



**Upper Tribunal
(Immigration and Asylum Chamber)
OA/16537/2013**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

Determination

Promulgated

On 26 January 2015

On 26 January 2015

Before

Deputy Upper Tribunal Judge MANUELL

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**Ms FATMATA KAMARA
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Ms A Everett, Home Office Presenting Officer

For the Respondent: Mr I Kamara, sponsor

DETERMINATION AND REASONS

Introduction

1. The Appellant (the Secretary of State) appealed with permission granted by First-tier Tribunal Judge Pirota on

15 December 2014 against the determination of First-tier Tribunal Judge Majid who had allowed the Respondent's appeal against the refusal of her application for entry clearance as a dependant spouse under Appendix FM the Immigration Rules and also under Article 8 ECHR in a determination promulgated on 24 October 2014.

2. The Respondent is a national of Sierra Leone, born on 24 May 1982, currently resident there. She had applied for entry clearance for settlement under Appendix FM of the Immigration Rules as the wife of Mr Ibrahim Kamara ("Mr Kamara"), a national of Sierra Leone with ILR, on 8 May 2013. The Entry Clearance Officer did not accept that the marital relationship was genuine and subsisting. The specified documents proving the sponsor's claimed income had not been submitted with the application. Adequacy of accommodation without recourse to public funds was not proven. By implication refusal did not amount to a breach of Article 8 ECHR. The application was refused on 19 July 2013.
3. Permission to appeal to the Upper Tribunal as sought by the Secretary of State was granted because, *inter alia*, the judge had not resolved conflicts in the evidence, had not addressed compliance with Appendix FM adequately, had taken into account irrelevant considerations and had erred in his approach to Article 8 ECHR family life.
4. Directions were made by the Upper Tribunal in standard form. It was directed that the appeal would be reheard immediately in the event that a material error of law was found.

Submissions - error of law

5. Ms Everett for the Appellant (the Secretary of State) indicated that she relied on the grounds and the grant of permission to appeal. The determination was wholly inadequate. The determination should be set aside, and the appeal reheard and dismissed.
6. Mr Kamara, the Respondent's sponsor, was not in a position to assist the tribunal on the legal issues which arose. Mr Kamara had requested the tribunal to consider additional evidence but the tribunal ruled that any such

evidence would have to form the basis of a fresh entry clearance application and did not go to the issue of whether there had been a material error of law.

The error of law finding

7. The tribunal gave its decision at the hearing that the Secretary of State's appeal would be allowed and briefly explained its reasons and stated that detailed reasons would be given which now follow. Ms Everett's submissions were correct. The judge had erred in a number of ways. First and foremost, the judge had failed to apply the provisions of Appendix FM. The Entry Clearance Officer had pointed out in the notice of refusal that the specified documents concerning the sponsor's income had not been produced. Nor had the sponsor produced evidence that he had been meeting the rental commitment of the property he occupied at the date of the application (there was no suggestion that any other property would be available at the date of the Appellant's proposed entry) or that there was consent to occupation by the Appellant. The judge made no proper findings on either matter, but rather embarked on wholly irrelevant matters: see [10] of the determination.
8. A particular deficiency of the determination was the judge's consideration of the subsistence of the marital relationship. That had been the subject of clear challenge by the Entry Clearance Officer and was a critical issue in view of the admitted long separation of the spouses. The judge reached no clear finding on that issue and failed to identify any relevant evidence concerning the intentions of the parties, let alone explaining what weight he gave to any such evidence. The determination was silent on the point. That was a material error of law.
9. The judge's approach to Article 8 ECHR was wholly mistaken and he recited several paragraphs of outdated law, apparently cut and pasted from other determinations of the same judge. The judge failed to identify any reason why it was not proportionate for the Appellant to make a fresh entry clearance application, addressing the defects and deficiencies of the present application. The Article 8 ECHR decision of the Entry Clearance Officer had no effect on the current degree of family life enjoyed by the

Appellant and sponsor. Nor did the judge consider whether the Appellant and sponsor's family life could reasonably be enjoyed in Sierra Leone. These were further material errors of law.

10. Accordingly, for all of these reasons, the tribunal finds that the determination must be set aside and remade. The Secretary of State's appeal to the Upper Tribunal is allowed.

The fresh decision

11. In this part of the determination for convenience and clarity the tribunal will refer to the parties by their original titles in the First-tier Tribunal. There was no need for any further evidence for the original decision to be remade, and no need for any further submissions.
12. Insufficient evidence had been produced to the First-tier Tribunal to show that the Appellant and sponsor's relationship was genuine and subsisting. There was no persuasive or satisfactory evidence of intervening devotion. Quite possibly such evidence exists and can be obtained, but it was not provided. There was little more than bare assertions which attract little weight.
13. There can be no doubt that the documentary requirements of Appendix FM were not satisfied. The sponsor had produced a miscellany of documents concerning his employments which failed to cover the period of time specified in the Immigration Rules and failed to correspond to his bank statements. The Entry Clearance Officer had correctly pointed that out in the refusal notice. Insufficient steps were taken by the Appellant and the sponsor to rectify the problem.
14. As to accommodation, the only evidence before the tribunal was an undated tenancy agreement for an unidentified address which at Clause 4 "Use of the Property" expressly stated (4.1) "not to let any other person live at the Property or any part thereof" and (4.2) "to use the property as a single private dwelling". There was no satisfactory evidence of the payment of rent. The tribunal finds that the Appellant was unable to show that

adequate accommodation was available to her in the United Kingdom without recourse to public funds.

15. Thus the Appellant was unable to show that her application satisfied Appendix FM of the Immigration Rules and her appeal must be dismissed. It is plain that the level of family life between the Appellant and the sponsor is relatively weak as they have not lived together for many years but, more importantly, that the refusal decision does not create an interference as it simply maintains the *status quo*, i.e., the existing situation. The appeal under Article 8 ECHR must also be dismissed.
16. It will be up to the Appellant and her sponsor to consider making a fresh entry clearance if they wish to pursue their family life in the United Kingdom rather than in Sierra Leone.

DECISION

The making of the previous decision involved the making of an error on a point of law. The appeal to the Upper Tribunal is allowed. The decision of First-tier Tribunal Judge Majid is set aside and remade as follows:

The appeal is DISMISSED

Signed

Dated

Deputy Upper Tribunal Judge Manuell

TO THE RESPONDENT

FEE AWARD

The appeal was dismissed and so there can be no fee award

Signed

Dated

Deputy Upper Tribunal Judge Manuell