



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: VA/04630/2013

THE IMMIGRATION ACTS

Heard at Field House
On 11 March 2014

Determination Promulgated
On 15 April 2014
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Before

UPPER TRIBUNAL JUDGE CONWAY

Between

MISS ESEZA NAKIWU
(NO ANONYMITY DIRECTION MADE)

Appellant

and

ENTRY CLEARANCE OFFICER - NAIROBI

Respondent

Representation:

For the Appellant: Mrs Violet Otti (Sponsor)
For the Respondent: Mr Tarlow

DETERMINATION AND REASONS

1. The Appellant is a citizen of Uganda born in 1959. She appealed against a decision of the ECO, Nairobi made on 10 January 2013 to refuse entry clearance as a family visitor under paragraph 41 of the Immigration Rules. She wishes to visit her son, daughter in law and family here.

2. The ECO had asked for details of the Appellant's income. She stated that this was the equivalent of £43 a month. She also supplied a bank statement but this did not show a regular income of £43 a month. The ECO was not satisfied that the statement was a genuine reflection of the Appellant's income.
3. In her statement the Appellant was able to show she had £728 available for her trip but it was noted that £685 was paid into the account between 31 December 2012 and 4 January 2013. This equated to sixteen times her monthly income. No explanation was provided. As such the ECO did not consider that the funds were genuinely available to her.
4. As a result the ECO had reason to doubt the genuineness of the Appellant's intent. It was noted that she is single and has no dependent family in Uganda. What family ties she has appeared to be her son and family in the UK. The ECO considered that there was little to encourage the Appellant to return to Uganda after her visit.
5. She appealed. No oral hearing was sought. The case was dealt with 'on papers' by Judge of the First-tier Tribunal Fox. In a determination promulgated on 21 October 2013 he dismissed the appeal.
6. His findings are at [16 – 20], At [16] the judge stated that a full explanation had been given about the lodgement of cash into the account, namely that she is a subsistence farmer and her income is calculated by dividing the total yearly income by twelve. This reflects a monthly income of £43.
7. As for the lodgement of £685 no explanation had been provided [17].
8. At [18] the judge concluded that the Sponsor was not able to maintain the Appellant during her stay here.
9. The judge concluded (at [19]) that he was not satisfied that the financial records produced gave an accurate reflection of the Appellant's circumstances.
10. Finally, (at [20]) the judge appeared to accept that the Appellant has family members in the Uganda but considered that there was inadequate evidence of a commitment to return home at the end of her visit.
11. The Appellant sought permission to appeal which was granted by a judge on 29 January 2014 who stated:
 - ' ...
 2. The grounds amount, for the most part, to a disagreement with the judge's findings but also complain that the judge failed to give adequate reasons.
 3. The judge has not provided cogent reasons for the facts found. There is an arguable case that the determination contains a material error of law.'
12. At the error of law hearing before me I sought to assist the Sponsor who attended in the absence of a legal representative.

13. The grounds are lengthy but can be summed up thus: the judge failed to note that an explanation for the £685 credit had been provided; the judge failed to consider evidence before him about significant savings held by the Sponsor; the judge failed to consider evidence before him from the Appellant from which the judge might have concluded that she had good reason to return to Uganda; the judge's determination showed a lack of care: the reference to an appeal from Dhaka rather than Nairobi was noted.
14. I concluded that the determination showed material error.
15. The determination regrettably shows a lack of care in its preparation and proof reading. At [2] the judge referred to the High Commission, Dhaka when the appeal is against a decision made in Nairobi. In itself that would not necessarily be anything other than an unfortunate lapse. However there are other more serious concerns.
16. As indicated the judge's brief conclusions are at [16] to [20]. At [16] he noted the 'full explanation' given for the Appellant's income namely that the figure of £43 a month income is got by dividing the total yearly income by twelve. Although the judge noted the explanation he reached no finding on it.
17. At [17] regarding the credit of £685 he stated that 'no explanation has been provided'. He failed to note that an explanation had been given in a letter produced with the Notice of Appeal, namely, that the Sponsor had provided it. A further problem is that the judge wrote:

