Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: VA/31835/2012

THE IMMIGRATION ACTS

Heard at Columbus House, Newport	**Determination Promulgated**
On 25 October 2013	**On 21 November 2013**

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

ENTRY CLEARANCE OFFICER - NAIROBI

Appellant

and

NILKA KIPTUI

Respondent

Representation:

For the Appellant: Mr K Hibbs, Home Office Presenting Officer
For the Respondent: No representative

DETERMINATION AND REASONS

1. This is an appeal by the Entry Clearance Officer against a decision of the First-tier Tribunal (Judge Holder) which allowed the claimant's appeal against a refusal to grant her entry clearance as a visitor under para 41 of the Immigration Rules (HC 395 as amended).

2. For convenience, hereafter I refer to the parties as they were before the First-tier Tribunal.

3. The appellant is a citizen of Kenya who was born on 11 October 1986. On 26 June 2012 she married a British citizen, Nigel Davies in Kenya. On 16 July 2012, she made an application to visit her spouse in the UK. On 6 August 2012, the ECO refused the appellant's application. He did so on the basis that he was not satisfied that the appellant was a genuine visitor who intended to leave the UK at the end of her visit and so she had not established that she met the requirements in para 41(i) and (ii) of the Rules. The ECO's reasons were as follows:

> "You state you seek entry clearance to visit your spouse for 6 months. You have provided evidence you married your spouse, a British citizen, on 26/06/2012. Whilst I accept your sponsor intends to fund your visit, it is your intentions and circumstances I must consider when assessing your application for entry clearance.
>
> You are currently unemployed and dependent on your sponsor to support you in Kenya. You have no property, no assets and no income. You state you intend to visit for 6 months, the maximum allowable time on a visit visa; however you have provided nothing with your application to suggest you have any reason to leave the UK, particularly as your newly married husband resides permanently in Gwent.
>
> In light of these things, I consider that you have not demonstrated sufficiently strong family, social or economic ties to your home country to satisfy me of your intentions in the UK.
>
> I am not satisfied that your personal circumstances are as stated. I am not satisfied that you are genuinely seeking entry as a visitor for a limited period not exceeding 6 months or that you intend to leave the United Kingdom at the end of the visit as required by paragraph 41(i) and (ii).
>
> I have therefore refused your application because I am not satisfied, on the balance of probabilities, that you meet all of the requirements of the relevant Paragraph of the United Kingdom Immigration Rules."

4. On 18 February 2013, the Entry Clearance Manager confirmed that decision.

5. The appellant appealed to the First-tier Tribunal. She did not request an oral hearing and the appeal was determined on the papers by Judge Holder on 21 June 2013. The judge allowed the appellant's appeal. His reasons for doing so can be found at paras 13-17 of his determination as follows:

> "13. The issue in this appeal is that the Respondent is not satisfied that the Appellant has shown that she is a genuine visitor or will leave the United Kingdom on completion of the proposed visit.
>
> 14. The Appellant married her sponsor, Nigel Davies, who is a British citizen. They married in Kenya on 26th June 2012.
>
> His financial and personal standing are not challenged by the Respondent. He will finance the Appellant's trip and provide accommodation.

> 15. I find from the application form that the Appellant was unemployed at the time of the application and had little money of her own. Nevertheless, I find that it is probable that she does have emotional ties to Kenya given that her family reside there.
>
> She does not have an adverse immigration record save that she was refused a visa to work as a home help in Germany as a consequence being over the age limit. There is no evidence of her overstaying in another country. She has a valid reason to visit the United Kingdom given her marriage to the sponsor.
>
> She states that she will return to Kenya at the end of her stay and any application for settlement will be made from Kenya.
>
> 16. I find, given the cumulative effect of the afore-mentioned, that it is probable that the Appellant is a genuine visitor who intends to return to Kenya at the end of her proposed visit.
>
> 17. I find that she has shown that she meets the requirements of paragraph 41(i) and (ii) of HC 395."

6. The Entry Clearance Officer sought permission to appeal on the basis that the judge had failed to give adequate reasons for his findings. On 5 July 2013, the First-tier Tribunal (Judge Robertson) granted the ECO permission to appeal to the Upper Tribunal on the basis that the judge had arguably erred in law. The arguable error is set out in para 2 of the grant of permission to appeal as follows:

> "2. In the grounds, it is submitted that the Judge, in arriving at his assessment of whether or not the Appellant would leave the UK at the end of her visit, erred in failing to give adequate reasons for his decision that any emotional attachment she may feel to Kenya because her family lived there was greater than her attachment to her husband who lived in the UK. This ground is arguable."

