



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: VA/12497/2013

THE IMMIGRATION ACTS

Heard at North Shields
On 13 May 2014

Determination Promulgated
On 14 July 2014

Before

UPPER TRIBUNAL JUDGE DEANS

Between

MRS OBERE MARY OKOH

Appellant

and

ENTRY CLEARANCE OFFICER - ABUJA

Respondent

Representation:

For the Appellant: Ms B Rest, David Gray Solicitors

For the Respondent: Mrs H Rackstraw, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

- 1) Judge of the First-tier Tribunal Traynor dismissed this appeal against refusal of entry clearance as a family visitor. The refusal decision was dated 27 June 2013. The Appellant is a national of Nigeria, who applied for entry clearance to visit her sister, Joyce, and her sister's husband, Joseph Brown, who are both settled in the UK.
- 2) The judge found that the Appellant had failed to adduce evidence of an ongoing relationship with her husband, including evidence of his support for her visit by way of underwriting the cost of her return and onward journey. Because the Appellant had failed to adduce such evidence, the judge found that this cast

considerable doubt upon her credibility and the judge found she had not discharged the burden of proof to show that she was a genuine visitor who had compelling reasons to return to Nigeria after a short visit. The judge was not satisfied that there was evidence that the Appellant's husband would be capable of paying the cost of her return and onward journey. Accordingly there were doubts about the Appellant's relationship with her husband and whether there were compelling ties which would cause the Appellant to return to Nigeria. The Appellant had not produced any explanation as to who would care for her children in her absence. The Appellant claimed that she was in business as a trader but the judge found the evidence as to her earnings was unreliable in the absence of any formal accounts or any other document which would suggest that the sums she received into her bank account represented earnings from a business.

- 3) The first ground of the application for permission to appeal was that the judge had placed unreasonable weight on the absence of evidence relating to the Appellant's husband. This was only one factor to be taken into account when assessing the Appellant's circumstances, in accordance with *Sawmynaden (Family visitors - considerations)* [2012] UK UT 00161. The judge heard evidence from Joyce and Joseph Brown. Joseph Brown confirmed the Appellant's marital status and her relationship with her children, who would remain in Nigeria with her husband. His evidence was that the Appellant intended to visit the UK for only two weeks because she was responsible for her husband and her children as well as her business. The judge was wrong to find there was no evidence that the Appellant currently remained with her husband. This was never put to Joseph Brown in cross-examination. Although the judge concluded that there was a lack of evidence to show the Appellant's ability to pay return airfares for the visit her own bank statements showed that she had a more than adequate sum and evidence was provided by Joseph Brown about the source of the transactions recorded in the bank statement.
- 4) The second ground contended that the judge had applied requirements which were not in the Immigration Rules. At paragraph 33 of the determination the judge recorded that there was no evidence of the Appellant's husband either consenting to her visit or supporting her application. It was pointed out that there was no requirement in paragraph 41 of the Immigration Rules for such evidence.
- 5) The third ground contended that there was a failure by the judge to engage with the evidence and to make clear findings. The judge did not give proper consideration to the Appellant's bank statements, which showed her earnings from her business. These earnings were explained by Joseph Brown in a supplementary witness statement. The judge nevertheless found at paragraph 38 of the determination that there was "...literally no evidence that the Appellant is trading with anyone in Nigeria" and that the "...bank statements represent a series of transactions which have never been explained by her." The judge did not make a finding as to whether he regarded Joseph Brown as a credible witness.

- 6) The fourth ground of the application contended that the judge had unreasonable expectations of the evidence from the Appellant. The judge appeared to have required that the Appellant should produce direct evidence about a number of issues while failing to acknowledge that there was no mechanism by which an overseas Appellant could give oral evidence to the Tribunal. Reference was made to paragraphs 38, 39 and 43 of the determination. It was not explained what the judge expected the Appellant to do by way of providing direct evidence.
- 7) Permission to appeal was granted on the basis that the judge arguably erred in law in finding that there was “an absence of any information” concerning the Appellant’s relationship with her husband. By making this finding the judge had arguably failed to refer to the evidence of the Sponsor, Joseph Brown, and to state whether this evidence was accepted or not. In relation to the Appellant’s finances, the Judge of the First-tier Tribunal appeared arguably to have applied a standard of proof more appropriate to an application for settlement or at least something more than a family visit.
- 8) A Rule 24 notice dated 3 April 2014 was received from the Respondent stating that the appeal was opposed. It was submitted that the Judge of the First-tier Tribunal directed himself appropriately. The judge was entitled to place weight on the absence of evidence confirming that the Appellant’s husband was in a position to pay for her journey to and from the UK, on the basis that it was claimed that he would be doing so. The judge was also entitled to draw an adverse inference on the lack of evidence regarding the Appellant’s husband within her application form. The alleged errors were no more than disagreement with conclusions the judge was entitled to reach.
- 9) It was further contended in the notice that the judge was entitled to be concerned about the lack of direct evidence from the Appellant confirming payments into her bank account. The judge was not bound to accept the Sponsor’s evidence on this matter. The Sponsor’s credibility was not necessarily relevant to the Appellant’s credibility and the judge was entitled to conclude as he did regarding the evidence of the Appellant’s finances.
- 10) At the hearing before me Ms Rest relied on the application for permission to appeal. She referred me to two pieces of evidence relating to the Appellant’s trading activities which she maintained had been disregarded by the judge. These were, at page 116 of the Appellant’s bundle, a receipt dated May 2012 for a trading licence and a receipt dated 22 January 2013 for rent for the Appellant’s trading premises. The judge did not refer to the receipt for the trading licence. I was referred to the supplementary witness statement, dated 28 January 2014, by Joseph Brown, considered at paragraph 21 of the determination, in which the judge recorded the evidence of Joseph Brown that the Appellant had told him that she did not hold a tenancy agreement for her boutique although she paid rent. Landlords in the area did not generally provide tenancy agreements because they tended to evict tenants without going to court. Subsequent to the decision to refuse the application the

