



IAC-FH-NL-V1

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

Appeal Number: IA/05739/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 28 August 2015**

**Decision & Reasons Promulgated
On 7 September 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE HILL QC

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MRS ELIZABETH MODUPE CLARK
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr S Walker, Home Office Presenting Officer

For the Respondent: Ms S Grewal, instructed by Afro Asian Advisory Service

DECISION AND REASONS

1. This is an appeal brought by the Secretary of State in relation to a determination by First-tier Tribunal Judge Sweet that was handed down on 17 March 2015. The appeal is brought pursuant to a grant of permission by First-tier Tribunal Judge Astle dated 7 May 2015.
2. The grounds of appeal can be very shortly stated. The preponderance of the determination indicates a lack of acceptance of the substance of the evidence put forward by the appellant (as she was before the Judge) in that what she said was deemed not to be credible and to lack plausibility

in a number of ways. In particular the Judge took a very negative view of the fact that she had exaggerated the level of care which she gave to her husband and in addition both exaggerated and directly contradicted the minister about the level of help or assistance which she afforded to her church. Furthermore, indications were given in the course of the determination that the immigration status of the children were questionable, the Judge remarking at paragraph 39: "I have considerable doubts as to ... their status in the United Kingdom". The judge quite properly took into account the fact that little weight should be accorded to the time during which her private life was being established on the basis that at that stage her leave to be in the United Kingdom could only be described as precarious.

3. What is properly and fairly recognised by Ms Grewal for the respondent is that the determination appears to be going in one direction for the majority of its length and then suddenly and unexpectedly takes a turnabout in paragraph 43 and comes to the opposite conclusion to that which appears to be have been built up by the foundations laid earlier in that determination. In particular the Judge indicates:

"I accept that there would be difficulties in her and her husband and in the other family members returning to Nigeria where she says that she only has a two bedroom bungalow where her elderly mother lives. On the balance of probabilities I conclude that there are insurmountable obstacles to her returning to Nigeria to continue her family life in that country."

Reference is made to the statutory definition of 'insurmountable obstacles' which means:

"The very significant difficulties which would be faced by the applicant or their partner in continuing their family life together outside the United Kingdom which could not be overcome or which would entail very serious hardship for the appellant or their partner."

4. Regrettably, there is nothing in paragraph 43 of the determination giving any indication of the factors which were considered by the Judge to amount to such insurmountable obstacles. There is no more than an assertion, and one which is not undergirded by any previous findings of fact which, as I have already indicated, seem to point in entirely the opposite direction.
5. I was initially inclined, having regard to the evidence recorded in the determination, to re-make the decision myself on the basis that no further material is likely to be available. On reflection, and perhaps through an abundance of caution, I am narrowly persuaded that it would be appropriate in this instance to remit the matter to a First-tier Tribunal for a fresh determination. My primary reason for doing so is the clear dissonance in the determination between the findings of fact as indicated in the bulk of the determination and the conclusion in paragraph 43. It is unclear to the informed reader why such a *volte face* has taken place in the course of the determination on a judicial assessment of credibility and plausibility by a Judge who has heard evidence and assessed that

evidence. It would be an unsafe basis for me to reach a different conclusion when I had not heard that evidence and when not been in a position to assess the credibility of those who gave it.

6. It has also been indicated to me by the Presenting Officer on behalf of the Secretary of State that there may be other material which the Secretary of State may wish to put before the First-tier Tribunal and that is a further reason why remitting the matter would be appropriate.
7. So in all the circumstances I allow this appeal and I order that the matter be remitted to the First-tier Tribunal to be determined afresh.

Directions

1. Remit to Hatton Cross.
2. Not before Judge Sweet.
3. No interpreter required.
4. Times estimate: 2 hours.

Notice of Decision

The appeal is allowed.

No anonymity direction is made.

Signed *Mark Hill*

Date 4 September 2015

Deputy Upper Tribunal Judge Hill QC