



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: OA/05204/2014

THE IMMIGRATION ACTS

Heard at: Manchester

Determination

On: 5th March 2015

Promulgated

On 11th March 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE BRUCE

Between

Olga Bondarenko
(no anonymity direction made)

Appellant

And

Secretary of State for the Home Department

Respondent

Representation

For the Appellant: Ms Smith, Counsel instructed by Birleys Solicitors

For the Respondent: Mr McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Ukraine date of birth 20th January 1986. She appeals with permission the decision of the First-tier Tribunal (Judge Foudy) to dismiss her appeal against the Respondent's decision to refuse to grant her entry clearance as the spouse dependent spouse of a Tier 4 (General) Migrant.
2. The central matter in issue between the parties was whether the Respondent had properly applied paragraph 320(7B) to the Appellant's case. It was alleged that the Appellant had knowingly used deception in respect of an earlier attempt to enter the UK.
3. At paragraph 3 of the determination it says the following: "It is for

the Appellant to persuade me on a balance of probabilities that at the date of the Respondent's decision the Appellant complied with the requirements of paragraph 319C of the Immigration Rules and that paragraph 320(7B) did not apply to her".

4. As Mr McVeety accepts there was no burden on the Appellant to show that paragraph 320(7B) did not apply. The burden squarely lay on the Respondent to show that the Appellant had herself sought to deceive. In granting permission First-tier Tribunal Judge Plumtre notes that in the final analysis, the outcome of this appeal may not be any different. That is true. However the Appellant is entitled to a determination which applies the correct burden and standard of proof and in which her evidence, and that of her sponsor husband, is properly weighed. That has not thus far been done and for that reason the matter must be remitted to the First-tier Tribunal.

Decisions

5. The decision contains an error of law and is set aside.
6. The matter is to be re-made in the First-tier Tribunal.

Deputy Upper Tribunal Judge Bruce
5th March

2015