



**The Upper Tribunal
(Immigration and Asylum Chamber)
OA/08736/2013**

Appeal number:

THE IMMIGRATION ACTS

Heard at Field House

On January 6, 2015

**Promulgated
Determination**

On January 19, 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

ENTRY CLEARANCE OFFICER

Appellant

and

**MISS PATRICIA ERETORU UPHILL
(NO ANONYMITY DIRECTION MADE)**

Respondents

Representation:

For the Appellant: Mr Walker (Home Office Presenting Officer)

For the Respondent: Ms Glass, Counsel, instructed by Fletcher
Dervish

and Co Solicitors

DETERMINATION AND REASONS

1. Whereas the original respondent is the appealing party, I shall, in the interests of convenience and consistency, replicate the nomenclature of the decision at first instance.

2. The appellant, born May 6, 1956 from Nigeria. She applied for entry clearance as the partner of a British citizen under Appendix FM of the Immigration Rules. The respondent refused the application on March 3, 2013.
3. The appellant appealed under section 82(1) of the Nationality, Immigration and Asylum Act 2002 on April 4, 2013. The respondent reviewed the original decision on July 12, 2013 but upheld the decision. The matter came before Judge of the First-tier Tribunal Andonian (hereinafter referred to as the "FtTJ") on April 4, 2014 and in a decision promulgated on May 6, 2014 she allowed the appeal on article 8 grounds but dismissed the appeal under the Immigration Rules.
4. The respondent lodged grounds of appeal on May 15, 2014 and on June 9, 2014 Judge of the First-tier Tribunal Cruthers gave permission to appeal finding there were arguable grounds that the FtTJ had erred not following the approach set out in Gulshan [2013] UKUT 640 (IAC).
5. On July 31, 2014 grounds of resistance were lodged with the Tribunal when the matter came before Deputy Upper Tribunal Judge Harris. He adjourned the case and gave directions. The appellant's solicitors did not meet that deadline but at their request the deadline for compliance was extended until August 18, 2014 and on August 20, 2014 Upper tribunal Judge Lane gave directions for the future conduct of the appeal. That deadline was also not met and the matter came before Deputy Upper Tribunal Judge Parkes on October 23, 2014. He adjourned the appeal because counsel was unable to attend. The matter came before me on November 28, 2014 and having made enquiries I ascertained that neither the solicitors nor the sponsor claimed to have received the adjournment notice. Reluctantly I adjourned the appeal and issued directions that the appellant's counsel has complied with.

PRELIMINARY ISSUES

6. I clarified with Ms Glass that no application to appeal had ever been made either to me or the Tribunal. I reminded her of EG and NG (UT rule 17, withdrawal; rule 24; scope) [2013] UKUT 143 (IAC) and in particular the contents of paragraph [46] which makes it clear that a Rule 24 response (such as the document filed on July 31, 2014) does not create a right of appeal. She agreed and accepted that no grounds of appeal had ever been lodged and the parties agreed to concentrate solely on the respondent's grounds of appeal.
7. I invited Mr Walker to address me on his grounds of appeal. Mr Walker agreed that paragraphs [7] to [9] of the determination set out what could be said to be "exceptional circumstances".

He agreed that the FtTJ had considered the evidence and found that there were grounds that he later described as exceptional.

8. Whilst not conceding the FtTJ had identified “exceptional circumstances” he had no further submissions he wished to make on that issue.
9. I thereafter asked him to consider the second part of his grounds of appeal namely had the FtTJ “given reasons for why the refusal of entry clearance would result in unjustifiably harsh consequences”.
10. Mr Walker acknowledged the appellant would never succeed under the Rules and he had looked at the consequences for the parties and had followed the test set out in Razgar [2204] UKHL 00027. He concluded that keeping them apart would have consequences of such gravity as to potentially engage article 8 and that the interference was not necessary. He had taken into account all of the facts and the importance of immigration control.
11. I did not require submissions from Ms Glass as I was satisfied there was no error in law.

ERROR OF LAW ASSESSMENT

12. The appellant’s appeal had been allowed under article 8 ECHR. The respondent appealed on the grounds that Gulshan had not been complied with but I am satisfied the approach to Gulshan has been confirmed in the recent cases of two recent decisions of Ganesablan, R (on the application of) v SSHD [2014] EWHC 2712 (Admin) and Aliyu & Anor, R (on the application of) v SSHD [2014] EWHC 3919 (Admin).
13. I am satisfied that the FtTJ identified exceptional circumstances in paragraphs [7] and [8] of her determination.
14. The issue was whether she considered whether refusal of entry clearance would result in unjustifiably harsh consequences. Article 8 is a discretionary ground of appeal and in considering whether there has been an error in law I must not replace what my decision may have been unless I find the FtTJ materially erred.
15. Whilst I may not have reached the same conclusion as the FtTJ I accept she has given her reasons for allowing this appeal and why she felt refusing entry would be unjustifiably harsh.
16. Mr Walker was unable to argue that the FtTJ had not given reasons and in the circumstances I dismiss the appeal.

17. On a separate issue I was unable to deal with the purported cross-appeal. I do not actually think there is any merit to the grounds of appeal because the sponsor was not receiving one of the exempt payments. Employment Support Allowance (ESA) is paid when a person is not fit for work but it does not appear in the exempted benefits in Section E-ECP 3.3 of Appendix FM. I therefore find no merit to this purported ground of appeal.

Decision

18. The decision of the First-tier Tribunal did not disclose an error in law. I uphold the original decision.
19. Under Rule 14(1) The Tribunal Procedure (Upper Tribunal) Rules 2008 (as amended) an appellant can be granted anonymity throughout these proceedings, unless and until a tribunal or court directs otherwise. No order was made in the First-tier and I see no reason to amend that decision.



Signed:

Dated:

Deputy Upper Tribunal Judge Alis
TO THE RESPONDENT

I revoke the earlier fee award as I have dismissed the appeal.



Signed:

Dated:

Deputy Upper Tribunal Judge Alis