



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: VA/34753/2012

THE IMMIGRATION ACTS

Heard at Field House
On 26th July 2013

Determination Promulgated
On 15th August 2013
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Before

UPPER TRIBUNAL JUDGE RENTON

Between

OLUWAYEMISOLA RACHAEL SHOBANDE
(ANONYMITY ORDER NOT MADE)

Appellant

and

ENTRY CLEARANCE OFFICER - ABUJA

Respondent

Representation:

For the Appellant: Unrepresented
For the Respondent: Mr E Tufan, Home Office Presenting Officer

DETERMINATION AND REASONS

Introduction

1. The Appellant is a female citizen of Nigeria born on 3rd January 2001. She and her grandmother, Roseline Oluwmimo Shobande, applied to the British High Commission, Abuja, for entry clearance to the UK to visit the Appellant's uncle,

Anthony Shobande. Those applications were refused for the reasons given in a Notice of Decision dated 13th September 2012. They both appealed, and their appeals were heard by First-tier Tribunal Judge Harris (the Judge) sitting at Hatton Cross on 4th April 2013. The appeal of Roseline Shobande was allowed and that decision is not the subject of this appeal. The appeal of the Appellant was dismissed for want of jurisdiction. The Appellant sought leave to appeal that decision, and on 6th June 2013 such permission was granted.

Error of Law

2. I must first decide if the decision of the Judge contained an error on a point of law so that it should be set aside. The Judge found that he did not have jurisdiction to hear the appeal of the Appellant because she proposed to visit her uncle and his family who were not family members as defined by the Immigration Appeals (Family Visitor) Regulations 2012. Therefore the Appellant did not have a right of appeal according to Section 88A Nationality, Immigration and Asylum Act 2002. I find this decision to amount to an error of law. Section 88A of the Act does not say that there is no jurisdiction to hear such an appeal. In effect by Section 88A(3) it only limits the grounds on which such an appeal can be brought to those given in Section 84(1)(b) and (c) of the 2002 Act. In this case the Appellant appealed on human rights grounds and therefore she does have the right of appeal on those grounds. The Judge did not deal with those grounds at all.
3. I therefore set aside the decision of the Judge.

Remade Decision

4. At the hearing the Sponsor Anthony Oladapo Shobande was unrepresented but did not object to me proceeding to remake the decision of the Judge.
5. In evidence, the Sponsor told me that his niece, the Appellant, lived in Nigeria with the Sponsor's mother. There was no other family in Nigeria, and the Appellant had not visited the UK before. The Sponsor had visited his family in Nigeria for periods of two weeks and three weeks in 2008 and 2011. During those visits he had stayed with his mother and had therefore seen his niece. Apart from those visits, the Sponsor kept in contact with his family in Nigeria by telephone conversations once per week. The Appellant's father was deceased, and therefore the Sponsor sent money for her upkeep.
6. Finally, the Sponsor said that he wanted to see the Appellant who proposed to visit for just two weeks. The Sponsor's mother, whose appeal had been allowed, could not visit alone as there would be no-one in Nigeria to care for the Appellant. The Sponsor wanted them to visit together.
7. On the basis of that evidence, I find that there is no family life between the Appellant and her uncle, the Sponsor. The Sponsor said that he contributed to the cost of the Appellant's maintenance, but no details have been given, and therefore I find that there is no dependency between the Appellant and the Sponsor over and above the

normal emotional ties which might exist between relatives of that consanguinity. In the alternative, I find that the interference with the Appellant's family life caused by the Respondent's decision is not of such a degree of gravity as to engage the Appellant's Article 8 rights. The Appellant and the Sponsor can remain in contact by regular telephone conversations and the Sponsor's occasional visits to Nigeria. Again in the alternative, I find that any interference is proportionate. The public interest of maintaining immigration control for the benefit of the economic wellbeing of the country carries most weight. The appeal of the Appellant's grandmother was allowed indicating that the concerns of the Entry Clearance Officer in originally refusing the applications for leave to enter were groundless. However, on the other side of the equation, the family life of the Appellant and the Sponsor, such as it was, can continue regardless of the Entry Clearance Officer's decision, and therefore I find that decision proportionate. I remake the decision of the Judge by dismissing the appeal.

Decision

8. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision.

I remake the decision in the appeal by dismissing it.

Anonymity

9. The First-tier Tribunal did not make an order pursuant to Rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and although the Appellant is a minor, I find no reason to do so.

Signed

Date

Upper Tribunal Judge Renton