



IAC-FH-CK-V1

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

Appeal Number: EA/00638/2020 (V)

THE IMMIGRATION ACTS

**Heard at Field House
On 26 August 2021**

**Decision & Reasons Promulgated
On 01 September 2021**

Before

UPPER TRIBUNAL JUDGE SHERIDAN

Between

**ASHLEY MUSERERE
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: Ms Ofei-Kwati, Counsel instructed by Wisemart Solicitors
For the Respondent: Mr Whitwell, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This has been a remote hearing to which both parties have consented. The form of remote hearing was video by Microsoft Teams (V). A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. I did not experience any difficulties, and neither party expressed any concern, with the process.

2. The appellant is a citizen of Zimbabwe born in April 1972, who has lived in the UK since 2002.
3. In 2008 she made an application for asylum that was refused.
4. In February 2010 she married an Austrian citizen and soon after applied for, and was issued with, a residence card under the Immigration (European Economic Area) Regulations 2016 ("the 2016 Regulations"). In October 2015 she applied for a permanent residence card. Although initially refused, following a successful appeal she was issued with a permanent residence card valid from December 2017 to December 2027.
5. On 11 January 2020 the appellant arrived in the UK on a flight from Ghana. Following a review by a duty fraud officer, the respondent was satisfied that the biodata page in the appellant's Zimbabwean passport was fraudulent. In a decision dated 12 January 2020 ("the refusal decision") the respondent stated that because the appellant had used deception, refusal of admission under the 2016 Regulations was "justified on serious grounds of public policy/health/security". The respondent stated that:
 - a. admission was refused under regulation 11(2)(b) of the 2016 Regulations;
 - b. the appellant was refused entry in accordance with paragraphs 320(3), 320(5) and 320(7B) of the Immigration Rules; and
 - c. the appellant's permanent residence card in accordance with regulations 23 and 24 of the 2016 Regulations.
6. The appellant appealed to the First-tier Tribunal where her appeal came before Judge of the First-tier Tribunal Bunting ("the judge"). In a decision promulgated on 2 March 2021, the judge dismissed the appeal. The judge stated (in paragraph 39 of the decision) that the sole issue in the appeal was whether the appellant had produced a valid passport. The judge considered – in detail – the evidence relating to the appellant's passport and concluded that the respondent had discharged the burden of showing that the biodata page was false. On the basis of this finding, the judge concluded that the appeal should be dismissed because regulation 11 of the 2016 Regulations had not been satisfied.
7. The grounds of appeal take issue with the judge's assessment of the evidence relating to the validity of the appellant's passport. They also state that the judge erred by not considering the refusal under the Immigration Rules and regulations 23 and 24 of the 2016 Regulations.
8. There is, in my view, a plain error in the decision such that it cannot stand. The error is that the judge did not consider (and did not make a decision in respect of) whether the appellant's permanent residence card should be

revoked. I put this to Mr Whitwell who acknowledged that regulations 23 and 24 were not addressed by the judge. However, he argued that if the evidence established that the appellant was not who she said she was then there was not a basis for her to have a permanent right of residence. The difficulty with this argument is that the judge did not actually address this point. He only considered, and made a finding in respect of, whether the appellant's passport was genuine. This finding was necessary, but not sufficient, to decide the appeal. As the judge failed to consider issues relevant to the revocation of the appellant's permanent residence card the decision cannot stand.

9. In my view, the effect of the error has been to deprive the appellant of an opportunity for her case, in respect of the decision to revoke her permanent residence card, to be considered by the First-tier Tribunal. I have therefore decided, in accordance with paragraph 7.2(a) of the Practice Statements of the Immigration and Asylum Chambers of the First-tier Tribunal and Upper Tribunal, that the appeal should be remitted to the First-tier Tribunal.

Notice of Decision

The decision of the First-tier Tribunal involved the making of an error of law and is set aside.

The appeal is remitted to the First-tier Tribunal to be made afresh by a different judge.

No anonymity direction is made.

Signed

D. Sheridan

Upper Tribunal Judge Sheridan

Date: 27 August 2021