



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

Appeal Number: VA/14880/2013

THE IMMIGRATION ACTS

Heard at Field House

Determination

Promulgated

On 8th August 2014

On 13th August 2014

Before

UPPER TRIBUNAL JUDGE MARTIN

Between

MRS FETHIA DAHAK

Appellant

and

ENTRY CLEARANCE OFFICER - PARIS

Respondent

Representation:

For the Appellant: Mr Lamine Mekideche (the Sponsor in person)

For the Respondent: Mr I Jarvis (Senior Home Office Presenting Officer)

DETERMINATION AND REASONS

1. This is an appeal to the Upper Tribunal, with permission, by the Respondent with regard to a determination of the First-tier Tribunal (Judge Colvin) dated 11th May 2014 by which he allowed the Appellant's appeal against the Entry Clearance Officer's decision to refuse her leave to enter as a family visitor. The Judge allowed the appeal under the Immigration Rules.
2. For the sake of clarity and continuity I shall continue to refer to the Entry Clearance Officer as the Respondent and Mrs Dahak as the Appellant.

3. The Entry Clearance Officer submits that the Judge misquoted the requirements of paragraph 41 of the Immigration Rules.
4. As the Judge correctly identified, the refusal notice indicate that the Respondent was not satisfied that the Appellant was a genuine visitor who intended to leave the UK at the end of the visit. The Entry Clearance Officer did so on the basis that the Appellant had previously been issued with a visit visa in November 2012 when she had indicated that it was her intention to stay for four weeks in the UK. However, she in fact remained in the UK for four months before returning to Algeria. She then returned to the UK only two weeks later returning to Algeria only five days before the expiry of the six months visa. Thus having said that she intended to spend four weeks in the UK she was here for almost 6 months.
5. The Judge at paragraph 11 indicates that he had the benefit of oral evidence from the Sponsor who told him that he had persuaded his wife to stay longer on the two previous visits so they could be together as a married couple. He explained to the Judge that they were in a difficult position having married two years ago with a five-month-old child but could not meet the new Immigration Rules to live together in the UK. They are therefore reliant upon visits to each other. He confirmed that his wife would leave before the expiry of the visa as she has done on both previous occasions.
6. The Judge then at paragraph 12, accepting the evidence of the Sponsor, accepted that the Appellant is a genuine visitor who intends to leave the UK at the end of the visit. The Judge acknowledged that she had stayed longer on the last two visits than she had indicated in her application but was nevertheless satisfied that she returned prior to the expiry of the visa "which is one of the main requirements of the Visa".
7. The pertinent part of what the Judge says is his statement that returning prior to the expiry of the visa is one of the main requirements.
8. Paragraph 41 of the Immigration Rules in fact states that in order to be granted a visa an applicant must be "genuinely seeking entry as a visitor for a limited period as stated by him, not exceeding six months".
9. What is relevant therefore is what the Appellant stated on the application form as to the duration of the visit, not that she will return before six months expires. It is quite clear that the evidence in this case was that the Appellant was unlikely to remain in the UK only for the period of four weeks. So much was confirmed by the Sponsor to me. On the basis that she is likely to stay for more than the four weeks applied for, she cannot show that she meets the requirements of paragraph 41(i) of the Immigration Rules and thus cannot succeed in her appeal.
10. In misquoting the requirements of paragraph 41 the First-tier Tribunal has made an error and as that was determinative of the appeal the decision must be set aside. On the basis that the Appellant, on the evidence of the

previous visits and the evidence of the Sponsor, cannot satisfy paragraph 41(i) the Appellant's appeal against the Entry Clearance Officer's decision must be dismissed.

11. There is brief mention in the First-tier Tribunal's determination that the Judge took into account the genuine difficulties that the couple have in being able to conduct their relationship and family life. That however arises due to their inability to meet the requirements of the Immigration Rules and there is no evidence that it is not possible for them to enjoy family life together in Algeria.
12. The appeal to the Upper Tribunal by the Entry Clearance Officer is allowed with the effect that the Appellant's original appeal against the Entry Clearance Officer's decision is dismissed.

Signed

Date 12th August 2014

Upper Tribunal Judge Martin