**Upper Tribunal**
**(Immigration and Asylum Chamber)** Appeal Number: OA/02787/2013

**THE IMMIGRATION ACTS**

| **Delivered orally at Field House** | **Determination Promulgated** |
|---|---|
| **On 7 February 2014** | **On 14 February 2014** |

**Before**

**UPPER TRIBUNAL JUDGE GOLDSTEIN**

**Between**

**MISS NOELLA VUBU KANZA**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr D Sills, Counsel instructed by Messrs Rahman & Company Solicitors
For the Respondent: Mr S Walker, Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. This is an appeal by the Appellant, a citizen of the Democratic Republic of Congo, born on 25 December 1996 against the decision of the Respondent dated 27 November 2012 when she refused the Appellant's application for an entry clearance

to settle in the United Kingdom, the relevant Immigration Rule being under paragraph 297 of the Immigration Rules (as amended).

2. The appeal was heard by First-tier Judge A W Khan at Hatton Cross on 29 October 2013 and in a determination promulgated on 18 November 2013 he dismissed the Appellant's appeal.

3. The Appellant's immigration appeal was dismissed solely on the basis that the Judge concluded that the Appellant had failed to discharge the burden of proof upon her to show that she met the maintenance requirements of the Rules. Indeed the Judge was clear that in all other respects the requirements of the Immigration Rules were met.

4. A successful application for permission to appeal to the Upper Tribunal was granted on the basis that the Judge was simply mistaken. He had miscalculated the figures before him. It was contended that the Sponsor's income exceeded the weekly amount necessary to demonstrate adequate maintenance.

5. In granting permission to appeal First-tier Judge Brunnen had this to say:

> "The grounds on which permission to appeal is sought submit that the Judge erred in law in that he made contradictory findings as to whether the maintenance requirement in paragraph 298(v) of the Immigration Rules (not 297(e) as stated in the grounds) was satisfied. In paragraph 12 of the Determination he found that it was satisfied and in paragraphs 15 to 21 he found that it was not. The grounds further submit that the Judge's calculations in relation to the maintenance requirement were made on an erroneous basis as to the amount required and as to the amount available.
>
> In view of the long and detailed consideration of the maintenance requirement in paragraphs 15 to 21, what the Judge said at paragraph 12 cannot arguably have been anything other than inadvertence that did not reflect the Judge's actual findings. However it is arguable that the basis on which the Judge assessed the maintenance requirements was erroneous."

6. Judge Brunnen also granted permission in terms of a contention raised in the grounds that the Judge had erred in his approach as to the assessment of proportionality for the purposes of Article 8 of the ECHR but as the parties before me rightly agreed, such a consideration would necessarily fall away were I to find that the First-tier Judge had indeed erred in law for the reason contended and that, in consequence, the Appellant met the requirements of the Immigration Rules.

7. Thus the appeal came before me on 7 February 2014 when my first task was to determine whether or not the determination of the First-tier Judge disclosed an error of law such as may have been material to the outcome of the appeal.

8. At the outset of the hearing, I was provided with further documentation by Mr Sills who pointed out that as contended in the grounds, the First-tier Judge had

miscalculated the Sponsor's means and the amount that he needed to show, to demonstrate that the Appellant met the requirements of the Immigration Rules.

9. I was referred to paragraph 20 of the determination, where the First-tier Judge stated that he had taken into account the sum of £15,921.69 per year as child tax credit. Mr Sills pointed out that this was a mistake, because if one looked at the relevant document (that appeared at page 35 of the bundle of documents before the First-tier Judge) it showed that the total annual figure was £16,884.90 and that the figure shown below, namely £15,921.69 was the annual amount less payments already received. In fact, had the Judge considered the calculation correctly he would have appreciated that the Sponsor was in fact in credit to the tune of £71.43 per week and as such the Appellant would have been found to clearly meet the maintenance requirements of the Rules.

10. At this stage in Mr Sills' submissions, Mr Walker helpfully interrupted in order to inform me that he accepted for the reasons given in the grounds and further clarified by Mr Sills, that the Judge was in error and that in fact he should have found that the maintenance requirements were met and thus allowed the appeal under the Immigration Rules.

11. I was able to inform the parties that upon my own consideration of the evidence I was in full agreement for like reason.

12. I further confirmed for the sake of completeness, that in the circumstances, there was no need for me to consider issues relating to Article 8 of the ECHR as this issue, in consequence, simply fell away.

**Decision**

13. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

14. I set aside the decision.

15. I re-make the decision in the appeal by allowing it.

Signed Date 14 February 2014

Upper Tribunal Judge Goldstein