



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Numbers: OA/20294/2013**

THE IMMIGRATION ACTS

**Heard at Field House
On 1st December 2014**

**Decision and Reasons
Promulgated
On 3rd December 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE RIMINGTON

Between

**IFEYICHUKWU LAWRENCIA EZEKWE
(NO Anonymity Direction Made)**

Appellants

and

Entry Clearance Officer

Respondent

Representation:

For the Appellant: The Sponsor Ignatius Onyekashi Esekwe
For the Respondent: Mr M Shilliday, Home Officer Presenting Officer

DECISION AND REASONS

1. The appellant, a citizen of Nigeria born on 11th December 1985, applied for entry clearance to join her spouse and sponsor, Ignatius Onyekashi Esekwe a person present and settled in the UK. The application was refused by the respondent on 24th October 2013 in part on the basis that the first appellant had not fulfilled the English language requirement further to paragraph E-ECP 4.1 of Appendix FM of the Immigration Rules. The ECO also asserted that the marriage was not a genuine subsisting

marital relationship that the accommodation and maintenance requirements were not met under Appendix FM.

2. First-tier Tribunal Judge Hussain dismissed the appeal in a determination promulgated on 18th September 2014. He found that the appellant succeeded under the Immigration Rules in all respects save for the English language requirement. It was conceded at the hearing by the Home Office Presenting Officer before the First Tier Tribunal that the appellant met the requirements of the relationship and accommodation and the judge found that the maintenance requirement was met. This was not challenged by the respondent on appeal to the Upper Tribunal.
3. However the appellant made an application for permission to appeal on the basis that the judge had ignored the evidence in relation to the English language qualification. The judge had heard the appeal on 1st August 2014 but did not decide the appeal until 18th September 2014. In the meantime the sponsor stated he had forwarded a further document to the Tribunal which was confirmation from UK NARIC regarding the status of the appellant's qualification.
4. At paragraph 9 of the determination Judge Hussain stated as follows
'As noted earlier, the only live issue in this case is whether the appellant is able to satisfy the requirement of the Immigration Rules concerning English. In this regard, the appellant provided a letter dated 13th May 2014 from UK NARIC which stated that the qualification possessed by the appellant in Bachelor of Science in Maths Communication from the Imo State University was comparable to a British Bachelor Degree. That of course does not satisfy the requirement of the Immigration Rules'
5. The judge did not identify in what way this did not fulfil the requirements of the rules and further proceeded in error in describing the degree as a qualification in 'Maths Communication' when in fact it was 'Mass Communication'. The appellant stated that evidence was faxed to the Tribunal on 1st September 2014 and again scanned to the Tribunal via email on 8th September 2014. There was no reference to the further documentation said to be sent by the appellant's sponsor which included a letter dated 30th July 2014 from Imo State University confirming that the degree was taught in English. Despite the production of the UK NARIC letter to the Tribunal, I find therefore that there was a procedural error, possibly owing to no error by the judge if the papers were not linked to the file, and the findings of the judge at paragraphs 9 and 10, in relation to English language, be set aside. I preserve the findings in relation to the remainder of the Immigration Rule requirements.
6. Having set aside the determination of Judge Hussain in respect of the English language findings, Mr Shilliday accepted at the hearing before me that the two NARIC letters produced, the first dated 13th May 2014 and the second the 28th August 2014, with attachments, indicated that the appellant did fulfil the Immigration Rules. In other words the documents

showed that the appellant had an academic qualification recognised by NARIC UK to be equivalent to the standard of a Bachelor's or Master's degree or PhD in the UK, which was taught in English. This fulfilled Rule E-ECP 4.1. Indeed all the documentation on the file in relation to the Imo State University Degree was in English. There was a further letter on file from Imo State University dated 30th July 2014 confirming that the appellant used English as a study language for her degree. The letter from UK NARIC dated 28th August 2014 referred to a degree completed in 2011 and confirmed that the 'level of English language for the above degree course is considered to meet the requirement of CEFR level C1'.

Conclusions

7. I find that the judge was in error when he found that the appellant did not meet the English language test requirements and I allow the appeal further to the Immigration Rules E-ECP1.1(d).

Order

I therefore find an error of law in the determination of the First Tier Tribunal Judge and I remake the decision and I allow the appeal under the Immigration Rules.

Signed

Date 2nd December 2014

Deputy Upper Tribunal Judge Rimington

Fee Award

In the light of the decision to re-make the decision in the appeal by allowing it, I have considered whether to make a fee award (rule 23A (costs) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and section 12(4)(a) of the Tribunals, Courts and Enforcement Act 2007). I have had regard to the Joint Presidential Guidance Note: Fee Awards in Immigration Appeals (December 2011). I make no whole fee award as the matter was complex.