



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

Appeal Number: IA/42455/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 16th October 2015**

**Decision & Reasons Promulgated
On 23rd November 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE SAINI

Between

MS SIRREH MANNEH

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr L Darboe; Queen's Park Solicitors

For the Claimant: Mr S Whitwell, Senior Presenting Officer

DECISION AND REASONS

1. The Appellant appeals with permission against the decision of First-tier Tribunal Judge Beg dismissing the appeal against the Respondent's decision to refuse her application for settlement and removal directions under section 47 of the Immigration, Asylum and Nationality Act 2006.
2. The Appellant appealed against that decision and was granted permission to appeal by First-tier Tribunal Judge Hollingworth. The basis upon which permission was granted may be summarised as follows:
 - (i) It is arguable that the judge erred in failing to take into account Mr Manneh's inability to visit his daughter in Gambia, as not being a

matter of choice, which would affect the assessment of Mr Manneh's credibility, with reference to paragraphs 16 and 18 of the determination; and

(ii) It is arguable that the judge erred in her findings, which do not portray an awareness of the distinction between an absence of corroborative evidence, internal inconsistency or implausibility in relation to the assessment of Mr Manneh's evidence, with reference to paragraph 28 of the determination.

3. I was provided with a Rule 24 response from the Respondent which submitted in summary that the factual error was immaterial and the finding concerning the lack of corroborative evidence is similarly immaterial.

Error of Law

4. At the close of submissions, I indicated that I would reserve my decision, which I shall now give. I find that there was an error of law in the decision such that it should be set aside. My reasons for so finding are as follows.

5. In relation to the first ground, I find that the Appellant's appeal is *just* made out and I reach this decision after significant pause and reluctance. In relation to the factual error, the judge does unfortunately state at paragraph 16 that the Appellant's father made no attempt to see his daughter for 17 years, which overlooks the facts that Mr Manneh did not receive his ILR vignette until 2011, he had made a legacy request which was pending an outcome and consequently could not travel to visit his daughter owing to a lack of immigration status and an unresolved legacy request. Although Mr Whitwell rightly raised that the judge was entitled to take into account the absence of visits from 2011 to the date of the Appellant's entry into the UK after being granted a visit visa in December 2013, he pragmatically accepted that the judge could not criticise Mr Manneh for not visiting his daughter for 17 years from his entry to the UK until her entry on a visit visa.

6. The findings made upon the relationship between the Appellant and her father, Mr Manneh, and the credibility findings that ensue from the judge's views of Mr Manneh's absence of reasons for visiting his daughter, would clearly be tainted by the view that the judge had formed that Mr Manneh was a person whom "could not find time to go and see" his daughter for "seventeen years". Consequently, those findings must be set aside and the determination is infected, such that it must be set aside.

7. In light of my findings upon the first ground, I do not propose to consider the second ground.

8. I therefore find that there is an error and that the appeal will need to be re-made.

Postscript

9. I have found this appeal an unnecessarily difficult one to decide. This is in part due to the presentation of the Appellant's appeal before me, which was unclear and confusing. It appeared as though the representative was unaware of the nature of the task before them, repeatedly asking me to uphold the grant of permission by Judge Hollingworth, but saying little in relation to the determination of the First-tier Tribunal, which distracted from the merit in the underlying factual error. It is hoped that such errors will not occur in future.

Decision

10. The appeal to the Upper Tribunal is allowed.
11. The decision of the First-tier Tribunal is set aside.
12. The appeal is remitted to the First-tier Tribunal, to be heard by a differently constituted bench.

Anonymity

13. The First-tier Tribunal did not make an anonymity order. I was not invited to make any such order and in any event I see no reason to make such an order.

Signed

Date

Deputy Upper Tribunal Judge Saini