



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/03971/2019

THE IMMIGRATION ACTS

Heard at Royal Courts of Justice
On 6th January 2020

Decisions & Reasons Promulgated
On 13th January 2020

Before

UPPER TRIBUNAL JUDGE COKER

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

LONE MAPOGO

Respondent

Representation:

For the Appellant: Ms S Cunha, Senior Home Office Presenting Officer
For the Respondent: Mr Gordon Taole, sponsor

DETERMINATION AND REASONS

1. Ms Mapogo, a citizen of Botswana, sought entry clearance as the fiancée of Gordon Taole, a British Citizen. The application was refused for reasons set out in a decision made on 22nd January 2019. Her appeal against that decision was heard by First-tier Tribunal judge Rose and, for reasons set out in a decision promulgated on 11 September 2019, allowed.
2. The Secretary of State sought and was granted permission to appeal that decision. The Secretary of State sought, in her grounds, to rely on the sponsor's ex-wife's conduct and that the sponsor had previously sponsored 5 other women for entry clearance as adversely impacting upon the credibility findings made by the First-tier Tribunal judge.

3. Ms Cunha readily accepted that the assertion by the Secretary of State that the sponsor had previously sponsored five other women had not been before the First-tier Tribunal judge. Although she submitted that evidence to that effect could be relied upon in the error of law hearing, she could provide no jurisprudence to support that submission – and in any event I note that other than assertion in the grounds, no evidence of such applications was provided.
4. In the absence of evidence, or indeed assertion, before the First-tier Tribunal judge that the sponsor had previously unsuccessfully sponsored five other applications, there is no error of law by the First-tier Tribunal judge in failing to take such matters into account.
5. The grounds relied upon by the respondent also submitted that the behaviour of the sponsor was such as should have impacted upon the credibility findings made by the judge. In granting permission, the Secretary of State was directed to provide a witness statement by the Presenting Officer if it was intended to rely upon that behaviour. No witness statement was provided, and it was by no means clear from the ‘Minute’ that was provided by the Secretary of State that any discussion that took place between the sponsor and the Presenting Officer took place in front of the judge. It would seem odd for a Presenting Officer to reassure a sponsor that the judge would be fair, in front of the judge. There is no merit in that ground and Ms Cunha did not seek to rely upon it.
6. The Entry Clearance Officer in the reasons for refusing entry clearance had referred to one previous application sponsored by Mr Taole for a wife to come to the UK. That application had been granted but the wife had then, very shortly after her entry to the UK, left the sponsor and they had subsequently divorced. The submission was that the judge, although assessing the credibility of the sponsor had failed to make credibility or other findings with adequate reasons on the intentions of Ms Mapogo.
7. The judge specifically addressed the issue of Mr Taole’s previous wife and the impact upon Ms Mapogo’s application and appeal. The judge considered the documentary and oral evidence and in particular the evidence given by Mr Taole as to why he considered Ms Mapogo was not attempting to use her relationship with him to gain entry to the UK. The judge considered the evidence of contact between the couple and gave detailed reasons why he found no bad faith on the part of the sponsor and accepted his evidence as it reflected upon the intentions of Ms Mapogo. The judge gave adequate reasons for his findings.
8. There is no identified error of law in the decision by the First-tier Tribunal to allow the appeal.

Conclusions:

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision; the decision of the First-tier Tribunal stands.

Date 6th January 2020

A handwritten signature in cursive script, appearing to read "Jane Coker".

Upper Tribunal Judge Coker