



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

VA/18527/2013

Appeal Number

VA/18528/2013

THE IMMIGRATION ACTS

Heard at Sheldon
On 9th September 2014
Prepared 16th September 2014

Determination Promulgated
On 17th September 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE PARKES

Between

MARTIN NGWA AKENJI

First Appellant

And

IRENE EPSE AKENJI MANDEH ABONGWA

Second Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Anonymity direction not made

For the Appellant: Mrs H A (Sponsor)

For the Respondent: Mr D Mills (Home Office Presenting Officer)

DETERMINATION AND REASONS

1. This is an appeal by the Secretary of State against the determination of First-tier Tribunal Judge Whalan promulgated on the 27th of May 2014 in which the Appellants' visit visa appeal were allowed. The grounds are to the effect that as the applications post-date the 25th of June 2013 the Judge was prohibited from considering the merits of the appeals under the Immigration Rules and was limited to considering human rights and race discrimination and was wrong to allow the appeal under the rules.
2. The determination is clearly flawed as by the provisions of section 52 of the Crime and Courts Act 2013 the rights of appeal in family visit visa applications were curtailed and limited to human rights and race discrimination grounds. The Judge had no power to consider the merits of the substantive application and was wrong to do so, the appeal could not be allowed on that basis.

3. At paragraph 5 the Judge noted that human rights and racial discrimination had been raised but without any specific detail. At paragraph 13 the Judge dismissed any suggestion that the decision was a consequence of racial discrimination or a breach of the Appellants' human rights.
4. At the hearing the Appellants were represented by the Sponsor. As the appeal had been a paper appeal the Sponsor's submissions were limited as the hearing before the Upper Tribunal was not to be a further appeal on the merits and having sought a paper appeal it would not be fair for the ambit of the hearing to be enlarged.
5. From what the Sponsor said it is clear that she had had a difficult year in terms of her health and that she wanted the Appellants to attend her graduation and to provide family support that had been lacking. It is a situation that commands sympathy for her and her distress at the refusal was both clear and understandable. However, at the hearing I explained that the Upper Tribunal role was limited to correcting an error by the First-tier Tribunal and that while I would consider the position she was not to be optimistic about the possible outcome.
6. The Grounds of Appeal were set out in a letter of the 2nd of November 2013. The letter set out the Sponsor's circumstances and addressed the merits of the appeals. The only reference to the limited rights of appeal 4th page in the 6th and 7th paragraphs. It is stated that the decision breached the Sponsor's and Appellants' human rights and was based on race rather than evidence but no evidence or particulars were given. This was a view maintained by the Sponsor at the Upper Tribunal hearing.
7. The Judge was right to observe that the grounds were raised and was also right to observe that there was no detail as to how the assertions could be maintained. Evidence is required to show that either is made out and in the case of human rights it is necessary to show that there is family life, i.e. that between adults there is some form of dependency beyond what would be expected. There was no evidence to that effect and no evidence of racial discrimination. The dismissal of these grounds at paragraph 13 was appropriate and was the only finding that the Judge was entitled to make on the information available to him.
8. In summary the Judge erred in considering the substantive application and the decision to allow the appeals under paragraph 41 was not legally open to him. The findings made in respect of human rights and race discrimination were properly made and open to the Judge on the information available. The substantive decision is set aside leaving only the findings on the remaining issues, on that basis the appeals are dismissed.

CONCLUSIONS

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

I set aside the decision and I re-make the decision in the appeal dismissing the appeal of the Appellants.

The First-tier Tribunal did not make an anonymity order and I make no direction.

In dismissing the Appellants' appeals I make no fee award.

Signed:

Deputy Judge of the Upper Tribunal (IAC)

Dated: 17th September 2014