



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: VA/08868/2013

THE IMMIGRATION ACTS

Heard at Field House
On 2 June 2014

Determination Promulgated
On 9 June 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE SHAERF

Between

ENTRY CLEARANCE OFFICER - ATHENS

Appellant

and

MIRANDA ZOTO
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Mr P Nath of the Specialist Appeals Team
For the Respondent: No appearance

DETERMINATION AND REASONS

The Respondent

1. The Respondent (the Applicant) is an Albanian national born on 4 April 1966. On 3 April 2013 she applied to the Respondent for entry clearance under paragraph 41 of the Immigration Rules to visit her husband Charilaki Zoto, a Greek national born on 23 May 1959 in Albania, and their two daughters, both Greek nationals.

2. On 24 April 2013 the Appellant (the ECO) under Post Reference 262712 refused her entry clearance. The Respondent noted the Applicant had not provided any evidence of her daughters' circumstances in the United Kingdom, that she was unemployed and had produced evidence of a Greek residence card issued to her as the wife of a Greek national. The ECO was not satisfied the Applicant's economic, family and personal ties to Greece or Albania were sufficiently strong to show she would leave the United Kingdom at the end of her proposed visit. He therefore found she would not be a genuine visitor and did not intend to leave at the end of her proposed visit.
3. The ECO went on to note no evidence of the funds available to the Applicant's husband had been shown so that the Applicant had failed to establish she would be maintained and accommodated during her proposed stay and also that she had sufficient funds to pay for her return or onward journey.

The Appeal and the First-tier Tribunal's Determination

4. On 16 May 2013 the Applicant lodged notice of appeal under Section 82 of the Nationality, Immigration and Asylum Act 2002 as amended. The grounds refer to additional documentation which accompanied them and include the comment that the only airline flying to her local airport refused to allow her to purchase flights until she was able to provide them with sight of a valid visa. The Applicant requested her appeal be determined without a hearing on the basis of the papers in the Tribunal file.
5. By a determination promulgated on 7 March 2014, Judge of First-tier Tribunal A W Khan allowed the Applicant's appeal. He found her husband was a Greek national exercising Treaty rights and would be able lawfully to accommodate and maintain the Applicant during her proposed visit. He concluded the Applicant wished genuinely to make a family visit and the fact her husband and daughters were living in the United Kingdom did "not necessarily mean that the Appellant would not return to Greece ...".
6. The ECO sought permission to appeal on the grounds the Judge had erred in law by dealing with the Applicant's appeal as a full appeal when there was no evidence her husband and children were settled in the United Kingdom for purposes of Regulation 3 of the Immigration (Family Visit) Regulations 2012. Further, there was no evidence the Applicant's husband had a permanent right of residence pursuant to Regulation 15 of the Immigration (EEA) Regulations 2006 as amended. On 9 April 2014 Judge of the First-tier Tribunal Lloyd granted the ECO permission to appeal on the sole ground referred to in the ECO's grounds for appeal.

The Upper Tribunal Hearing

7. There was no indication in the Tribunal file the Applicant had ever instructed any representatives and she had not named her husband or any other person as her Sponsor. I requested the Tribunal's clerk to contact the Applicant's husband on the

mobile telephone number given for him and she informed me that the line was no longer in service.

8. I noted that in consequence of the failure to identify her husband as her Sponsor, the Applicant's husband had not been given notice of the hearing although notice had been sent to the Applicant in Greece. Having regard to the overriding objective in Regulation 2 of the Tribunal Procedure (Upper Tribunal) Rules 2008 as amended, I was satisfied I could properly consider the error of law appeal without the Applicant's husband being present.
9. Mr Nath referred to the grounds for appeal and submitted the Judge had not adequately addressed the ECO's ground for refusal that the Applicant had not shown her intention to leave the United Kingdom at the end of her proposed visit.

Findings and Consideration

10. I find that the Applicant did not have a full right of appeal under Section 82 of the 2002 Act for the reason mentioned in the ECO's grounds for appeal and that the Judge's statement that fact the Applicant's husband and daughters live in the UK does not necessarily mean she would not return to Greece does not amount to a proper consideration of the issue of the Applicant's intention to leave the United Kingdom at the end of her proposed visit. The burden of proof to the civil standard was on the Appellant and effectively the Judge's choice of words reverses the burden.
11. For these reasons the determination contains errors of law and is set aside.

Future Disposal

12. Having regard to the lack of evidence that the Applicant's husband had had any notice of the hearing, I did not consider it would be just to proceed with a substantive re-hearing of the appeal. There is no evidence in the Tribunal file to show when the Applicant's husband and their daughters came to the United Kingdom and when her husband started to exercise Treaty rights here. In these circumstances and having regard to the provisions of Practice Statement 7.2, I find it appropriate to remit the appeal to the First-tier Tribunal for hearing afresh before a judge other than Judge of the First-tier Tribunal A W Khan and that notice of the time, date and place for the hearing be sent to both the Applicant and her husband.

Anonymity

13. No anonymity direction had been previously requested and having considered the documents in the Tribunal file I find there is no need for one.

Signed/Official Crest

Date 06. vi. 2014

Designated Judge Shaerf
A Deputy Judge of the Upper Tribunal