



**Upper Tribunal
(Immigration and Asylum Chamber)
OA/08744/2014**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On 4 February 2016**

**Decision & Reasons
Promulgated
On 29 February 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE HANBURY

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MRS ISATOU JARJU
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr R Parkin, Solicitor, UK Law Associates
For the Respondent: Mr S Staunton, Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. This is an appeal by Miss Jarju who is in a long-term relationship, it has been accepted, with the UK sponsor Mr Lamin Camara. Miss Jarju made an application for entry clearance, which was considered by the Entry Clearance Officer on 25 June 2014. The Entry Clearance Officer was not

satisfied that the relationship was a genuine and subsisting one. Moreover, he was not satisfied that she had met all the requirements of the Immigration Rules including the financial and other requirements which had to be met. These included the English language requirements.

2. The appellant appealed that refusal and it came before Immigration Judge Hunter on 17 June 2015. There appears to have been some delay in the FTT reaching a decision, which was promulgated on 4 August 2015. Having found the appellant to have “narrowly missed” the requirements for entry clearance the Immigration Judge nevertheless allowed the appeal “on human rights grounds”, finding that the decision was a disproportionate one for the ECO to reach having regard to his obligations under Article 8 of the European Convention on Human Rights (ECHR).

Discussion

3. It is clear that the appellant came close to meeting the requirements of the Immigration Rules but clearly did not meet the requirements for valid leave to enter the UK as the partner of Mr Camara, who is present and settled here. Whilst this tribunal is sympathetic to the predicament which faced the appellant, who has since acquired additional qualifications which would have assisted her application, the Immigration Judge should have asked whether this was a case which fell within the “exceptional” or “compelling” category. It is clear from the recent decisions of the Court of Appeal in **Singh v Secretary of State for the Home Department [2015] EWCA Civ 74** or **SS (Congo) [2016] 1 All ER 706** that there was likely to be only a small gap between the requirements of the Rules and the requirements of Article 8. The rules make comprehensive provision for family like in Appendix FM and it is clear that the appellant here did not meet the requirements of that Appendix of the Immigration Rules in this case. The respondent is entitled to a wide margin of appreciation, particularly in entry clearance cases, but exceptionally cases may be found where the circumstances are compelling. It is clear therefore that the Rules ought to have been the starting point for the Immigration Judge’s consideration of the case and that the Immigration Judge should then have asked whether there was any proper basis for departing from the requirements of those Rules.

Conclusions

4. I am not satisfied that that there were compelling or exceptional circumstances where which justified the Immigration Judge treating the decision to refuse entry clearance as disproportionate. The Secretary of State must apply the Rules fairly across a range of circumstances. With respect, it was not open to the Immigration Judge to speculate over the quality of the appellant’s spoken English. The circumstances do not appear to have been exceptional. “Near miss” situations often arise but do not make the case exceptional. If the threshold were set so low a high proportion of applicants would succeed under Article 8 where they would fail under the Rules.

5. The appellant does have the benefit of a finding that it is a genuine and subsisting relationship and may well be able to make a successful fresh application for entry clearance. However, as far as the requirements of the Immigration Rules at the date of the appellant's application were concerned, the ECO was right to find they were not met at the date of the decision.
6. Accordingly, I will allow the respondent's appeal against the decision of Immigration Judge Hunter and substitute the decision of this Tribunal which is to dismiss the appellant's appeal against the refusal of entry clearance.

Notice of Decision

The present appeal is allowed and the respondent's decision to entry clearance stands.

No anonymity direction was made by the FTT and I make no anonymity direction.

Signed _____ Date _____

Deputy Upper Tribunal Judge Hanbury

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Signed _____ Date _____

Deputy Upper Tribunal Judge Hanbury