



The Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal number: OA/10734/2013

THE IMMIGRATION ACTS

Heard at Field House  
On December 5, 2014

Determination Promulgated  
On December 9, 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

THE ENTRY CLEARANCE OFFICER

Appellant

and

MS RENELLE GLENDA STANTON  
(NO ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr Walker (Home Office Presenting Officer)

For the Respondent: Mr Collins, Counsel, instructed by Breytenbachs Immigration Consultants

DETERMINATION AND REASONS

1. Whereas the original respondent is the appealing party, I shall, in the interests of convenience and consistency, replicate the nomenclature of the decision at first instance.
2. The appellant, born April 30, 1969 is a citizen of South Africa. On February 25, 2013 she submitted an application for entry clearance as a fiancée of the

sponsor, Kieran Moore. The respondent refused his application under the Immigration Rules on March 15, 2013 under Appendix FM and in particular section E-ECP 1.1(d).

3. The appellant appealed to the First-tier Tribunal under Section 82(1) of the Nationality, Immigration and Asylum Act 2002 on May 3, 2013. On August 14, 2014 Judge of the First Tier Tribunal Bart-Stewart (hereinafter referred to as the "FtTJ") heard her appeal. At the hearing both representatives agreed that the respondent should have considered this under paragraph 290 HC 395 because the transitional provisions contained in paragraph A280 of part 8 of the Immigration Rules applied. In a determination promulgated on September 19, 2014 the FtTJ found the decision was not in accordance with the law and she allowed the appeal to the extent that the application would be remitted to the Entry Clearance Officer to make a fresh decision under the Immigration Rules.
4. The respondent lodged grounds of appeal on September 26, 2014 and on November 3, 2014 Upper Tribunal Judge Martin sitting as a Judge of the First-tier Tribunal granted permission to appeal finding it arguable the FtTJ may have erred by taking the decision she did because it was arguable the transitional provisions only applied to members of HM Armed Forces.
5. There was no Rule 24 response filed by the appellant and the matter came before me on the above date. The sponsor was in attendance and was represented.

#### **PRELIMINARY ISSUE**

6. Mr Walker and Mr Collins agreed that the grounds of appeal did not disclose any error in law.
7. Paragraph A280(d)(i) of Part 8 of the Immigration rules states:

"The following provisions of Part 8 continue to apply to applications made on or after 9 July 2012 and are not subject to any additional requirement listed in (b) above, by persons who have made an application for entry clearance, leave to enter or remain as the fiancé(e), proposed civil partner, spouse, civil partner, unmarried partner, same sex partner, or child or other dependent relative of a British citizen or settled person who is a full-time member of HM Forces."
8. Both representatives agreed that these provisions caught the appellant's application because the sponsor was a British citizen. It was not a requirement of the Rules that the British citizen had to also be a member of HM Armed Forces despite the content of the grounds of appeal.
9. Mr Walker confirmed that he did not intend to pursue the grounds of appeal and invited me to dismiss the appeal.

10. I considered the grounds and the provisions and I am satisfied the requirement to be a member of the Armed Forces only applied if the sponsor was a person settled in the United Kingdom. The appellant was a British citizen and the requirement to be a member of the Armed Forces did not apply in this appeal.
11. I find there is no error in law.
12. Mr Collins asked me to make a wasted costs order but I refused the application because the respondent had been given permission to appeal and there had been a failure by the appellant's solicitors to file a Rule 24 response. I was not satisfied the respondent had acted unreasonably in bringing these proceedings.

**DECISION**

13. There was no material error of law I uphold the original decision.
14. Under Rule 14(1) The Tribunal Procedure (Upper Tribunal) Rules 2008 (as amended) the appellant can be granted anonymity throughout these proceedings, unless and until a tribunal or court directs otherwise. No order has been made and no request for an order was submitted to me.

Signed:

Dated:



Deputy Upper Tribunal Judge Alis

**TO THE RESPONDENT**

No fee was payable.

Signed:

Dated:



Deputy Upper Tribunal Judge Alis