



**Upper Tribunal  
(Immigration and Asylum Chamber)  
VA/05437/2014**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Birmingham  
Reasons Promulgated  
On 5 August 2015  
2017**

**Decision and  
On 24 August**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE CHANA**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**MISS JENNIFER AYELEY  
(ANONYMITY DIRECTION NOT MADE)**

Respondent

**Representation**

For the Appellant: No appearance

For the Respondent: Mr N Smart, Senior Presenting Officer

**DECISION AND REASONS**

1. The appellant is the Secretary of State for the Home Department and the respondent is a citizen of Ghana born on 17 October 1989. However, for convenience, I refer below to Ayeley as “the appellant” and to the Secretary of State as “the respondent” which are the designations they had before the First-tier Tribunal.
2. The appellant appealed to the First-tier Tribunal against the decision of the respondent to refuse her application for entry clearance as a visitor pursuant to paragraph 41 of the Immigration Rules. First-tier Tribunal Judge McAteer allowed the appellant’s appeal under Article 8 of the European Convention on Human Rights.
3. On 16 June 2015, First-tier Tribunal Judge Haynes granted the Secretary of State permission to appeal saying that it is arguable that

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the First-tier Tribunal erred in allowing the appellant's appeal and therefore made a flawed assessment of proportionality.

4. At the hearing before me, there was no appearance from the sponsor or a representative although the notice of the hearing date was served to the sponsor at his address. At the hearing before Judge McAtter, the appeal was decided on the papers and the sponsor did not attend the hearing.
5. The appellant's application was to enter the United Kingdom to live with her husband for two years although she had applied for entry clearance as a visitor pursuant to paragraph 41 of the Immigration Rules. The First-tier Tribunal Judge allowed the appeal under Article 8 of the European Convention on Human Rights.
6. Under paragraph 41, the maximum time limit to remain in the United Kingdom as a visitor is six months. The First-tier Tribunal Judge erred in his approach to the appeal because he failed to appreciate that the appellant wanted to live in the United Kingdom for two years and therefore was not seeking entry clearance as a visitor. It is therefore clear that the appellant has made an application under the wrong immigration rule.
7. The Judge noted that the appellant's right of appeal is limited to human rights and race discrimination grounds virtue of s88A of the 2002 Act and has no right of appeal against the immigration decision. No such ground was raised in this appeal and therefore there was no valid appeal before him to determine. He had no jurisdiction to allow the appellant's appeal under Article 8 of the European Convention on Human Right.
8. I find that there is an error of law in the decision of the First-tier Tribunal and I set it aside. The appellant has no right of appeal under paragraph 41 of the Immigration Rules. It follows that there is no valid appeal before me. That disposes of the appeal.

## DECISION

The Secretary of State's appeal is allowed and the decision of the First-tier Tribunal is set aside.

The appellant's appeal is dismissed as she has no right of appeal

Signed by

Mrs S Chana

Deputy Judge of the Upper Tribunal  
August 2017

Dated this 23<sup>rd</sup> day of

