



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/12177/2015

THE IMMIGRATION ACTS

Heard at Field House
On 11th April 2018

Decision & Reasons Promulgated
On 17th May 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

LILIAN SAMUEL UGOCHI IBEKWE
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr V Nwike (Solicitor)
For the Respondent: Mr N Bramble (Senior HOPO)

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge J McIntosh, promulgated on 24th October 2017, following a hearing at Taylor House on 27th September 2017. In the determination, the judge allowed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a female, a citizen of Nigeria, who was born on 24th June 1982. She appealed against the decision of the Respondent dated 15th October 2015 refusing her

application to join her sponsoring husband, a person present and settled in the United Kingdom under paragraph EC-P.1.1 of Appendix FM of the Immigration Rules.

3. By a decision dated 15th October 2015 the Entry Clearance Officer rejected the application for a whole host of reasons, including rejecting that the relationship between the Appellant and her sponsoring husband in the UK was a genuine and subsisting one, as well as whether the pay slips demonstrated that the Appellant met the financial requirement threshold. Also rejected was the English language requirement certificate.

The Judge's Findings

4. Upon appeal, the matter came before Judge McIntosh on 27th September 2017 who allowed the appeal on the basis that the Sponsor had continued to visit the Appellant in Nigeria since their marriage and had invited now the Appellant to visit the United Kingdom. The judge also observed how when the Appellant had applied in 2013 for entry clearance as a visitor to join Mr Ibekwe, her sponsoring husband, the Appellant was granted a six month visit visa during which she remained with him at his home address and undertook an ESOL examination, which she passed and the Appellant then returned back to Nigeria for three months in compliance with the terms of her visa. Since their marriage Mr Ibekwe, her sponsoring husband, has made several visits to Nigeria to be with the Appellant, and in particular has spent the Christmas holidays with her in Nigeria (paragraph 12). The judge also accepted that the sponsoring husband's total earnings amounted to £20,155 (paragraph 13). The judge, moreover, went on to say that there was daily contact between the Appellant and the sponsoring husband and telephone cards and telephone records were put in evidence (at paragraph 14).
5. On the whole, the judge went on to find the sponsoring husband, Mr Ibekwe, to be a "credible witness who clearly had affection for his wife and was extremely proud of her achievements in Nigeria and the fact that she was successful in obtaining the ESOL award" (paragraph 19). The judge recognised that the Sponsor himself had returned to Nigeria on several occasions to be with his Appellant wife and there was evidence of telephone communication (paragraph 18). Ultimately, in relation to whether the Appellant met the English language requirement, the judge noted that the ESOL certificate was dated 2013, when the Appellant initially made her application, "it was accepted that she met the requirements" and the judge went on now to say that, "I find it contradictory to now suggest that she has now lost ability to speak English in the two year period since the last application". The judge went on to find that "the Appellant meets the English requirements to reside in the United Kingdom" (paragraph 20).
6. The appeal was allowed.

Grounds of Application

7. The grounds of application by the Respondent Secretary of State are based on paragraph 32D of Appendix FM-SE which states that,

“If an applicant applying for limited leave to enter or remain under Part 8 of Appendix FM submits an English language test certificate or result and the Home Office has already accepted it as part of a successful previous partner or parent application (but not where the application was refused, even if on grounds other than the English language requirement), the decision maker will accept that certificate or result as valid if it is”.

8. The grounds state that because the Appellant's previous application was refused for other reasons, and dismissed at appeal, therefore under Appendix FM-SE the judge could not rely on her previous certificate, and in doing so had materially erred in law. The grounds go on to say “it is submitted that no English language test certificate has been submitted for this application and therefore Appendix FM requirements have not been met”.
9. On 19th February 2017 permission to appeal was granted by the Tribunal.

The Hearing

10. At the hearing before me on 11th April 2018, Mr Bramble appearing as Senior Home Office Presenting Officer on behalf of the Respondent Secretary of State stated that the judge had allowed the appeal under the Immigration Rules, and was wrong to do so because paragraph 32D of Appendix FM-SE was quite clear in stating that if an application had previously been refused, then documentation could not be relied upon, and in this case the Appellant had not submitted an English language test certificate to accompany the application.
11. For his part, Mr Nwike fundamentally disagreed with this proposition. He submitted that the gravamen of the grounds of application was that the Appellant had failed to submit an English language test certificate. That being so, reliance could not be placed upon the fact that a previous application had been made in which such documentation had been included, given that that application had foundered. In point of fact, however, if one looks at the Entry Clearance Officer's decision, submitted Mr Nwike, it is clear from this that the ESOL test certificate had indeed been submitted. He directed the Tribunal's attention to page 3 of the Entry Clearance Officer's decision which at the top of the page states that, “although you have provided a Pearson's Skills for Life certificate, this certificate is not valid for the purposes of your application”. It was not explained why this certificate was not valid. There is no rule of law, submitted Mr Nwike, for an English language test certificate to be repeatedly taken and re-taken. It was valid for life. In any event, submitted Mr Nwike, the fact was that the certificate had indeed been submitted and therefore the judge had not erred in law. Mr Nwike also went on to say that the Appellant had since then undertaken another English language test certificate by ESOL and had passed in her speaking and listening capabilities, and this was awarded by Asta College, and issued on 13th July 2013, the original of which she handed up for the Tribunal to examine. Needless to say, this is only relevant were this Tribunal to find that there is an error of law and to proceed to re-make the decision, whereupon this evidence could then be taken into account.

No Error of Law

12. I am satisfied that the making of the decision by the judge did not involve the making of an error on a point of law. This is a case where the Entry Clearance Officer on 15th October 2015 had rejected every aspect of the application, only to find that the judge had allowed every aspect equally on the basis of the evidence before him. The outstanding issue upon which the application was made for permission to appeal was that “no English language test certificate has been submitted for this application”, which is plainly untrue. The refusal decision of 15th October 2015 itself makes it quite clear that “you have provided a Pearson’s Skills for Life certificate”. This being so, the judge was correct in concluding that it could validly be taken into account as the evidence. Insofar as reliance was placed upon paragraph 32D of Appendix FM-SE, this is misconceived. It does not say that a successful completion of an English language test certificate, at a previous date, is no longer valid. The reading of paragraph 32D has been erroneous in the grounds of application. In any event, it is simply factually incorrect for the grounds to assert that “no English language test certificate has been submitted”.
13. An IELTS test certificate was additionally now also adduced dated 1st March 2018 with a valid stamp on it. This shows the Appellant to have passed with level A1.

Notice of Decision

14. There is no material error of law in the original judge’s decision. The determination shall stand.
15. No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge Juss

14th May 2018