



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: VA/33465/2012

THE IMMIGRATION ACTS

Heard at North Shields
On 23rd August, 2013

Determination Promulgated
On 30th September 2013

Before

Upper Tribunal Judge Chalkley

Between

HLEZIPHI TSHUMA
(No order for anonymity made)

Appellant

and

ENTRY CLEARANCE OFFICER - PRETORIA

Respondent

Representation:

For the Appellant: The Sponsor appeared in person
For the Respondent: Mr C Dewison, Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Zimbabwe who was born on 28th January, 1956 and who is the mother of the sponsor, Mr Khulekani Moyo.
2. The appellant applied for entry clearance as a family visitor to visit her son, the sponsor. Her application was refused on 14th June, 2012. The appellant appealed and her appeal was heard by First-tier Tribunal Judge Traynor in a determination

promulgated on 12th April, 2013, following a hearing at North Shields on 6th March, 2013.

3. The judge set out at paragraph 3 of the determination, the reasons recorded by the respondent for refusing the appellant's application. The respondent was not satisfied that the appellant met the requirements of paragraph 41(1) and 41(2) of Statement of Changes in Immigration Rules, HC 395, as amended ("the Immigration Rules").
4. The judge concluded, after considering the evidence before her that the appellant had failed to establish her personal and financial circumstances in Zimbabwe. The evidence before the judge was that the sponsor sent money to his brother, who in turn paid the money into his mother's bank account. Unfortunately, the sponsor failed to provide any evidence to show that money was paid to his brother or that money was paid into the appellant's bank account. The judge noted that the evidence was contradictory, because the sponsor had also given evidence that his mother rarely visited the town and, therefore, rarely visited the bank. If that was the case, the judge failed to understand how the appellant had access to funds held in the account. The judge concluded that the evidence failed to establish the appellant's personal and financial circumstances and concluded that the appellant had not met the requirements of the Immigration Rules.
5. Permission to appeal was granted because the appellant believed that the judge had made an arguable error of law in that documents on which the appellant relied had been omitted from the documents set to and considered by the judge. She believed that the British High Commission, visa section, had failed to forward to the Tribunal all documents on which she relied and which she had submitted with her application.
6. I clarified with both the sponsor and the Entry Clearance Officer the documents which had been submitted to the Tribunal by the appellant and which documents had been submitted by the appellant to the Entry Clearance Officer with her application. The sponsor and Presenting Officer both confirmed to me that the copy "deed of transfer" in respect of a property in Cowdray Park Township related to the appellant's home.
7. The Presenting Officer explained that at part 9 of the Visa Application Form appeared a list of the documents submitted by the appellant to the Entry Clearance Officer in support of her application. Mr Dewison told me that he had spoken to the Entry Clearance Officer in Pretoria and there was no dispute that those documents were received by the Entry Clearance Officer. There is, however, a difference between that list and the list of documents which was sent to the Tribunal, shown in paragraph 2 of the Entry Clearance Manager's appeal review. Mr Dewison confirmed that an affidavit had been submitted with the application to the Entry Clearance Officer.
8. The Home Office Presenting Officer told me that the reason for the discrepancy between the two lists of documents was because the Entry Clearance Officer returned to the appellant those documents which he believed were irrelevant to the application. These included the Certificate of Occupancy, the Stock Card, the bank

statements, the letter of Recommendation from the Church, the letter of Recommendation from the School, the letter of Recommendation from the Council, three birth certificates, an affidavit and letter from Mthulisi Tshuma, a copy of a death certificate of the appellant's late husband, and a copy of the title deed of transfer.

9. The sponsor explained to me that the Certificate of Occupancy related to the appellant's rural home, which was the home where she lives on the farm, as opposed to the home she has at Cowdray Park, which is let. He explained that the stock card was evidence that his mother farmed two cows, two heifers and two calves.
10. The sponsor me that his mother received rental income from the letting of the house at Cowdray Park. I asked him if he had any evidence of the rental income and he told me that he did not. I asked him if he knew what other income she had and he said that his mother also receives income from the grinding mill. I asked him if he had any accounts for the grinding mill and he told me he did not. The only money his mother pays is her rent. She does not pay any income tax.
11. I asked the sponsor if there was any evidence anywhere which would help me to understand the appellant's finances. He explained that she did not keep accounts and he did not have any evidence.
12. I am satisfied from my perusal of the documents submitted by the appellant that, while they were not all before the judge at the time the judge prepared the determination, they could not have made any difference to the outcome because none of them gave any insight into the appellant's personal financial circumstances.
13. The judge referred to the appellant having two dependent children. No evidence was deduced to me in respect of them. I did, however, receive birth certificates for the appellant's grandchildren. Reference was made to the appellant enclosing with her application to the Tribunal, a copy of an affidavit and supporting letter from Mthulisi Tshulma. I believe that this lady is the appellant's daughter, but the appellant did not supply me with a copy of the affidavit or any supporting letter to the Tribunal.
14. I noted from the letter which was sent to the Tribunal dated 7th September, 2012 from M Mbuyazwe, that the author of the letter confirmed that the appellant owned six cows, but the appellant had adduced no evidence to demonstrate what sums (if any) she earned as a result of her farming activities and there was no evidence before me as to either the level of income she was receiving from the rent in respect of her house, or of any profits (if any) she made from the grinding mill.
15. I concluded that the judge's determination contained no material error of law. I uphold his decision. **The appellant's appeal is dismissed.**

Upper Tribunal Judge Chalkley