



IAC-HW-MP-V1

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

Appeal Number: VA/18641/2013

THE IMMIGRATION ACTS

Heard at Field House

**Decision & Reasons
Promulgated**

On 3 November 2014

On 5 November 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVID TAYLOR

Between

**OKSANA GRANT
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms G Loughran of Counsel

For the Respondent: Mr P Armstrong, Home Office Presenting Officer

DECISION AND REASONS

1. Although the Secretary of State is, strictly, the appellant to this appeal, for the sake of consistency I refer to her as the respondent and to the original appellant as such.
2. The Secretary of State has appealed, with permission, against the First-tier Tribunal decision (Judge Blake) promulgated on 19 August 2014 allowing the appellant's appeal against the refusal of the Entry Clearance Officer to grant her a family visit visa to the UK.

3. The grounds submit that the judge made an error of law in failing to take account of the fact that the appellant had only limited Grounds of Appeal – in this case on human rights grounds only – as the application had been made after 25 June 2013, the date on which Section 88A of the Nationality, Immigration and Asylum Act 2002 was amended. It was submitted that the judge appears to have applied the law as it stood before 25 June 2013 and made no findings under Article 8 of the ECHR.
4. Brief submissions were made by both representatives, the Presenting Officer relying simply on the grounds. Ms Loughran acknowledged that there had been no specific mention of Article 8 in the determination but suggested that the judge's findings of fact, in favour of the appellant, were sufficient implication that the judge was making a decision on human rights grounds.
5. Notwithstanding the submissions of Ms Loughran, it is regrettably clear from the judge's determination that he has made no reference at all to human rights other than an oblique reference in [27] to a case decided in 2001. It was clear from the respondent's decision and, indeed, from the original Grounds of Appeal that the only issue before the judge was that of Article 8. I note that the appellant was not legally represented at the First-tier Tribunal and the respondent chose not to send any representative at all. The judge was therefore not given any guidance – even though none should have been needed – that the only issue before him was the question of Article 8 human rights. But he appears to have decided the case under paragraph 41 of the Immigration Rules, to which he referred in detail, and not under Article 8.
6. That is a clear error of law and the decision must therefore be set aside.
7. The judge, however, did hear oral evidence and found the sponsor to have been a credible and honest witness. There is therefore no reason why the judge's findings as to the evidence at [66] - [75] of the determination should not be preserved.
8. Human rights was the only issue. That issue has not been considered by the First-tier Tribunal at all. The appellant's appeal must therefore be remitted to the First-tier Tribunal for a rehearing on that issue.

Notice of Decision

9. The First-tier Tribunal determination contained an error of law and is hereby set aside save as to paragraphs [66] - [75] which shall be preserved.
10. I remit the appeal to the First-tier Tribunal at Taylor House to be heard as to the human rights issues by any judge (other than Judge Blake).

Deputy Upper Tribunal Judge David Taylor
4 November 2014