



Upper Tribunal
Immigration and Asylum Chamber

Appeal Number: IA/34681/2013

THE IMMIGRATION ACTS

Heard at Field House
On 12 March 2014

Promulgated
On 20 March 2014

Before

Upper Tribunal Judge Kekić

Between

Mariam Shubitidze

Appellant

and

Secretary of State for the Home Department

Respondent

Determination and Reasons

For the appellant: Mr D Sills, Counsel
For the Respondent: Mr L Tarlow, Home Office Presenting Officer

Details of appellant and basis of claim

1. This case comes before the Upper Tribunal following the grant of permission to appeal on 30 January 2014 by Designated First-tier Tribunal Judge Murray in respect of the determination of First-tier Tribunal Judge M A Khan who dismissed this appeal on 10 January 2014.

2. The appellant, a Georgian national born on 7 May 1993, made an in country application under the ten year family route, as the mother of a British child and on Article 8 grounds. When her appeal came before Judge Khan, it was determined under the entry clearance provisions and on this basis permission to appeal was sought and granted. Other criticisms of the determination were also made and at the hearing before me, which the appellant attended, Mr Sills expanded on his grounds.
3. He pointed out that not only did the judge apply the wrong rules, but he also made several typographical errors and made findings that were unsupported by the evidence. He did not need to go into further details in his submissions as Mr Tarlow readily conceded that the application of the incorrect rules resulted in a flawed determination.

Findings and Conclusions

4. There is little that I need to add to what was agreed between the parties at the hearing with respect to the flaws in the determination. The judge in at least three paragraphs of the determination (4, 5 and 33) cited the entry clearance provisions which plainly do not apply, this being an in country application. I agree with Mr Sills that this misconception taints all the subsequent findings and means that the determination cannot stand. As stated, other criticisms have also been made of the determination but having found it flawed on the first point, there is no necessity to go any further.
5. The determination is set aside in its entirety and no findings are preserved.

Decision

6. The First-tier Tribunal Judge made errors of law. I set aside the determination and remit the appeal for hearing afresh by another judge of the First-tier Tribunal.

Signed:

**Dr R Kekić
Judge of the Upper Tribunal**

13 March 2014