



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: OA/10553/2013

THE IMMIGRATION ACTS

Heard at Bradford

Determination

On 9th September 2014

Promulgated

On 15th September 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE KELLY

Between

**THE ENTRY CLEARANCE OFFICER
(POST REFERENCE: SHEFO/367)**

Appellant

and

MR OSAYUWAMEN OSAGIEDE

Respondent

Representation:

For the Appellant: Mr Tetley, Counsel instructed by Halliday Reeves Solicitors
For the Respondent: Mr Diwnycz, Home Office Presenting Officer

DETERMINATION AND REASONS

1. This appeal comes before the Upper Tribunal as the result of permission granted by First-tier Tribunal Judge Kinnell in the following terms -

Permission is sought [by the Entry Clearance Officer] to appeal against the determination of First Tier Tribunal Judge Shimmin, promulgated 4th April 2014, allowing an appeal against the refusal of entry clearance as a partner, or spouse.

The determination was not served on the respondent, and came to attention only on the day of the application for permission was made on 12th June

2014. I therefore extend the time for giving notice so as to place the application “in time”.

Paragraph 18 of the determination records the fact that the issues in the case were identified at the commencement of the hearing. The issues included the adequacy of the proposed accommodation and whether or not the documents provided by the appellant were in the specified form. The judge makes no specific finding on either matter, and provides no reason for the conclusion that the appellant satisfies the Immigration Rules.

2. The terms of the grant reflect the assertions that were made by the Entry Clearance Officer in the application for permission to appeal –

While it is not possible to prove a negative in this case, it is clear from the attached document that this is the appellant’s copy of the determination. This was provided to me today. The attached email exchange corroborates this. It is clear that for whatever reason, the determination was not served on the SSHD or ECO correctly.

Given that this only came to my attention today, an extension of time is sought to cover the period from 4 April to now. There was no way that the application could have been made sooner.

It is respectfully submitted that the Tribunal erred in law in the following way.

Making a material error of law.

At paragraph 34 of the Tribunal found that the appellant satisfies the Immigration Rules. However, there is no explanation of this. For example, there are no findings on the level of the sponsor’s income and whether this complies with the threshold set out in Appendix FM or the specified evidence requirements of Appendix FM-SE. That being so it is uncertain how the Tribunal can find that the Rules are satisfied.

3. Neither the application for nor the grant of permission to appeal makes the slightest reference to paragraphs 22 and 23 of Judge Shimmin’s determination, which read as follows –

22. After hearing and considering all the evidence, and particularly after a detailed consideration of the documentation, Mr Sobowale [the Home Office Presenting Officer at the hearing] indicated that the documentation of the sponsor’s income provided by the appellant was sufficient to meet the Immigration Rules. Furthermore, the documentation confirmed that the sponsor had more than the minimum required under the Rules.

23. With regard to the accommodation, there was no property inspection report before me. However, the sponsor gave oral evidence as to the

details of the property. The documents included the tenancy agreement and photographs of the interior of the property. Mr Sobowale accepted that nothing undermined the evidence in respect of the accommodation. On the basis of the evidence before me I am satisfied that the appellant will be adequately accommodated without recourse to public funds and that the Immigration Rules are met in this regard.

4. The Tribunal is entitled to presume that any representative, but more especially an employee of the Home Office, has the authority to concede that a particular issue in the appeal has been proved *as a matter of fact*. Thus, whilst the Tribunal will always retain the right to determine a question of law, it is entitled to treat a concession of fact as sufficient reason for concluding that the matter in question has been proved. In such circumstances, it is nonsensical for the party making the concession later to claim that he or she does not understand the reason for the finding to which the concession related. Moreover, in the circumstances of this case, it would have been procedurally unfair to the appellant if the Tribunal had gone behind the concession in question without first giving notice to his representative. The reason for this is that once the Presenting Officer had made the concession during his closing submissions, the sponsor (who made closing submissions on the appellant's behalf: see paragraph 16) was entitled to assume that she no longer needed to address the Tribunal in relation to the issues of maintenance and accommodation and was required only to address the Tribunal concerning the outstanding issue of whether discretion under the Immigration Rules ought to have been exercised differently [see paragraph 24].
5. In the absence of any reference to it in the grounds of appeal, it is reasonable to assume that the respondent does not challenge the First-tier Tribunal's record of the concession that had been made concerning the issue of maintenance. That concession provided sufficient reason for finding that the requirements of the Immigration Rules concerning the level of maintenance and submission of specified documents in relation thereto had been satisfied. In relation to the issue of accommodation, the Tribunal clearly explained that it was satisfied that the requirements of the Immigration Rules were met by reference to the oral testimony of the sponsor, photographs of the interior of the property in question, and the relevant tenancy agreement, none of which were suggested by the Presenting Officer to be either lacking in credibility or unreliable. That provided a sufficient explanation for the Tribunal's very clear finding that the appellant had proved that there would be adequate accommodation available to him in the United Kingdom.
6. Before leaving this appeal, I wish to express a degree of concern about the terms in which permission was granted. Permission to appeal should only ever be granted on the basis that it is *arguable* that the First-tier Tribunal made an error of law. It is then for the Upper Tribunal to decide whether

that argument is made out. If it was appropriate for permission to have been granted at all, then it ought to have been expressed along the lines that it was *arguable* that the concession made by the respondent was an insufficient reason for the Tribunal to make the finding of fact in question. To state that the Tribunal's determination, "... provides no reason for the conclusion that the appellant satisfied the Immigration Rules" [emphasis added] was not only to pre-judge a matter that fell to be determined by the Upper Tribunal, but was also to accept without question a statement that had been made in the application and which was plainly contrary to the facts. As a result, both the sponsor and the appellant have suffered very nearly six months of further uncertainty as to whether they would be permitted to reside together in the United Kingdom.

Decision

7. The appeal is dismissed.

Anonymity not directed.

Signed

Date

Deputy Judge of the Upper Tribunal