



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: VA/31375/2012

THE IMMIGRATION ACTS

Heard at Field House
On 31 July 2013

Determination Promulgated
On 13 August 2013
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Before

UPPER TRIBUNAL JUDGE ESHUN

Between

MISS RACHEAL NAKASI

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Mr Joseph Mulindwa (Sponsor)
For the Respondent: Miss H Horsley, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Uganda born on 29 July 1985. She has been granted permission to appeal the determination of First-tier Tribunal Judge Abebrese dismissing her appeal against the decision of the respondent made on 20 July 2012 to refuse her application for entry clearance to the UK as a visitor.

2. The appellant has a daughter with the sponsor. The daughter is called Joanna Zinunula Mulindwa Nalweyiso. She was born in Uganda on 18 April 2011. As the sponsor, her father, is a British national, the child was issued with a British passport on 4 April 2013 to expire on 4 April 2018.
3. The appellant's appeal is in respect of the visit application she made on 20 July 2012 which was refused on 8 August 2012 by the Entry Clearance Officer. The decision was reviewed by the Entry Clearance Manager on 9 January 2013.
4. The Entry Clearance Officer's reasons for refusing the appellant's application are:

“(1) I am satisfied that the Uganda entry passport stamps dated 12/3/2010 and the Uganda exit stamp dated 13/7/2010 (page 5) and the Uganda entry stamp dated 30/11/2010 and Uganda exit stamp dated 3/4/2011 (page 12) are not genuine or have been fraudulently obtained, as they are not commensurate with your travel history to the UK as claimed. In your passport there are no corresponding arrival dates for either of the Uganda departure stamps detailed.

(2) I am satisfied that the above-mentioned stamps are non-genuine and have been fraudulently obtained, as our records show that you travelled from Brussels to the UK on the 26/2/2010 and then departed London Heathrow on the 2/8/2010, and then again travelled to the UK from Brussels on the 12/11/2010 and departed from London Heathrow on the 2/4/2011.

(3) Furthermore, you applied for entry clearance to the UK on 21/10/2010 to attend a CTA Convention and were issued a business visit visa for the period 27/10/2010 to 27/4/2011. At the time of this application you would have been approximately three months into your pregnancy, your daughter having been born on 18/4/2011. You stated at this application that you were married to Grace Ssinabulya who is an American citizen, and provided a marriage certificate dated 10/4/2010, as proof of your marriage and claimed family circumstances. You made no mention of your current husband, Joseph Mulindwa, on that application and stated that you had no friends or family in the UK. Our records show that you were in the UK at the time of your marriage to Grace Ssinabulya and could not therefore have been in Uganda at that time. I note that you have now, in your current application, provided your divorce certificate dated 3/11/2011, for your marriage to Grace Ssinabulya. At a telephone interview, Joseph Mulindwa stated that you were married on the 22/4/2012. Given this information I am satisfied that you also made false representations with regard to knowing your current husband in the UK at the time of your earlier application.”

5. The appellant's application was refused under paragraph 320(7A) of the Immigration Rules because false representation in the form of non-genuine passports, entry/exit stamps was produced in her visa application.
6. The appellant's application was also refused under paragraph 41(i) and (ii) on the basis that she had stated in her Visa Application Form that it was her intention to apply for settlement in the UK with her husband at a later date, but at present the UK sponsor could not meet the requirements for settlement as his income was below the minimum threshold. Given the documentation provided, the Entry Clearance Officer was not satisfied that the appellant has strong family, social or economic ties to Uganda. Given her stated dependence on funds sent from the UK sponsor, and her intention to apply for settlement in the UK, the Entry Clearance Officer considered that there was little to encourage the appellant to leave the UK at the end of her visit.
7. The Entry Clearance Manager reviewed the decision and was satisfied in the light of the evidence that false representations were made by the appellant on her previous application and that the current application fell to be refused under paragraph 320(7B).
8. The First-tier Tribunal Judge found as follows:-

"8. The appellant is sponsored in this appeal by her claimed husband Joseph Mulindwa and he provided documents regarding his employment and bank details in support of the appeal. He and the appellant maintain that the application is genuine and that they are indeed married to each other. They have also produced the documents to show that they did enter into a marriage and also that Joseph Mulindwa was free to enter into the marriage. They have however not raised sufficient evidence to challenge the use of the false documents and the facts relied upon by the respondent in this appeal that the appellant seek to rely on the documents in order to gain entry into this country. I do find on balance that the facts and evidence relied on by the respondents has been proven and the appellant has not discharged the burden of proof which is imposed on them in law to required standard. The appeal of the appellant is therefore dismissed."-

