UPPER TRIBUNAL
(IMMIGRATION AND ASYLUM CHAMBER) **APPEAL NUMBER: VA/16221/2013**

THE IMMIGRATION ACTS

Heard at: Field House	**Determination Promulgated**
On: 23 September 2014	**On 13 October 2014**
Prepared: 2 October 2014	

Before

DEPUTY UPPER TRIBUNAL JUDGE MAILER

Between

ENTRY CLEARANCE OFFICER: ACCRA

Appellant

and

MR JEFFREY JOSEPH RICHTER
(NO ANONYMITY DIRECTION MADE)

Respondent

Representation

For the Appellant: Mr I Jarvis, Senior Home Office Presenting Officer
For the Respondent: Ms Ofei-Kwatia, counsel (instructed by Victory at Law Solicitors)

DETERMINATION AND REASONS

1. For the sake of convenience, I shall refer to the appellant as the "entry clearance officer" and to the respondent as "the claimant."

2. The claimant is a national of Ghana. His application for an entry clearance to visit the UK for four weeks was refused by the entry clearance officer on 3rd July 2013.

3. The reasons for the refusal of entry clearance were extensive.

4. The claimant stated that he intended to visit his wife in the UK. The entry clearance officer refused his application on the merits under paragraph 41(i), (ii), (vi) and (vii) of the Immigration Rules.

5. The entry clearance officer also considered his application pursuant to paragraph 320(3) of the rules. That was on the basis that the claimant failed to produce to the entry clearance officer a valid national passport or other document satisfactorily establishing his identity and nationality. He had previously been encountered by authorities and had given a different identity. Accordingly, the entry clearance officer could not be satisfied that he had presented a valid passport satisfactorily establishing his nationality and identity.

6. In addition, records showed that the claimant had previously overstayed in the UK. When interviewed, he stated that he entered the UK in March 1998 and that he held a six month visit visa obtained in Accra. Home Office records showed that he was encountered in October 2010 and was served with removal papers on the basis that his leave to enter the UK had expired in 1998. He was removed from the UK in November 2010.

7. Accordingly, the entry clearance officer also refused his entry clearance pursuant to paragraph 320(7B) of the Immigration Rules.

8. His application was also refused under paragraph 320(11) of the Immigration Rules. He had entered the UK in 1998 and was encountered by the authorities in May 2009 when he gave a false identity. He failed to comply with restrictions attached to this offence. He was again encountered in October 2010. He attempted to obtain indefinite leave to remain in the UK by paying someone to facilitate this for him. Given these facts, the entry clearance officer was satisfied that he had contrived in a significant way to frustrate the intentions of the rules and therefore refused his application under paragraph 320(11) of the rules.

9. Furthermore, records indicated that he had been arrested and sentenced following convictions in connection with two offences. He failed to comply with the terms imposed by these sentences. Accordingly, the entry clearance officer was satisfied that his exclusion from the UK would be conducive to the public good. It was considered that on balance and in the light of his conduct, it was undesirable to issue the claimant an entry clearance visa.

10. It was recorded by First-tier Tribunal Judge Abebrese on 28th May 2014, that it had been submitted to him that the entry clearance officer had wrongly applied paragraph 320(7B) of the rules as this was an application made by a spouse of the sponsor.

11. He accordingly held at paragraph 9 of the determination that he did not find on the evidence that the claimant had breached paragraph 320(7B) as his application was to visit his spouse in the UK.

12. Ms Ofei-Kwatia accepted that this was a material error in the circumstances as the claimant was applying for a visit visa to visit a spouse and not for entry clearance as a spouse.

13. Furthermore, although the Judge referred at paragraph 7 to "the second issue", namely paragraph 320(11) of the rules, he found at paragraph 10 that the claimant had provided information which is not contrary to his evidence as to his true identity.

14. The Judge thereafter considered the appeal on its merits, allowing it under the rules.

15. On 11th August 2014, Upper Tribunal Judge Renton granted the entry clearance officer permission to appeal. In particular, he stated that the Judge made a contradictory finding in respect of paragraph "320(B)(7)". At paragraph 9 of the determination the Judge stated that he did not find on the evidence that the claimant had breached paragraph "320(B)(7)".

16. Mr Jarvis relied on the entry clearance officer's grounds and submitted that paragraph 7 of the determination was "misconceived" as the claimant was applying for a visit visa to visit a spouse and not an entry clearance. Accordingly, the Judge was required to, but failed to consider the relevance and applicability of paragraph 320(7B).

17. Further, the Judge accepted at paragraph 10 that the claimant intentionally gave the authorities incorrect details when encountered as an overstayer in May 2009. However, the Judge had failed to consider at all, or give reasons as to why the claimant should not be refused entry under paragraphs 320(11) or 320(19). That is particularly so having regard to the facts: the Judge failed to adequately address why as a person who overstayed for 12 years and who had committed offences whilst illegally in the UK, those paragraphs did not apply as contended by the entry clearance officer.

18. Accordingly, Mr Jarvis submitted that there had been no engagement at all with paragraphs 320(11), (19) or (3) of the Rules.

19. Ms Ofei-Kwatei accepted that there were difficulties particularly regarding the way the Judge dealt with paragraph 320(7B) in this case.

20. Furthermore, she stated that it was evident that the Judge had not engaged with the discretionary basis upon which the entry clearance officer refused the claimant's application.

21. Accordingly, both parties accepted that there had therefore been material errors of law and that the decision had to be set aside.

22. The parties also submitted that this was an appropriate case for the appeal to be remitted to the First-tier Tribunal as it was evident that the issues required to be determined had not been properly dealt with. There would have to be extensive evidence and fact finding, which rendered the case suitable for remittal.

23. I find that the decision of the First-tier Tribunal Judge involved the making of material errors of law. I accordingly set aside the decision. There will have to be a fresh decision made. I have had regard to the Senior President's Practice Statement regarding the issue of remitting the appeal to the First-tier Tribunal for a fresh decision.

24. This is a case where one of the parties has been denied the opportunity of having his case properly presented and determined and where the Judge ignored potentially significant immigration rules.

25. This is also a case where there is a fairly extensive amount of judicial fact finding which is necessary for the decision to be re-made. There will be a complete re-hearing with no findings preserved. I have also had regard to the overriding objective and conclude that it would be just and fair to remit the case, which I do.

Decisions

The decision of the First-tier Tribunal Judge involved the making of material errors of law and is set aside.

The appeal is remitted to the First-tier Tribunal (Taylor House) for a fresh decision to be made. The agreed hearing date is 14th January 2015. The appeal will be heard by any judge apart from First-tier Tribunal Judge Abebrese.

Signed Date 2 October 2014

C R Mailer
Deputy Upper Tribunal Judge