Appellant had moved to new premises in October 2013 and the new premises were owned by her father and occupied on a rent free basis.

- 11) For the Respondent, Mrs Rackstraw relied on the rule 24 notice. She submitted that the judge had directed himself properly. There was an absence of evidence from the Appellant's husband as to the financing of the journey, although the Appellant had stated that he would pay for this. The judge was entitled to be concerned about the source of payments into the Appellant's bank account and was not bound to accept the evidence of the Sponsor.
- 12) Reference was made to paragraph 38 of the determination where although the judge recorded that the bank statements "represent a series of transactions which have never been explained" by the Appellant, the judge also recorded that the Sponsor gave oral evidence to the effect that he had recently spoken to the Appellant concerning the entries in the bank statements and that she had given him an explanation as set out in his supplementary witness statement of 28 January 2014. The judge went on to record that while he did not doubt that the Sponsor had provided these explanations in good faith, the fact remained that the Appellant had not directly provided such evidence herself. In relation to this Mrs Rackstraw submitted that the lack of evidence from the Appellant was not remedied by evidence from the Sponsor. She referred to paragraph 34 of the determination, in which it was pointed out that the application was premised upon the basis that the cost of travel would be paid for by the Appellant's husband. The judge stated that it would be only reasonable to expect the Appellant to have produced tangible evidence not only of her husband's ability to pay for this but of her continuing relationship with him. The judge noted that there was no submission from the Appellant's representative at the hearing to the effect that it would be the Appellant's husband who would be paying the cost of her travel.
- 13) In respect of these issues relating to the evidence, Ms Rest explained that pages 7-93 of the Appellant's bundle contained documents prepared in the UK but pages 94-117 were documents added by the Appellant before the application was submitted to the High Commission. Ms Rest submitted that this was the bundle that was handed in to the High Commission.

Reasons for decision

- 14) I am satisfied that the Judge of the First-tier Tribunal did not properly assess the evidence before him and by failing to do so did not give adequate reasons for his decision and so erred in law. In particular, at paragraph 38 of the determination the judge referred to there being "...literally no evidence that the Appellant is trading with anyone in Nigeria." This statement cannot be sustained. The judge had before him not only the written statements of the Appellant herself but also the evidence of Joseph Brown and the documentary evidence referred to above at pages 116-117 of the Appellant's bundle.
- 15) Then again, at paragraph 33, the judge referred to the Appellant having stated in her application that it would be her husband who would discharge the costs of her

return travel to the UK. He then referred to the “complete absence of evidence from her husband either consenting to her visit or supporting her application” and states that this “casts considerable doubt as to whether or not she is a genuine visitor who has strong reasons to leave the United Kingdom at the end of her visit.” Then at paragraph 34 the judge found it “only reasonable to expect that she adduces tangible evidence not only of his ability to do so but also of a continuing relationship with the Appellant.” At paragraph 35 the judge referred to photographs in the Appellant’s bundle and stated “there is no evidence that she currently remains with her husband.”

