



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/035262017

THE IMMIGRATION ACTS

Heard On the Papers at Field House
On 1 August 2018

Decision & Reasons Promulgated
On 07 August 2018

Before

UPPER TRIBUNAL JUDGE KING TD

Between

MRS EVELYN MCCALLUM

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS

1. The appellant is a citizen of Guyana. She seeks to appeal against the decision of the Entry Clearance Officer dated 14th February 2014 refusing to grant her entry clearance as the spouse of the sponsor, who is a person present and settled in the United Kingdom.
2. The reason given in the refusal was that the appellant failed to meet the Immigration Rules, particularly as the sponsor had not provided suitable evidence as to maintenance and accommodation and failed in any event to meet the maintenance requirement of £18,600. There is also an issue as to the appropriate medical certificate to be provided from Guyana as to her being free from tuberculosis.
3. The appellant sought to appeal against that decision, which appeal came before First-tier Tribunal Judge Cohen on 13th December 2017. In a decision dated 8th January 2018 the appeal was dismissed.

4. The sponsor attended and gave evidence relying upon documentary material. He stated that he visited the appellant as often as he could but could not go and live in Guyana as he was settled in the United Kingdom.
5. The Judge upheld the concerns of the respondent as to the Immigration Rules.
6. It was contended in the grounds of challenge to the decision that the Judge failed adequately to consider Article 8 and indeed made a somewhat surprising finding that there was no family life between the appellant and sponsor. Given the evidence that had been produced it is somewhat surprising that that was the result.
7. In any event leave to appeal to the Upper Tribunal was granted in respect of the aspect of Article 8.
8. In the Secretary of State's response to the grounds of appeal under Rule 24 dated 23rd July 2018, it is accepted that was a fundamental error of law such that the matter should be reheard before the First-tier Tribunal. The appellant's solicitors have also written asking for the matter to be heard before the First-tier Tribunal.
9. It is not automatically to be assumed that because there is an error of law in a decision that the appropriate course is to remit it to the First-tier Tribunal for a rehearing.
10. However, in the circumstances of this case there being a paucity of clear findings on an important issue, it seems to me in accordance with the Senior President's Practice Direction that the fairest course is indeed to remit the matter to the First-tier Tribunal for a rehearing on all relevant issues.

Notice of Decision

The appeal in the Upper Tribunal succeeds to the extent that the decision of the First-tier Tribunal is set aside to be remade in the course of a de novo hearing before the First-tier Tribunal.

No anonymity direction is made.



Signed
Upper Tribunal Judge King TD

Date 3 August 2018