



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: OA/02316/2014

THE IMMIGRATION ACTS

Heard at Field House
On 1 September 2015

Decision & Reasons Promulgated
On 5 November 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

ENTRY CLEARANCE OFFICER - LAGOS

Appellant

and

MISS MUIBAT MORENIKE OYELEKE
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Ms A Fijiwala, Senior Presenting Officer

For the Respondent: Ms J Bond, Counsel instructed by Freemans Solicitors

DECISION AND REASONS

1. In this decision the Appellant is referred to as the ECO and the Respondent is referred to as the Claimant.
2. The Claimant, a national of Nigeria, date of birth 3 December 1990, appealed against the ECO's decision, dated 10 January 2014, to refuse entry clearance to the Claimant

as an adult dependent relative under Appendix FM of the Immigration Rules HC 395 (as amended) with particular reference to paragraphs EC-DR.1.1 and EC-DR.2.4 and 2.5 with respect to paragraphs EC-DR.1.1(b) of Appendix FM.

3. The application was misconceived and proceeded upon the erroneous basis that the Claimant was a dependent relative under the old Immigration Rules (paragraph 317) and so it was certain to fail. However, in the grounds of appeal to the First-tier Tribunal, Article 8 ECHR grounds were raised: The terms of those grounds are, it is fair to say, discursive and wide-ranging. Any judge preparing for an appeal, if those Article 8 grounds were to be pursued, should have clarified with the parties at the outset of the hearing of the appeal if those matters or some of them were no longer material.
4. With the appeal grounds the Entry Clearance Manager on 5 September 2014 set out a substantive response which does not appear to have been raised with First-tier Tribunal Judge Majid (the Judge) at the outset or what was the true nature of the Article 8 claim being pursued by the Claimant. The Judge allowed the appeal on Article 8 ECHR grounds. Permission to appeal was granted by First-tier Tribunal Judge Cox on 10 June 2015.
5. The matter was further complicated to a degree by the fact that in the skeleton argument from a Ms Manyarara, Counsel, the issue of the Appellant's sexuality was raised but not addressed by the Judge. Ms Bond tells me, and I fully accept what she has said, that there are 'one line' references to the issue in witness statement evidence which the Judge records he has read and taken into account, see paragraph 10 of the Decision and Reasons.
6. Nevertheless, the Record of Proceedings does not show that the sexuality issue was a matter that was pursued. I do not have a copy of the Record of Proceedings recorded on the Judge's Braille computer. Nevertheless, if it had been raised it would have been a matter that should have formed a part of the Judge's reasoning in relation to Article 8 issues. However, as Ms Bond fairly said, the position was that the Article 8

decision was not part of the grounds that were lodged by the ECO against the decision of the Judge dated 24 March 2015. The Specialist Appeals Team only had the decision of the Judge and it was abundantly plain that the ECO in drafting the grounds of application, which have not been amended, was attacking the lack of reasoning for the appeal being allowed under the Immigration Rules. It is clear beyond any doubt whatsoever that the Claimant could not meet the requirements of the Rules. Thus the grounds fairly attack the fact that the Judge failed to make clear in the determination what provisions of the Rules the Judge was referring to, if he was, purporting to allow the appeal. Those grounds as settled by the ECO make the fair point that that omission amounted to an error of law. However, in the circumstances of the appeal before the Judge where quite simply compliance with the Rules by the Claimant was not the issue, the failure to provide reasons does not make any difference.

7. Instead the Claimant's representatives before the Judge in their skeleton argument essentially argued the matter by reference to Article 8 in terms of restoring a family/private life between the Claimant and her parents in the UK. The case law cited, even if not entirely apposite, nevertheless was touching upon that issue. It was clear beyond doubt that the Judge understood the nature of the skeleton argument for he said at paragraph 15 of the decision that the skeleton argument was very useful. The rest of that paragraph is less than entirely coherent but that does not undermine the material facts that the Judge found on the evidence particularly that of the Claimant's mother. The Judge, it is fair to say, did not set out the public interest issues and did not display any clear reasoning on proportionality as an issue. Nevertheless, the Judge went on to allow the appeal with reference to the Article 8 ECHR considerations that had been raised.
8. The ECO's grounds on which permission was granted do not attack the Judge's decision on Article 8 ECHR. In the absence of the grounds being amended, which of course could have been done, I am left with the judge's findings. It did not seem appropriate to go behind such unchallenged findings. In these somewhat unusual circumstances the Judge made no error of law in relation to Article 8. The finding

that the Claimant met the requirements of the Immigration Rules was manifestly wrong, was never an issue and made no material difference to the appeal as a whole. Ms Fijiwala did try to finesse the absence of challenge to the Article 8 ECHR grounds by arguing a general lack of reasons upon both the Rules and Article 8. However, it seemed to me that on the face of it that was not a ground of appeal, nor a point upon which permission was given by the First-tier Tribunal Judge. In those circumstances it is not open to me to interfere with that aspect of the decision whatever I might think of it.

NOTICE OF DECISION

9. For these reasons therefore I have concluded that the ECO's appeal succeeds in relation to the issues raised under the Immigration Rules. The Original Tribunal's decision stands in relation to the Claimant succeeding under Article 8 of the ECHR.
10. I note that an anonymity order was requested of the Judge. His reason for refusing it was less than fulsome but an order was not pursued before me.
11. I regret promulgation has been delayed by the file being mislocated

Signed

Date 2 November 2015

Deputy Upper Tribunal Judge Davey