



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/12503/2019

THE IMMIGRATION ACTS

Heard at Field House
On 28 January 2021

Decision & Reasons Promulgated
On 16 February 2021

Before

UPPER TRIBUNAL JUDGE PITT

Between

AGNES BOAKYE
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Mr M Jibowu of Solomon & Partners

For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision issued on 14 April 2020 of First-tier Tribunal Judge Lucas which refused the appellant's Article 8 ECHR appeal against the refusal of leave to enter for settlement as the spouse a British national.
2. The appellant is a national of Ghana and was born on 2 February 1964.
3. The appellant applied for entry clearance on 14 March 2019. The application was refused on 18 June 2019. The respondent considered that the appellant had acted so

as to frustrate the Immigration Rules by way of her poor immigration history, in particular overstaying from 2003 onwards prior to her voluntary departure for Ghana on 17 October 2018. The appellant also had an unpaid litigation debt of £579. The respondent found these issues meant that paragraph 320(11) of the Immigration Rules applied and showed that the suitability criteria of Appendix FM were not met.

4. The First-tier Tribunal found that the appellant had paid the litigation debt; see paragraph 10 of the decision. The First-tier Tribunal found that paragraph 320 (11) of the Immigration Rules should not have been applied; see paragraph 20. The parties were in agreement that where paragraph 22 of the decision suggested otherwise, this was a typographic error.
5. The appellant maintained that the First-tier Tribunal erred in finding in paragraphs 21 and 23 that “there is no realistic Human Rights or Article 8 claim” given that there was no issue as to the genuineness of the marriage and the First-tier Tribunal had accepted that the Immigration Rules were met in full.
6. Before me, Mr Walker conceded for the respondent that the First-tier Tribunal did err as set out in the appellant’s written and oral grounds. It was not open to the First-tier Tribunal to find that there was “no realistic human rights claim” where the appellant was in a genuine relationship and, further, had been found by the First-tier Tribunal to meet the requirements of the Immigration Rules in full, an important factor when considering the proportionality of the respondent’s decision. It was therefore conceded that the decision disclosed an error on a point of law such that it had to be set aside and re-made as allowed under Article 8 ECHR.
7. The Tribunal accepted that the respondent’s concession was rational and therefore found material error of law, set aside the decision and re-made the appeal as allowed, it being accepted that the marriage was genuine and that the Immigration Rules had been met in full.

Notice of Decision

8. The decision of the First-tier Tribunal discloses an error on a point of law and is set aside to be remade.
9. The appeal is re-made as allowed under Article 8 ECHR.

Signed: *S Pitt*
Upper Tribunal Judge Pitt

Date: 28 January 2021