9. The grant of permission by First-tier Tribunal Judge Cruthers said that contrary to the grounds on which the appellant seeks permission to appeal, in his operative paragraph (paragraph 8) the judge did refer to the respondent having proved his/her case. Relying on paragraph 9 of **R (Iran) [2005] EWCA Civ 982, 27 July 2005**, he said it is arguable that the judge did not give adequate reasons for that conclusion. The FtTJ also said it is arguable that the judge should have considered whether or not the respondent's decision of 8 August 2012 represented a disproportionate interference with the family life of those concerned as the appellant's original Notice of Appeal made reference to the best interests of certain children and being deprived of family life by the decision under appeal. He warned the appellant however that

she should not take the grant of permission as any indication that her appeal will ultimately be successful. She may struggle to persuade the Tribunal that she met the requirements of paragraph 41 at the date of the respondent's decision given amongst other things the matters set out in the respondent's decision and the matters referred to in the appellant's own original notice of appeal.

10. FtTJ Abebrese decided the appeal on the papers at the request of the appellant.
11. The sponsor gave me a short background history of the appellant's marriage to Grace Ssinabulya and of her visits to the UK. He said they met when the appellant visited the UK for the CTA Convention in 2010. She returned to Uganda and discovered she was three months pregnant. They had intended to make a settlement application but she had not at the time taken the English language test. He also did not have the required amount of funds to satisfy the maintenance requirement. They want to get the visit appeal out of the way and then make an application for settlement. I asked him why he did not come to court to explain all this to the judge and he said he was studying and taking exams at the time.
12. I find that this background information was not before the First-tier Judge and cannot be considered by me in deciding whether or not the judge made an error of law in his decision. I shall therefore limit my consideration to the evidence that was before the FtTJ Abrebese.
13. I find that the judge he did not make an error of law on the evidence that was before him. Firstly, the appellant has not refuted the allegation that the Uganda exit and entry stamps were not commensurate with her travel history to the UK as claimed. She has also not refuted the records produced by the Entry Clearance Officer as to her travels from Brussels to the UK.
14. The appellant has not also refuted the allegation that when she made the application for entry clearance on 21 October 2010 she provided a marriage certificate dated 10 April 2010, as proof of her marriage and claimed family circumstances. She has also not refuted the allegation that she made no mention of her current husband on that application and had stated that she had no friends or family in the UK. I have seen the application which she made on 1 October 2010 and she does indeed refer to being married to Grace Ssinabulya. If there was pressure applied by her family to marry this man she has not said as much herself. Indeed the appellant has not written a letter to try and set the record straight. Rather what she has been saying in her grounds is that the judge failed to take account of the fact that the burden of proof lay on the respondent with regard to the authenticity or otherwise of the entry stamps. I accept Miss Horsely's submission that the judge did in fact make the finding that the appellant had not raised sufficient evidence to challenge the use of the false documents and the facts relied upon by the respondent. Consequently, his finding that the facts and evidence relied upon the respondent had been proven was open to him.

15. The appellant went on to say in her grounds that the judge failed to take account of the fact that her daughter is a British citizen and that effectively the refusal to permit the appellant entry clearance to travel to the UK prevents the British child from travelling to the UK and frustrates the child's Article 8 entitlement.
16. In this regard I accept the submission made by Ms Horsley. At the date of the Entry Clearance Officer's decision, that is August 2012, it had not been accepted by the FCO that the child was British. Indeed the letter from the FCO dated 28 November 2012 said that they were unable to confirm the child's identity on the basis of the documents submitted. They offered the sponsor the option of establishing his relationship to the applicant/daughter by means of DNA testing. The results of the DNA test were revealed on 30 January 2013. In any event, the child being British and having a British passport is not prevented from travelling to the UK. She is entitled to enter the UK at any time. The decision of the Entry Clearance Officer does not prevent the child from enjoying her right as a British national in the UK.
17. As to the appellant's appeal under paragraph 41 I accept that the judge was very brief in his finding that she had not discharged the burden of proof imposed on her to the required standard. I formed the view that the judge relied on the false documents and the facts as presented by the Entry Clearance Officer to make that finding. The facts relied on by the Entry Clearance Officer included the appellant's own evidence at the interview that her husband/sponsor has just finished his studies and has not yet got a job that meets the £18,600 minimum threshold as required by the new Rules. They intended to apply for a settlement visa once he had attained that requirement. She and her husband have discussed the cheapest and most convenient ways they can keep their family union and have chosen the option of the appellant and their daughter visiting him in the UK. On this evidence the Entry Clearance Officer was entitled to doubt that the appellant would return to Uganda at the end of her stated visit.
18. I find that the judge's decision does not disclose an error of law. The judge's decision dismissing the appellant's appeal shall stand.

Signed
Upper Tribunal Judge Eshun

Date