Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: OA/08289/2015**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 14 August 2017	**On 29 August 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

ENTRY CLEARANCE OFFICER – LAGOS

Appellant

and

MISS ABIOLA ABIGAIL AIYELABOLA
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Mr T Wilding, Senior Presenting Officer
For the Respondent: Mr A A J Aiyelabol, Sponsor

DECISION AND REASONS

1. In this appeal the Appellant is the Entry Clearance Officer – Lagos (ECO) and the Respondent is referred to as "the Claimant".
2. An appeal was made by the Claimant against the decision of the ECO, dated 28 April 2015, to refuse entry clearance as a dependent child of a person settled in the UK with reference to paragraph 297 of the Immigration Rules (the Rules).

3. The application was dealt with on that basis because, looking at the documentation it appeared that the application, on the basis of the 'additional representations' made, was made as a child seeking to join a parent settled in the UK with reference to paragraph 297 of the Rules

4. It is clear that in fact the route for the application, as an adult dependent relative could no longer be made under paragraph 317 of the Rules, but under Appendix FM of the Rules as amended. In the appeal against the ECO's decision FtT Judge James (the Judge) in her decision, promulgated on 29 November 2016 said [at D9]:-

> "The main problem with the reasons for refusal is that the Respondent (ECO's) has singularly failed to consider this application under the correct rule. Although the Appellant is an adult there is only reference to the rule applicable to a minor child of a parent present and settled in the UK, under Paragraph 297. There is a total failure to consider this application under the rule, which apples to an adult dependent child, under the relevant rule as at date of refusal i.e. Paragraph 317 of the Rules. In particular in regards to Paragraph 317(1)(f)."

5. It is most unfortunate that the Judge did not deal with the matter with reference to Appendix FM. There is quite simply no way to save this decision when such an error of law was made. Indeed the Judge made abundantly plain that in fact it was she who applied the wrong Rule in determining the appeal. Paragraph 317(i)(f) was replaced by Appendix FM on 9 July 2012.

6. Similarly her criticism of the Entry Clearance Manager was wrong [D10].

7. It is further clear that the Judge whilst reaching a view on Article 8 ECHR made some findings as to the Article being engaged and that the decision was not proportionate, but the Judge simply failed to give any adequate or meaningful explanation of her conclusion, bearing in mind she was doing

that in the context of having applied the wrong Rules; in terms of the consideration of the Rules relevant to the exercise of proportionality: It is most unfortunate that this should have happened.

8. The Sponsor before me has indicated a number of matters relating to his personal circumstances, the circumstances of the Claimant and the circumstances of his dependent son presently in the UK. The Sponsor wishes to present information which shows just what were or are the Claimant's circumstances and why she should join him in the UK, not least by reference to his ability to support her here, his employment, and his personal health, about which questions are currently raised. He has also, of course, been in the United Kingdom for many years. It seemed to me that the appropriate outcome, when there are no material findings of fact that can stand, the matter will have to be remade in the First-tier Tribunal.

9. Decision

The Original Tribunal's decision can not stand. The appeal must be remade in the First-tier Tribunal

ANONYMITY

No anonymity direction was made, nor is one required.

Signed Date 20 August 2017

Deputy Upper Tribunal Judge Davey