- 16) The judge’s statement at paragraph 35 that there was “no evidence that she currently remains with her husband” is a further error of law. There was the evidence of the Appellant herself and the evidence of the Sponsor, Joseph Brown. Mrs Rackstraw submitted that the judge’s words should be read as meaning there was no evidence from the Appellant’s husband himself but, with respect to Mrs Rackstraw, I have to say that that is not what the judge wrote in the determination. The judge clearly inferred that because the photographs submitted showed the Appellant with her children but not her husband this was an indication that the Appellant was estranged from her husband. Under the circumstances such an inference was not supported by the evidence.
- 17) I accept that the judge further erred in law when he appeared to require evidence that the Appellant’s husband either consented to the visit or supported the application. As was pointed out in the application for permission to appeal, this was not a requirement of the rules.
- 18) In view of the errors of law made by the Judge of the First-tier Tribunal I set aside his decision. This requires to be re-made and, on the basis of the documentary evidence and the evidence recorded by the Judge of the First-tier Tribunal I consider that the remaking of the decision can be accomplished without any further evidence.
- 19) The refusal decision of 27 June 2013 is mainly concerned with the Appellant’s stated earnings and her bank statements. It is noted that the Appellant recorded in her visa application form (VAF) that she was self employed and earned N85,000 (£340) per month. According to the Respondent the Appellant failed to submit satisfactory documentary evidence of her stated business or earnings. Accordingly the Respondent was not satisfied on the balance of probabilities that the Appellant’s economic circumstances were as stated. This led the Respondent to doubt her intentions in respect of her proposed visit to the UK. The Respondent was not satisfied that the Appellant was a genuine visitor who would leave the UK at the end of the visit.
- 20) According to the refusal decision the Appellant had stated that she would fund her trip to the UK. Because of the concerns over the Appellant’s earnings, the Respondent was not satisfied that the Appellant would be able to do this and that the requisite funds were available. The Respondent was not satisfied that there was

satisfactory evidence as to the source of the funds in the Appellant's bank account and the Respondent was not satisfied that these funds were available for the Appellant's exclusive use for her trip to the UK. Accordingly the Respondent was not satisfied that the Appellant would be maintained and accommodated in the UK without working or having recourse to public funds and would be able to meet the cost of her return journey.

- 21) I am satisfied on the basis of the documentary evidence and the evidence given at the hearing before the First-tier Tribunal that these concerns have been met. I accept, of course, that the evidence of Mr Joseph Brown, although accepted as given in good faith by the Judge of the First-tier Tribunal, is not the evidence of the Appellant herself. Nevertheless, I was not referred to any inconsistencies between the evidence of Mr Joseph Brown, the documentary evidence and the Appellant's own statements. In other words, the explanations provided by Mr Joseph Brown were in accord with the rest of the evidence, including the evidence emanating from the Appellant.
- 22) The Judge of the First-tier Tribunal recorded at paragraph 21 of the determination that in Mr Joseph Brown's supplementary witness statement he recorded discussions he had had with the Appellant regarding her bank accounts in Nigeria. She has two Zenith bank accounts - a current account and a savings account. The account she used depended on which would attract the lowest bank charges.
- 23) At paragraph 19 the judge recorded Mr Brown's evidence that the Appellant operates a clothing business. She buys clothes to sell in her boutique. In her VAF she estimated her monthly income as N85,000 each month but from the bank statements the sum actually received from the business by way of earnings was significantly in excess of this. The Appellant had under-estimated her earnings. Moreover, due to the success of her business she was able only to spend a short period of time in the UK and would have to return to manage her business and look after her husband and children.
- 24) Mrs Rackstraw pointed out that according to the VAF the Appellant's husband would pay for the Appellant's travel to and from the UK. The refusal decision, on the other hand, refers to the Appellant having said she would pay for her travel. I infer from this that it is not material whether the Appellant or her husband was to pay provided there was evidence that the Appellant had the financial resources available to her to do this.
- 25) I consider there is some force in the contention made in the application for permission to appeal that the Judge of the First-tier Tribunal approached this appeal as if it concerned an application for settlement rather than an application for a visa for a two week visit. There is, contrary to the view of the Judge of the First-tier Tribunal, nothing in the evidence before me to indicate that the Appellant's family circumstances are other than she has stated. There is nothing to suggest that she is not able to pay the cost of her return journey to the UK. It is clear from the evidence that the Appellant's sister and her husband will be able to pay the costs of

accommodation and maintenance in the UK. There is good evidence as to the existence of the Appellant's family and business commitments in Nigeria, giving her a strong incentive to return there.

- 26) It is, of course, axiomatic that evidence which is on the face of it reliable should not be disregarded on the basis of mere suspicion. This seems to me, regrettably, the way in which this evidence was treated by the Judge of the First-tier Tribunal. The Appellant has provided sufficient reliable evidence to show on the balance of probabilities that she meets all the requirements of rule 41 of the Immigration Rules. It would be wrong to impute an intention to her not to abide by the terms of her visa when such an intention is not supported by the evidence. I see nothing in the evidence before me to indicate that the Appellant is anything other than a genuine visitor who intends to leave the UK at the end of the period of her visit.

Conclusions

- 27) The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.
- 28) I set aside the decision.
- 29) I re-make the decision in the appeal by allowing it.

Anonymity

The First-tier Tribunal did not make an order for anonymity and I see no reason for such an order.

Fee Award

Although the appeal has been re-made and allowed I make no fee award because the successful outcome of the appeal depended to a significant extent upon the witness statements and oral evidence before the First-tier Tribunal

Signed

Date

Judge of the Upper Tribunal