



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: VA/07926/2013

**THE IMMIGRATION ACTS**

Heard at Field House  
On 24 March 2014

Determination Promulgated  
On 2 April 2014

Before

UPPER TRIBUNAL JUDGE KING TD

Between

KATERYNA BUTE

Appellant

and

ENTRY CLEARANCE OFFICER - WARSAW

Respondent

**Representation:**

For the Appellant: no appearance  
For the Respondent: Mr Jack, Home Office Presenting Officer.

**DETERMINATION AND REASONS**

1. The appellant is a citizen of Ukraine born on 20<sup>th</sup> March 1979.
2. The appellant sought leave to enter the United Kingdom as a visitor but that was refused in a notice dated 25<sup>th</sup> April 2013.

3. The appellant sought to appeal against that decision, which appeal came before First-tier Tribunal Judge Holder on 11<sup>th</sup> October 2013. This was an appeal considered on the papers.
4. Although the Judge found the appellant to be a genuine visitor, who intended to return to the Ukraine, it was found that she did not meet the other requirements of paragraph 41 of HC 395 given the lack of financial information supplied.
5. The appeal was dismissed.
6. Grounds of appeal were submitted on the basis that that approach lacked logicity, not only because the appellant had been granted leave to enter on the same documents before, but also that clearly the means and circumstances as described were more than enough to facilitate her travel. Leave was granted on that basis.
7. Thus the matter comes before me in pursuance of that grant.
8. Seemingly, however, and unknown to the Judge the Entry Clearance Officer had granted entry clearance to the appellant for a family visit visa for a duration of five years on 10<sup>th</sup> September 2013.
9. Mr Jacks, who represents the respondent handed me a copy of the application and the grant. He confirmed that the grant postdated the Tribunal's decision.
10. Clearly therefore at the time when the matter came before First-tier Tribunal Judge Holder in October 2013 leave had already been granted to the appellant and presumably therefore the decision of 25<sup>th</sup> April 2013 withdrawn.
11. Under the Asylum and Immigration Tribunal (Procedure) Rules 2005 Rule 17(2) an appeal should be treated as withdrawn if the respondent notifies the Tribunal that the decision (or where the appeal relates to more than one decision, all of the decisions) to which the appeal relates has been withdrawn. Had the Judge known about the grant then no doubt the file would have been marked appeal withdrawn.
12. It seems to me therefore that the Judge proceeded under a mistaken understanding of fact namely that the Entry Clearance Officer was maintaining the refusal in the circumstances that clearly was capable of being a material error of law as set out in the case of ER. [2004] EWCA Civ 49 Accordingly I therefore set aside the decision of the Judge.
13. That leaves matters at large in the Upper Tribunal. The withdrawal by one party in such a jurisdiction does not necessarily bring to an end the proceedings. I have regard in particular to the recent case of SM (**withdrawal of appeal decision: effect**) **Pakistan [2014] UKUT 0064 (IAC)**.

14. However in this case there has not only been a withdrawal of a decision but a grant of leave to enter and therefore clearly an acceptance by the Entry Clearance Officer that the Appellant meets all the requirements of the Rules. In those circumstances it seems to me that the justice of the situation is that the appeal should be remade to the extent that it is allowed in line with the grant of leave that has been made.
15. Thus the appeal is allowed without consideration of the merits

Signed

Date

Upper Tribunal Judge King TD