



**Upper Tribunal
(Immigration and Asylum Chamber)
VA/01825/2015**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

Decision & Reasons

On 24 May 2017

Promulgated

On 25 May 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE MANUELL

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MISS ANASTASIIA KOZIUK
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr P Duffy, Home Office Presenting Officer

For the Respondents: Mrs V Gallacher, sponsor

DETERMINATION AND REASONS

Introduction

1. The Appellant (the Secretary of State) appealed with permission granted by First-tier Tribunal Judge Grant-Hutchison on 12 April 2017 against the decision and reasons of First-tier Tribunal Judge Feeney who had allowed the Respondent's appeal against the Entry

Clearance Officer, Warsaw's decision dated 11 February 2015 to refuse to grant the Respondent entry clearance as a visitor to the United Kingdom. The decision and reasons was promulgated on 10 November 2016 following a hearing on 29 September 2016.

2. The Respondent is a national of Ukraine, born there on 29 June 1993. Her application for a visit visa was made under paragraph 41 of the Immigration Rules (since replaced by Appendix V) and was refused under paragraphs 41(i), 41(ii) and paragraph 320.
3. Judge Feeney allowed the appeal under the Immigration Rules. Unfortunately no Home Office Presenting Officer had been present at the hearing to remind the judge that the First-tier Tribunal's jurisdiction in visit appeals has been limited since 25 June 2013 to human rights (Article 8 ECHR) and Equality Act 2010 issues. The judge omitted to consider Article 8 ECHR at any stage.
4. Permission to appeal to the Upper Tribunal as sought by the Appellant (the Secretary of State) was granted for those reasons.
5. Standard directions were made by the Upper Tribunal indicating that the appeal would be reheard immediately if a material error of law were found. No rule 24 notice was filed on behalf of the Respondent.

Submissions - error of law

6. Mr Duffy for the Secretary of State relied on the grounds and the grant of permission to appeal. In summary he submitted that the judge's errors were manifest. The starting point had to be whether the decision interfered with the family life of two adult siblings, i.e., the Appellant and her sponsor, her sister. No emotional or other form of dependency had been suggested by the evidence. The appeal fell at the first hurdle. The decision and reasons could not stand and should be set aside, remade and dismissed.
7. Mrs Gallacher was present on behalf of her sister. Her main concern had been the paragraph 320 refusal, which prevented the possibility of future visits. Making a fresh visit visa application was not otherwise a problem.

The error of law finding

8. At the conclusion of submissions, the tribunal indicated that it accepted Mr Duffy's submissions and found that the judge had fallen into all of the material errors of law of which the Secretary of State complained and in respect of which permission to appeal had been granted. The judge had misdirected herself as to the tribunal's powers.
9. There was no evidence before the tribunal of any relationship between the Appellant and her sister beyond that of the normal ties between siblings. The Appellant was 22 years of age at the date of submitting the entry clearance application. She is leading an independent life as a university student in the Ukraine, where indeed she has a partner. There was no evidence of dependency, whether emotional or otherwise on her senior married sister. Article 8 ECHR was not engaged.
10. There was no basis for the judge to go further in those circumstances. Had the judge found evidence of emotional dependency beyond the normal adult relationship between siblings, then the Article 8 ECHR appeal would have had to have been approached through the lens of the Immigration Rules. Even then there would have been difficulties, because at [7] the judge referred to Section E-ECP of Appendix FM of the Immigration Rules, which has nothing to do with paragraph 41, although confusingly the judge then set out extracts from paragraph 41 and paragraph 320(7A). It was a decision which gave the appearance of carelessness and had few redeeming features.

Submissions - fresh decision

11. For clarity the tribunal will now refer to the parties by their original designations in the First-tier Tribunal.
12. Mrs Gallacher was understandably concerned that the favourable paragraph 320(7A) findings were preserved. Fortunately they can be, because it is expressly stated in the permission to appeal application at [4]: "For the avoidance of doubt the Judge's findings in relation to paragraph 320(7A) are no[t] challenged."
13. Mr Duffy relied on his previous submissions.

The fresh decision

14. The burden of proof in this appeal lies on the Appellant. The scope of this appeal is limited as indicated above. As also indicated, the Respondent accepts that the judge was right to find that paragraph 320(7A) of the Immigration Rules incorrectly applied by the Entry Clearance Officer. That finding stands by concession.
15. The appeal is otherwise dismissed because Article 8 ECHR was not shown to be engaged. The Appellant is of course free to make a fresh entry clearance application at any time. No doubt when doing so she will have in mind the other reasons why her application was refused, and will refer closely to the provisions of Appendix V and the useful guidance offered by the Home Office on its website. A future application appears to have good prospects of success, given her past record of compliance, although it will be considered against the circumstances which exist at the date of any such application. The present appeal must, however, be dismissed.
16. There was no need identified for an anonymity direction in this appeal and no submission to any such effect.

DECISION

The making of the previous decision involved the making of an error on a point of law. The tribunal allows the onwards appeal of the Secretary of State for the Home Department, sets aside the original decision and remakes the original decision of the First-tier Tribunal as follows:

The appeal is DISMISSED

Signed

Dated 24 May 2017

Deputy Upper Tribunal Judge Manuell

**TO THE RESPONDENT:
FEE AWARD**

There is no fee award

Signed

Dated 24 May 2017

Deputy Upper Tribunal Judge Manuell