



IAC-FH-NL-V1

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

Appeal Number: IA/40723/2014

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 8 June 2015**

**Decision & Reasons  
Promulgated  
On 19 June 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE SHAERF**

**Between**

**DINNA SHAIBU  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr W Ehimika of David & Vine, solicitors

For the Respondent: Mr C Avery of the Specialist Appeals Team

**DECISION AND REASONS**

**The Appellant**

1. The Appellant is a citizen of Malawi born on 8 June 1987. She is married to Eddie who is also a citizen of Malawi born on 26 October 1973. The Appellant's leave as a Tier 1 (General) partner expired on 19 July 2014. She together with her husband applied for further leave, he as a Tier 4 (General) Student and she as his dependant. He was granted leave but on 26 September 2014 the Respondent refused leave as a partner dependant

to the Appellant because she failed to meet the requirements of paragraph 319C(i) of the Immigration Rules.

### **The appeal to the First-tier Tribunal**

2. The Appellant appealed under section 82 of the Nationality, Immigration and Asylum Act 2002 as amended (the 2002 Act). The appeal was dismissed by Judge of the First-tier Tribunal Monson in any decision promulgated on 26 February 2015.
3. At paragraph 13 of his decision the Judge set out the relevant requirements parts of paragraph 319C(i) and found on the evidence that she did not meet these requirements.
4. On 30 April 2015 Judge of the First-tier Tribunal Frankish granted the Appellant permission to appeal on grounds that it was arguable the Respondent had failed to follow her policy about changes made to paragraph 319C of the Immigration Rules in a Ministerial Statement made on 6 September 2013. Additionally, he considered it was arguable that the Appellant having arrived as a spouse dependant, should have had her claim under Article 8 of the European Convention outside the Immigration Rules considered by way of reference to the judgment in *Beoku-Betts v SSHD [2008] UKHL 39*.

### **The Upper Tribunal Hearing**

5. The Appellant and her husband attended the hearing. I noted the husband's current leave for studies leading to an MBA expires on 31 August 2015. I was informed that he was considering applying in due course for further leave for doctoral studies.
6. Mr Ehimika for the Appellant referred to the Ministerial Statement of 6 September 2013 and submitted that the Statement of Changes of Rules laid before the House of Commons on 6 September 2013 did not reflect the penultimate paragraph of the statement in which the Minister said:-

"I am making changes to the Rules for dependants in the Points-Based System and other work routes, following the High Court judgment in *R (oao Zhang) v SSHD*. The changes will allow dependants to apply from within the UK, providing they are not here illegally, as visitors, or on temporary admission or temporary release. They will still need to satisfy all other existing requirements."

I remarked to Mr Ehimika that the reference to "dependants" did not mean "all dependants".

6. Mr Ehimika then referred me to a document to be found at pages 11 and 12 of his original bundle. This is an extract from the website of the London School of Economics (LSE) and is entitled "Rules for your dependants in the UK". There was no information of the date of this document. He referred me to the section entitled "Who can bring dependants?" but this

has no relevance to the Appellant and his family since they are already in the United Kingdom.

He also referred me to the section entitled "Family members already in the UK" in which it states:

'If you meet the Tier 4 Rules to bring dependants:

You are studying at postgraduate level for twelve months or more, or

You are fully sponsored by your government for a programme of study longer than six months;

And your family are already in the UK as your Tier 4 dependants, they can apply to continue to stay in the UK with you.'

7. I also noted that the guidance refers to a situation in which family are already in the UK as Tier 4 dependants. The Appellant's previous leave was as a Tier 1 (Post-Study Work) Migrant dependant, not as a Tier 4 dependant. What is of note and to which I was not expressly referred is the paragraph immediately under the heading which informs the reader that the Rules are complex and that he or she should seek advice before making any decisions about travelling or switching immigration categories.
8. I indicated that I was reluctant to place reliance on this type of advice rather than on statements and guidance issued by the Secretary of State.
9. For the Respondent Mr Avery submitted the Appellant had misunderstood the effect of the Ministerial Statement of 6 September 2013. It was simply an introduction to the detailed Statements of Changes to the Immigration Rules which were laid before the House of Commons. There were no changes to paragraph 319C except for those affected by paragraph 131 of the new Statement of Changes which substituted a new paragraph 319C(h) which has no application to the Appellant's circumstances. He also produced the relevant guidance notes as amended at 24 April 2015. Page 24 of the guidance merely reiterated the Rules and the Appellant had not shown that the Immigration Rules failed to reflect the Ministerial Statement. The Appellant had not made out her case and the appeal should be dismissed.
10. In response Mr Ehimika referred again to the Ministerial Statement submitting that it was misleading and that the Statement of Changes of the Immigration Rules did not accurately reflect what was in the Ministerial Statement. He referred generically to the judgment in *R (oao Zhang) v SSHD [2013] EWHC 891 (Admin)* which I note was the catalyst for the changes to paragraph 319C(h) referred to in the preceding paragraph.
11. He continued that each appeal had to be considered on its own merits and that the Appellant had complied with the requirements of the Immigration Rules before and throughout her stay in the United Kingdom and it was not fair that in the light of the judgment in *R (oao Zhang)* the Appellant was

now denied further leave to remain. The Immigration Rules were extremely complex and it was difficult for anyone to understand them.

### **Findings and Consideration**

12. For the reasons given by Mr Avery, I do not find that the Ministerial Statement is in conflict with the Statement of the Changes to Immigration Rules which it introduced. The Respondent's own guidance reflects the Rules and does not indicate that case workers have any area of discretion in the application of these particular Rules. This approach would be consistent with the general approach of the Respondent to the application of the Rules for Points-Based System Migrants.
13. For the reasons again already given, I find little weight can be attached to the guidance prepared by or for the LSE. Additionally, for the reasons given the LSE guidance does not cover the situation in which the Appellant finds herself as the leave of both her and her husband prior to their application for further leave leading to the decision under appeal was under Tier 1 and not Tier 4 of the Points-Based System.
14. There was no allegation that the Respondent had dealt with the Appellant's application in a manner which was procedurally unfair. The complaint simply was that the Immigration Rules themselves operated in an unfair manner in the particular circumstances of the Appellant. I accept the submission that the Immigration Rules are complex and indeed they have been criticised by the Court of Appeal for their rebarbative drafting: see para.59 of *Singh and Khaled v SSHD [2015] EWCA Civ 74*.
15. I find that the Appellant has not shown that there was any material error of law in the First-tier Tribunal's decision and therefore it shall stand.

### **Anonymity**

16. There was no request for an anonymity direction and having heard the appeal considered none is warranted.

### **NOTICE OF DECISION**

**The decision of the First-tier Tribunal did not contain an error of law and shall stand. The effect is:-**

**The appeal of the Appellant is dismissed.**

Signed/Official Crest

Date 16. vi. 2015

Designated Judge Shaerf  
A Deputy Judge of the Upper Tribunal