Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: VA/18597/2013**

THE IMMIGRATION ACTS

Heard at: Field House	**Determination Promulgated**
On: 23 September 2014	**On 9 October 2014**
Prepared: 2 October 2014	

Before

DEPUTY UPPER TRIBUNAL JUDGE MAILER

Between

ENTRY CLEARANCE OFFICER: ABUJA

Appellant

and

MISS AMONIA BENJAMIN ALLISON
(NO ANONYMITY DIRECTION MADE)

Respondent

Representation

For the Appellant: Mr I Jarvis, Senior Home Office Presenting Officer
For the Respondent: Mr C Emezie, Solicitor (DCK Solicitors)

DETERMINATION AND REASONS

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

2. The claimant is a citizen of Nigeria, born on 29th June 1952. Her appeal against the entry clearance officer's decision dated 26th September 2013 refusing to grant her an entry clearance as a visitor was allowed by First-tier Tribunal Judge Malins under the substantive immigration rule. He explicitly stated at paragraph 10 of the determination that this was not an appeal to which Article 8 of the European Convention on Human Rights could, in his judgment, apply.

3. On 12th August 2014, Designated First-tier Tribunal Judge McCarthy granted the entry clearance officer permission to appeal. He stated that the grounds of application were well made. The Judge had recorded that the claimant applied for entry clearance on 16th September 2013. That was after 25th June 2013 when s.52 of the Crime and Courts Act 2013 came into effect, limiting the grounds of appeal in such cases to human rights and race relations.

4. He also noted the Judge's reference in his conclusions that this is not an appeal to which Article 8 could apply. Designated Judge McCarthy also stated that it was arguable that in the light of that finding and in the absence of any reliance on race relations grounds, the outcome is confused. The Judge gave no reasons for that finding and it may be that he did not think that he needed to do more, having allowed the appeal under the rules.

5. At the hearing on 23rd September 2014, Mr Emezie accepted that the Judge had erred by allowing the appeal under the immigration rules. He submitted however that the Judge had failed to engage with or make any decision regarding Article 8.

6. Mr Jarvis accepted that to that extent the decision was not in accordance with the law.

7. It was evident from paragraphs 11 to 19 the grounds of appeal before the First-tier Tribunal that there had been substantial reference to Article 8. Submissions in accordance with Article 8 were made. Accordingly, the First-tier Tribunal had only limited jurisdiction in this case and was only entitled (and required) to consider the claimant's human rights claim.

8. I find that the decision of the first-tier Judge involved the making of a material error of law. The decision is accordingly set aside and will have to be remade.

9. Both parties therefore agreed that this was an appropriate case to remit to the First-tier Tribunal on the appellant's Article 8 appeal.

10. I have had regard to the Senior President's practice statement regarding the issue of remitting an appeal to the First-tier Tribunal for a fresh decision.

11. This is a case where the appellant has been denied the opportunity of properly presenting her case and where the Judge failed to consider the Article 8 claim at all. This is an appropriate case to remit to the First-tier Tribunal.

Decisions

The decision of the first-tier Judge involved the making of a material error of law. The decision is accordingly set aside and will have to be remade.

The appeal is remitted to the First-tier Tribunal (Taylor House) for a fresh decision to be made.

No anonymity order made.

Directions

The agreed hearing date is the 8th January 2015, with a time estimate of one hour.

The appeal will be heard by any Judge apart from First-tier Tribunal Judge Malins.

Signed Date 2 October 2014

C R Mailer
Deputy Upper Tribunal Judge