



IAC-AH-SAR-V1

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

Appeal Number: IA/24604/2014

THE IMMIGRATION ACTS

Heard at Bradford

On 13 January 2016

**Decision &
Promulgated**

On 8 March 2016

Reasons

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**KATHLEEN MARGARET FAIRCHILD
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr M Diwnycz, Senior Home Office Presenting Officer
For the Respondent: Mr Tetey, instructed by Parker Rhodes Hickmotts,
Solicitors

DECISION AND REASONS

1. In this decision, I shall refer to the appellant as the respondent, and to the respondent as the appellant (as they appeared respectively before the First-tier Tribunal). The appellant, Kathleen Margaret Fairchild, was born

on 16 March 1955 and is a female citizen of South Africa. The appellant arrived in the United Kingdom on 29 September 2013 with leave to enter as a visitor valid until 13 March 2014. On 11 March 2014, she applied for leave to remain in the United Kingdom on the basis of her marriage. The respondent refused the application on 22 May 2014. The appellant appealed to the First-tier Tribunal (Judge N P Dickson) which, in a decision promulgated on 5 May 2015 allowed the appeal on Article 8 ECHR grounds. The Secretary of State now appeals, with permission, to the Upper Tribunal.

2. The Secretary of State's primary complaint as expressed in the grounds of appeal is that the judge has failed completely to address the fact that the appellant could not meet the relevant provisions of HC 395 (as amended). Instead, the judge has, in his decision, directly addressed Article 8 ECHR outside the Immigration Rules and has allowed the appeal on that basis. I find that this ground of appeal has merit. In *Izuazu (Article 8 - new Rules) Nigeria* [2013] UKUT 45 and also *SS (Congo)* [2015] EWCA Civ 387, it is made clear that there is a "two stage" process involved in appeals of this kind. Whilst I acknowledge that there is no need for an appellant to satisfy any threshold criteria for Article 8 ECHR to be engaged, there is, as the law currently stands, nonetheless a requirement on the First-tier Tribunal to address any appeal on Article 8 ECHR grounds outside the Rules in the context of an appellant's inability to comply with those Rules. In the present appeal, the judge has done no more than to summarise the contents of the respondent's refusal letter of 2 May 2014 [15] and to observe (as had the respondent) that the appellant could not meet the requirements of paragraphs E-LTRP2.1 and E-LTRPT3.1 of Appendix FM of the Immigration Rules. Likewise, the appellant could not meet the requirements of paragraph 276ADE [16]. However paragraphs [15-17] of the judge's decision are, as I have noted, no more than a summary of the respondent's reasons for refusing the appellant's application. The judge has not attempted to identify those circumstances of the appellant which engaged both the relevant parts of the Immigration Rules and Article 8 ECHR but which failed to satisfy the former. As the judge has carried out that part of the analysis, it is unclear as to whether aspects of the appellant's case which failed to meet the requirements of the Rules have, nonetheless, led the judge to allow the appeal outside the Rules. It is possible that the judge has allowed the appeal on Article 8 grounds for the very same reasons that it may have failed under the Immigration Rules; it was, at the very least, necessary for the judge to consider which of the appellant's circumstances lay beyond the ambit of the Immigration Rules and to explain why those circumstances engaged Article 8 ECHR. As it is, the judge has simply conducted a freestanding Article 8 assessment without any reference to the Immigration Rules. By doing so, he has erred in law such that his decision falls to be set aside. It will be necessary for there to be a further fact-finding exercise and further determination of the appeal, both by reference to the Immigration Rules and, should it prove necessary, on Article 8 ECHR.

Notice of Decision

3. The decision of the First-tier Tribunal promulgated on 5 May 2015 is set aside. The appeal is remitted to the First-tier Tribunal for that Tribunal to re-make the decision.

4. No anonymity direction is made.

Signed

Date 20 February 2016

Upper Tribunal Judge Clive Lane