



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

Appeal Number: IA/20727/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 12 February 2016**

**Decision & Reasons Promulgated
On 26 February 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE SHERIDAN

Between

**FOLUKE ADEOLA ADETONA
(NO ANONYMITY DIRECTION MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: Ms P Young, Counsel instructed by Natado Solicitors
For the Respondent: Mr S Whitwell, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Nigeria born on 24th December 1971. This appeal arises from the decision of the respondent, dated 1 May 2014, whereby the appellant's application for leave to remain in the United Kingdom on the basis of private and family life under Article 8 ECHR was refused. The appellant appealed and her appeal was heard by First-tier Tribunal ("FtT") Judge Wiseman who, in a decision promulgated on 19 March 2015, dismissed the appeal.


2. At the outset of the error of law hearing the parties stated that that they were in agreement that the FtT had made an error of law and that the appeal should be remitted to the FtT. I agree with their assessment.
3. As the parties are in agreement I will give only brief reasons for my decision to find an error of law and remit the appeal to the FtT.
4. The error of law in respect of which the parties were in agreement concerns the FtT's approach to paragraph EX.1 of Appendix FM to the Immigration Rules.
5. Paragraph EX.1 is not freestanding and a prerequisite to its consideration is that certain eligibility and suitability requirements are met. These differ depending on whether the applicant is applying under the "partner route" or "parent route".
6. The FtT correctly recognised that the appellant met the eligibility requirements as a "partner" but not as a "parent". Accordingly, the only route open to her was that of a "partner".
7. Section R-LTRP 1.1(d) of Appendix FM states that the requirement to be met for limited leave to remain as a partner are (i) the applicant must not fall for refusal under Section S-LTR (the appellant did not fall for refusal under this section); (ii) the applicant meets the requirements of paragraphs E-LTEP.1.2-1.12 (the applicant did meet these requirements); and (iii) paragraph EX.1 applies.
8. EX.1 is divided into two parts: sub paragraph EX.1(a) which concerns an applicant's relationship with a child; and sub paragraph EX.1(b) which concerns a relationship with a partner.
9. The FtT's error was to find that because the appellant reached EX.1 through the partner route and not the parent route only EX.1(b) could be considered. However, as recognised by the parties before me, that is not the case. Section R-LTRP 1.1(d) does not state that only EX.1(b) applies where EX.1 is reached through the partner route; rather, it provides that EX.1 applies. And EX.1 is satisfied if either EX.1(a) or EX.1(b) is satisfied. By finding that EX.1(a) could not be considered, the FtT made an error of law.
10. Both Mr Whitwell and Ms Young considered this error to be material such that the decision of the FtT should be set aside and the decision remade by a differently constituted FtT. They did not agree, however, on the extent to which the FtT's findings of fact should be preserved.
11. Mr Whitwell argued that the findings of fact should be preserved apart from those relating to the length of time the appellant's children have resided in the UK, which he accepted should be considered afresh. Ms Young argued that the appeal should heard *de novo*.

12. In my view, the issue of when the appellant's children entered the UK is not a discrete one that can be separated from other factual findings. The FtT's finding that they entered the UK in 2011, rather than 2006 as claimed by the appellant, is related to its conclusions more generally about the appellant's lack of credibility. Accordingly, in order for the matter of when the children entered the UK to be properly reconsidered, the FtT will need to consider the entirety of the evidence that concerns the appellant's credibility and therefore none of the FtT's findings should be preserved.
13. Having regard to section 7.2(b) of the President's Practice Statement, this appeal shall be remitted to the First tier Tribunal to be heard afresh by a judge other than Judge Wiseman with no findings from Judge Wiseman's decision being preserved.

Decision

- a. The decision of the First-tier Tribunal contains a material error of law such that it should be set aside in its entirety and the appeal heard afresh.
- b. The appeal is remitted to the First-tier Tribunal for hearing afresh before a judge other than First tier Tribunal Judge Wiseman.

Signed



Deputy Upper Tribunal Judge Sheridan

Dated: 23 February 2016