



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: IA/39164/2014

THE IMMIGRATION ACTS

Heard at Field House

On 27th August 2015

Promulgated

2015

Decision & Reasons

On 22nd September

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVIDGE

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MRS IRENE JUDITH ANNICK MOUNTEFOU NEE MAKOSSO
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr E Tufan, Home Office Presenting Officer
For the Respondent: Mr Otchie, Counsel instructed by Shan & Co.

DECISION AND REASONS

1. On 11th October 2014 the Appellant (hereafter “The Secretary of State” or “SSHD”) refused entry to the Respondent (hereafter the Claimant) at Heathrow Airport. The Claimant was travelling with the benefit of an entry clearance granted in Congo as a visitor valid for the period of 1st July 2014 to 1st January 2015. The Claimant had previously entered and left the United Kingdom within the validity of that visa.
2. The SSHD noted that the Claimant had obtained emergency NHS treatment during her previous period of stay and concluded that she intended to access further follow-up treatment, to the point that she was now seeking leave to enter for “medical purposes” rather than as a family visitor. The SSHD relied on Paragraph 320(5) of HC 395 which states:

“Grounds on which entry clearance or leave to enter the United Kingdom is to be refused:

- (5) failure, in the case of a visa national, to produce to the Immigration Officer a passport or other identity document endorsed with a valid and current UK entry clearance issued for the purpose for which entry is sought;”
3. The notice of decision identified that the Claimant only had an out of country appeal save on race relations/human rights grounds.
 4. The claimant appealed complaining that the decision interfered with her Article 8 private and family life rights, and maintained that she was seeking leave to enter for a purpose permitted by the Immigration Rules, namely a family visit to see her brother and she had no intention of obtaining medical treatment. She explained that she had had to have treatment on an emergency basis previously, she had provided her passport to the treating authority, who had exercised discretion not to charge. The Claimant had previously received treatment in India and carried with her information about her medical history for no other reason than to ensure that in the event she became unwell her medical history was available.
 5. The Claimant’s appeal was heard at the First-tier Tribunal which decided, having had the benefit of hearing and seeing the Claimant and her sponsoring brother give evidence that both were credible witnesses. The panel concluded that the Claimant was making an application for leave to enter as a family visitor and had a valid entry clearance for that purpose, to the point that, contrary to the substance of the impugned decision, the Claimant did not fall foul of paragraph 320(5) of HC 395.
 6. The SSHD sought permission to appeal on the basis that:
 - (i) The Tribunal did not have jurisdiction because the decision to refuse leave to enter under Section 82(2)(a) of the Nationality, Immigration and Asylum Act 2002, is caught by the provisions of Section 92(3A-C) of the same Act, so that the appeal against the substance of the decision is out of country only.
 - (ii) In the alternative:
 - (a) The panel misdirected, addressing the Claimant’s intention at the time of making her entry clearance application in the Congo as opposed to on arrival and/or
 - (b) The panel failed to deal with the evidence militating against the Claimant’s credibility, set out in the reasons for refusal.

The Hearing at the Upper Tribunal

7. The Claimant had returned to the Congo. The matter proceeded on submissions only. Although permission had been granted in respect of jurisdiction it was not expressly limited however, the only issue pursued with vigour before me was that of jurisdiction. Mr Tufan argued that as the jurisdictional point had been raised in the notice the Tribunal should

not have proceeded to hear the appeal. Mr Otchi argued that the Claimant was in similar circumstances to the Appellants Anwar and Pengeyo in the case of Anwar and Another v SSHD [2010] EWCA Civ 127, because the Tribunal had reached findings of fact which made the Secretary of State's decision demonstrably wrong to the point that the decisions were unlawful. This was a case where it was now too late for the Secretary of State to take the point.

My Consideration and Findings

8. Neither representative who appeared before me as the representative before the First-tier Tribunal. The Record of Proceedings of the First -tier tribunal came to light following the hearing, and at it records at start of the hearing the following:

“HO - not pursuing ‘no right of appeal’ point”.

9. I wrote to the parties advising that in light of that record I proposed to dismiss the jurisdiction ground of appeal after seven days in the event that I heard nothing further from them. The case of Anwar is binding upon me to the point that the SSHD's decision not to pursue the point before the First-tier means that a challenge to the Tribunal's decision on that basis at this late stage is not available.
10. The other grounds were not withdrawn but they have no merit. The panel correctly self-directed in terms of assessing the Claimant's intention at the time of application. In setting out the chronology and directing their minds to the matter of the application it is clear from paragraphs 16 to 20 that the panel correctly addressed their minds to the issue of intention as at the time of the application at Heathrow Airport. As a matter of law (Aiyegbeni and Others, R (on the application of) v SSHD [2009] EWHC 1241) in circumstances where holders of entry clearance who leave and re-enter the country, so as to face examination by an Immigration Officer under Schedule 2, paragraph 2A of the Immigration Act 1971, they are deemed to make an application at the point of re-entry.
11. The ground challenging the reasoning concerning the reasons for refusal letter fails to take into account that the panel reasoning addresses the case as made on the day, and, in particular it was conceded by the SSHD's representative that there was no deception, either by the Claimant or her sponsoring brother, so that the credibility matters raised in these grounds fell away on the day and are not now properly open to the Respondent.
12. For all these reasons the appeal is dismissed.

Signed

Date

Deputy Upper Tribunal Judge Davidge