7. Thus, the appeal came before me.

8. The appellant has no legal representative and the sponsor did not appear at the hearing. It is clear from the Tribunal's file that notice of the hearing was sent to the sponsor at his correct address on 12 September 2013. In the circumstances, I exercised my discretion to hear the appeal in the absence of the appellant under rule 38 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) in the interests of justice.

9. Mr Hibbs, who represented the ECO, relied upon the grounds and a skeleton argument he submitted on the day of the hearing. He submitted that the judge had failed to provide adequate reason for finding that the appellant's emotional attachment to her family and life without any income or employment in Kenya were greater than her attachment to her husband such that she would leave the UK at the end of a visit. He also submitted that the judge had failed to take into account that the appellant had been refused a visa to live in Germany less than twelve months before. He submitted that the judge had failed to apply the balance of probabilities test and had given the appellant the benefit of the doubt rather than weighing the

evidence in the round. He submitted that the judge had failed to take a holistic look at the circumstances including all the adverse factors.

10. First, it is clear the judge applied the balance of probabilities test. He expressly sets that out at para 6 of his determination and there is no basis for finding that he did not have that fully in mind when he made his findings at paras 14-17.

11. Secondly, the judge did take into account that the appellant had been refused a visa to work in Germany solely on the basis that she was over the age limit for such visas. The judge was fully entitled to conclude that she had no "adverse immigration record" apart from that and there was no evidence of her overstaying in another country.

12. Thirdly, the judge noted that the appellant was unemployed and had little money of her own. He was entitled to find that, having lived in Kenya where she had family since her birth in October 1986, she had "emotional ties" to Kenya.

13. Fourthly, the judge took into account the appellant's evidence that she would return at the end of her stay as set out in her application. There was, of course, no interview in this case.

14. Fifthly, the judge noted in para 4 of his determination that he took into account the documents in both the respondent's and appellant's bundle. Contained in those bundles, is a letter of support from the appellant's husband dated 14 July 2012 in which he states that he is a British citizen and a class 1 lorry driver working in South Wales. He states that he is able to accommodate the appellant during her stay. Also, in her application the appellant states that the sponsor will be responsible for her accommodation and also will pay for her visit (£1,000).

15. The judge was entitled to take the view that the appellant did not have an adverse immigration history given that she was refused a work visa as a home help in Germany only because she was over the permitted age limit. The judge had the evidence of the sponsor and also a number of testimonial letters relating to the sponsor. The judge was entitled to take into account that the appellant had "emotional ties" with Kenya and, in effect, to accept her evidence set out in her application that she intended to leave the UK at the end of a six month visit. The judge took into account all the evidence before him. He was entitled to find that the appellant was a genuine visitor who intended to return to Kenya at the end of her visit. There was no evidence of any immigration offending by the appellant. She had made an application to visit her husband within a few weeks of marrying him in June 2012.

16. In Shizad (sufficiency of reasons: set aside) [2013] UKUT 85 (IAC), the Upper Tribunal set out the well-accepted standard for assessing the "adequacy" of reasons for a judge's findings (at [10]):

> "We would emphasise that although there is a legal duty to give a brief explanation of the conclusions on the central issue on which the appeal is determined, such reasons

> need not be extensive if the decision as a whole makes sense, having regard to the material accepted by the judge. Although a decision may contain an error of law where the requirements to give adequate reasons are not met, this Tribunal would not normally set aside a decision of the First-tier Tribunal where there has been no misdirection of law, the fact-finding process cannot be criticised and the relevant Country Guidance is taken into account, unless the conclusions that the judge draws from the primary data before him were not reasonably open to him."

17. Taking into account all the evidence, I do not accept Mr Hibbs' submission that the judge failed to give adequate reason for his positive finding in favour of the appellant. The Judge's reasons are clear if concise. It may well not have been a finding which every judge would necessarily make on this evidence but it cannot be said that his finding is perverse or irrational in that no reasonable judge could reach it.

18. For these reasons, the judge did not err in law in allowing the appellant's appeal under para 41 of the Immigration Rules.

19. The Entry Clearance Officer's appeal to the Upper Tribunal is dismissed.

Signed

A Grubb
Judge of the Upper Tribunal