimant had not met the requirements because she had not submitted a written undertaking from the sponsor to be responsible for her maintenance and accommodation, had not shown that her relationship with the sponsor was genuine and subsisting and that they intended to live together permanently in the UK, had not provided

the required documents to establish the sponsor's financial circumstances and had not passed an English-language test to the required standard.

3. The claimant appealed and First-Tier Tribunal Judge Ruth heard the appeal on 21 June 2013. The ECO was represented. The claimant was not legally represented but the sponsor attended and gave evidence.
4. The judge heard oral evidence from the sponsor and made findings of fact in relation to that evidence. He found the sponsor to be a credible witness. He concluded that the ECO had not applied the correct Immigration Rule and should have decided the application under the provisions of paragraph 281 not Appendix FM. He allowed the appeal to the extent that it should be reconsidered by the ECO under the provisions of paragraph 281.
5. The ECO has appealed and been granted permission to appeal on the basis that the judge erred in law because the provisions of the Immigration Rules which the claimant had to satisfy changed on 9 July 2012. The claimant made her application on 20 July 2012. For applications made after 9 July 2012 the requirements were contained in Appendix FM not paragraph 281.
6. Insofar as permitted I did my best to assist Mr Spinks who accepted that he had no legal expertise. I explained that after a careful study of the Immigration Rules including the changes made to them from the beginning of 2012 to date and any possible exceptions or transitional provisions I found that the ECO's position, as set out in the grounds and Mr Saunders submissions, was correct. Had the claimant made her application on or before 9 July 2012 she would have had to satisfy the requirements of paragraph 281. Because her application was submitted after 9 July 2012 she had to meet the requirements of Appendix FM.
7. On behalf of the claimant Mr Spinks accepted that at the date of the application and the date of the decision the claimant did not meet the requirements of Appendix FM. He believed that together they had since put together all the documents and information which would be needed to meet the requirements of Appendix FM.
8. I find that the judge erred in law and I set aside his decision. It is accepted that at the dates of application and decision the claimant did not meet the requirements of Appendix FM. No Article 8 human rights grounds have been raised. In the circumstances I remake the decision by dismissing the claimant's appeal under the Immigration Rules.

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Signed
Upper Tribunal Judge Moulden

Date 6 September 2013