'With regard to the lodgement of £685 I note that no explanation has been provided. The Appellant's occupations *out of a fire* (sic) and the deposit could have had many sources or one. No explanation has been provided.'
18. Such only emphasises the lack of care taken by the judge.
19. At [18] the judge considered that having examined the bank statements of the Sponsor he found them to be insufficient leading to the conclusion that the maintenance requirement was not satisfied.
20. There are two problems with this. First the ECO took no issue with maintenance. Whilst the judge was entitled to raise it if it was a matter of concern to him as an applicant must satisfy all the provisions of the rule, in my judgment fairness required that he allowed the Appellant the opportunity to comment on it, if necessary by setting the matter down for oral hearing. Further, the general statement that he was not satisfied by the bank statements simply shows no analysis of the financial evidence before him which as well as statements included payslips and some evidence of savings.
21. Paragraph [19] merely states that the judge was not satisfied on the financial evidence produced that it showed a true reflection of the Appellant's assets.
22. Finally, at [20] he wrote:

'I accept that the Appellant may have ties to Uganda *by where family members* (sic). Of themselves this may not be adequate evidence of a commitment to return upon the end of her proposed visit, to her home country.'

23. Such lack of coherence merely adds to concern about the determination.
24. I concluded that the determination showed material error due to a lack of adequate reasoning. Mr Tarlow agreed.
25. By consent the determination was set aside. I proceeded immediately to remake it.
26. In brief evidence the Sponsor's wife and Appellant's daughter in law, Mrs Otti, said that the Appellant was a respected member of the community. She does volunteer work for a health centre as well as earning an income as a farmer. She has various children all but one of whom are adults. She no longer has financial responsibility for the youngest who is 17. He lives with other family members although she looks after him during holidays.
27. She said the Appellant's work is seasonal. She grows food for herself and sells the excess. She owns the land on which she farms. The credit of £685 was provided by herself (Sponsor) for the Appellant to buy the ticket to the UK.
28. The Sponsor said the Appellant would return home after the visit. She has her extended family there, and also her mother for whom she is responsible. If granted a visa her older children would look after her mother during the visit.
29. The Sponsor said that as a British citizen, who is law abiding and in a good job as a human resources manager at a major supermarket chain, she would ensure that the Appellant returned. The Sponsor has other family in Uganda who might like to visit in future. If the Appellant breached the terms of her visa it would endanger the prospect for them.
30. Mr Tarlow in his submission simply noted the refusal letter and had nothing to add. No issue was taken with maintenance or any other aspect of the rule.
31. The ECO's decision was made under paragraph 41 of the Rules.

Paragraph 41(i) requires that the applicant '*is genuinely seeking entry as a visitor for a limited period as stated by her*'.

Paragraph 41(ii) requires that she '*intends to leave the United Kingdom at the end of the period of the visit as stated by her*'.

32. I can deal with this matter fairly briefly. The ECO's concerns were about the Appellant's financial situation. I may say that I found the Sponsor to be an impressive and patently truthful witness. She did not seek to exaggerate the Appellant's modest financial circumstances, namely, that she is a subsistence farmer on land she owns who supports herself by growing crops, and selling some if there is surplus. I see no reason to doubt the claim that her modest monthly income (c£43 a month) is calculated by dividing her yearly income by twelve.

33. I accept the explanation that the £685 paid into the bank account prior to the application was from the Sponsor to pay for her flight. Such is mentioned in the Grounds of Appeal. It is also alluded to in the application form (Q70f) where the Appellant stated that the Sponsor would meet her travel costs. It is a little unfair to criticise her for not giving an explanation for it when she was not asked. I find that the funds are genuinely available to her.
34. I found persuasive her comment that with other family members in Uganda who she might wish to invite to visit she would not want to endanger their prospects by not ensuring that her mother obeyed the terms of her visa.
35. I am of course required to consider the credibility not just of the Sponsor but principally of the Appellant. I see no reason not to do so. None of it was challenged at the hearing. I accept that she has several adult children in Uganda and one aged 17 who lives with his father but who she cares for during holidays. Also, that she has responsibility for her mother and that there is a large extended family there. I accept also that she has had a respected role in the local community for many years as a volunteer and counsellor at a local government health centre offering counselling services to HIV patients, pregnant women and others. This was mentioned in the application (Q56) and there was paperwork to that effect before the ECO. It has not been challenged.
36. In conclusion, I find that the Appellant has good reason to visit the UK namely to see her son and other close family members. Also that she has good reason to leave to return to Uganda at the end of her visit, namely, her mother, her children and extended family, her voluntary work and her life generally there.
37. The Appellant, on the balance of probabilities, satisfies paragraph 41(i) and (ii) of the Immigration Rules. The appeal succeeds.

Decision

The decision of the First-tier Tribunal contained a material error of law. The decision is set aside and remade as follows:

The appeal is allowed under the Immigration Rules.

Signed

Date

Upper Tribunal Judge Conway