



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU027262015

THE IMMIGRATION ACTS

Heard at Field House
On 2 February 2017

Decision & Reasons Promulgated
On 25 July 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MRS JOYCE PINKRAH
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Mr I Jarvis, Senior Presenting Officer
For the Respondent: Mr Durojaiye, Legal Representative of Moorehouse Solicitors

DECISION AND DIRECTIONS

1. In this decision the Appellant is referred to as the Secretary of State and the Respondent is referred to as the Claimant.

2. The Claimant, a national of Ghana, date of birth 28 April 1972, had appealed against the Secretary of State's decision, dated 14 July 2015, to refuse leave to remain. The refusal was with reference to the Immigration Rules (the Rules), particularly Appendix FM and paragraph 276ADE of the Rules.
3. The appeal came before First-tier Tribunal Judge Andonian (the Judge), who on 22 August 2016 appears to have refused the appeal under the Immigration Rules and to have allowed the appeal on Article 8 ECHR grounds. He also made a fee award of £140.
4. On 12 December 2016 First-tier Tribunal Judge Landes gave the Secretary of State permission to appeal, identifying a number of arguable errors of law.
5. It is trite law but both parties to an appeal are entitled to sufficient and adequate reasons. In this case the Secretary of State says that the judge failed to properly consider the application of the Rules and whether or not the Claimant had fallen outside of the Rules, had misunderstood elements of the law in relation to the length of stay: Although that is not evidently material to the outcome of the appeal Further the judge had failed to properly take into account and apply, as he was required, Sections 117A - B of the Nationality, Immigration and Asylum Act 2002 as amended.
6. I agree with the Secretary of State that the judge fails to give adequate reasons as to why he concluded that Appendix FM did not apply; although on the face of it it appears it might well not have done in any event. More importantly the judge fails to address the considerations under Section 117B of the NIAA 2002, in particular the public interest and the issue of how that sat with the judge's consideration of the general merits of the claim.

7. I am satisfied therefore that there is a lack of sufficient or adequate reasons to properly explain why Article 8 ECHR was engaged and in the event the Secretary of State's decision was not compliant.
8. The judge's assessment of proportionality is simply inadequate. I do not consider that had the decision been more felicitously expressed it would have made any difference and neither do I accept the submission that in effect the Secretary of State's challenge is really a disagreement with the adverse findings made against the Secretary of State's case. It seems to me that this case having been heard at least in some detail must be remade.
9. Accordingly, as the Original Tribunal's decision does not stand the matter will have to be remade in the First-tier Tribunal. The appeal to be remade de novo with no findings of fact to stand unless they are not disputed or the Tribunal otherwise directs.

DIRECTIONS

- (1) List for hearing two hours. Not before F-t T J Andonian.
- (2) No interpreter required.
- (3) Any additional documents relating to the Article 8 ECHR claim to be served not less than seven working days before the further hearing.
- (4) All additional statements to be served not less than seven days before the date of rehearing.
- (5) The issues are the following:
 1. The applicability of the application with reference to Appendix FM;

2. The period of the Claimant's stay in the United Kingdom and her immigration history and
3. Article 8 ECHR considerations.

NOTICE OF DECISION

The appeal of the Secretary of State is allowed. The matter is to be remade in the First-tier Tribunal.

Signed

Date 3 February n2017

Deputy Upper Tribunal Judge Davey