Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: VA/18112/2013

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 6th August 2014	**On 19th August 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE J G MACDONALD

Between

MS SEKINAT ABIODUN AMINU

Appellant

and

VISA OFFICER

Respondent

Representation:

For the Appellant: Mr A Aminu, Solicitor, Charles Hill & Co Solicitors
For the Respondent: Mr I Jarvis, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellant is a citizen of Nigeria who applied for entry clearance to the United Kingdom under paragraph 41 of the Immigration Rules. Her application was refused by the Entry Clearance Officer (ECO) and her

subsequent appeal allowed under the Immigration Rules by First-tier Tribunal Judge Malone in a determination promulgated on 25th April 2014.

2. The Respondent lodged grounds of application. It was said that on 25th June 2013 Section 52 of the Crime and Courts Act 2013 was commenced which amended Section 88A of the Nationality, Immigration and Asylum Act 2002. This change restricted the appeal rights for visitors coming to visit family members here. Applicants were still able to bring an appeal but only on the residual grounds of Section 84(1)(b) and (c) of the 2002 Act, namely on human rights and race relations grounds.

3. In this case the application was made on 17th July 2013 and as such the Appellant was only able to appeal on human rights and race relations grounds.

4. Despite this the judge had found that the decision was not in accordance with the Rules and had gone on to allow the appeal.

5. Permission to appeal was granted primarily on the basis that the judge had failed to recognise there was no jurisdiction to entertain an appeal under paragraph 41 of the Immigration Rules.

6. A Rule 24 notice was lodged stating that it was clear in the Grounds of Appeal that the substantial part of the grounds was and still is under Section 84(1)(b) and (c) of the 2002 Act. Those grounds gave the judge the jurisdiction to hear the appeal.

7. Based on the grounds which the judge must have perused he would still have allowed the appeal. The Appellant therefore asked the court to maintain the decision of the First-tier Tribunal Judge.

8. Thus the appeal came before me on the above date.

Submissions

9. Mr Jarvis relied on his grounds. If the judge really was considering the appeal on human rights grounds he had to grapple with the concept of family life sufficient to engage with Article 8 in the first place, and he had not done that. The decision should be set aside and the appeal dismissed.

10. Mr Aminu accepted that he had no case on the race relations ground but he did have a case on human rights grounds. The Appellant had a right to a fair hearing. The Appellant was also severely disabled and the judge was aware of this matter. I was asked to maintain the decision.

Conclusions

11. The judge, albeit briefly, rehearsed the evidence and noted that the Appellant was proposing to come for a visit for four weeks. He noted that proper arrangements had been made for the Appellant's travel to the United Kingdom and her return to Nigeria. He concluded at paragraph 19

that having considered the oral and written evidence there was no justification for the ECO's querying the Appellant's intentions. He found in paragraph 19 that the Appellant had genuinely sought leave to enter the United Kingdom as a visitor not exceeding six months and intended to leave. In the next paragraph he found the Appellant had satisfied the criteria set out in paragraph 41 of the Immigration Rules.

12. It is manifestly clear that the judge had found that because the Appellant was a genuine visitor and would return to Nigeria that he satisfied the terms of paragraph 41 and that the appeal should be allowed.

13. The judge did not consider the appeal on human rights grounds. Unhappily it is clear that he failed to appreciate that the rights of appeal were restricted in the manner set out above. Given the proper concession from Mr Aminu the only avenue for the Appellant to be successful was an appeal on human rights grounds which is touched on in the grounds of appeal to the judge.

14. By allowing the appeal under paragraph 41 it is clear that the judge erred in law and that the decision will have to be set aside as the Appellant was only able to appeal on human rights and race relations grounds.

15. There is no evidence before me that the Appellant has not had a fair hearing. On the contrary, she was given a right of appeal to the Tribunal which evidence was heard and assessed.

16. No evidence was presented to suggest that the Appellant suffered any form of discrimination at any point during the appeal process.

17. Given that the Appellant was proposing to come for a short visit only, I have concluded that Article 8 ECHR is not engaged. It was not argued before me that it was, only that the Appellant was severely disabled and was entitled to a fair hearing. Even if Article 8 was engaged, I cannot see that the refusal of the application is anything other than proportionate to the legitimate public end sought to be achieved, namely the economic wellbeing of the country through immigration control. I received no argument to the contrary from Mr Aminu presumably because it is not a point which was properly arguable.

18. It is therefore necessary to set the decision aside and make a fresh decision dismissing the appeal.

Decision

19. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

20. I set aside the decision.

21. I remake the decision in the appeal by dismissing it.

Signed Date

Deputy Upper Tribunal Judge J G Macdonald