Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/07155/2015

THE IMMIGRATION ACTS

Heard at Birmingham	**Decision & Reasons Promulgated**
On 29th August 2017	**On 30th August 2017**

Before

UPPER TRIBUNAL JUDGE COKER

Between

GERALDIE GRACE DIVINE DIAFOUKA

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: no appearance by sponsor or legal representative
For the Respondent: Ms Aboni, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant was granted permission to appeal on the grounds that the First-tier Tribunal had failed to take into account the evidence produced that there was no testing centre available in Cameroun; it had not opened until after the appellant had applied for entry clearance as a spouse.

2. The Notice of Hearing for today was sent to the last notified address of the appellant's husband who is on the record as her sponsor and representative.

The Notice of Hearing has not been returned undelivered. There is no explanation why he has not attended the hearing today. I do not consider that an adjournment is necessary and proceeded with the hearing. I heard submissions from Ms Aboni.

,

3. The appellant from Congo-Brazzaville, had applied for entry clearance as the spouse of a person present, settled and a British citizen in the UK. She met the requirements of the Immigration Rules save that she had not obtained a recognised language certificate. In her application for entry clearance she said there was no testing centre in her country and that was why she did not have the test.

4. The First-tier Tribunal judge referred to there being testing centres in Cameroun, Nigeria, Ghana and South Africa. In fact, the testing centre in Cameroun was not opened until after she had made her application and it was on this basis that permission to appeal was granted. Ghana, Nigeria and South Africa are thousands of miles from where the appellant lives but the appellant has not and did not provide any evidence why she could not travel to another testing centre – not necessarily one as far away as South Africa. The burden is on the appellant; simply to state that there is not a testing centre in her home country is not sufficient to discharge the burden. Had she provided evidence of particular difficulties at the time she applied for entry clearance, including evidence of the research she had undertaken, the costs of travelling to take the test and other similar evidence it may be that the Entry Clearance Officer would have considered exercising his/her discretion. But on the evidence before the ECO his/her decision was lawful. There is no identifiable error of law in the decision of the First-tier Tribunal to dismiss the appeal.

5. I would comment that the testing centre in Cameroun – a neighbouring country – is now open. Even if there had been an error of law in the First-tier Tribunal decision, the circumstances of the application would have been reconsidered by the ECO in the circumstances as they stood at the time of reconsideration – namely that t there was a testing centre open and accessible.

Conclusions:

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision

The decision of the First-tier Tribunal stands, namely the appeal against the decision of the ECO is dismissed.

Jane Coker

Date 29th August 2017

Upper Tribunal Judge Coker