Upper Tier Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/11869/2015

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons**
Promulgated	
On 13 April 2018	**On 17 April 2018**

Before

Deputy Upper Tribunal Judge Pickup

Between

The Entry Clearance Officer SHEFFIELD

Appellant

and

BENICE ONYINYENCHI
[No anonymity direction made]

Claimant

Representation:
For the Claimant: Not represented, except by the sponsor Queen Onyinyenchi
For the respondent: Mr P Nath, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The claimant date of birth 20.2.50 is a citizen of Nigeria.

2. This is the appeal of the Secretary of State against the decision of First-tier Tribunal Judge Oliver promulgated 26.5.17, allowing the claimant's appeal against the decision of the Entry Clearance Officer, dated 21.10.15 to refuse her application for entry clearance for a period of three years in order to care for her granddaughter whilst the child's mother, the sponsor attended university.

3. First-tier Tribunal Judge Osborne granted permission to appeal on 29.1.18.

4. Thus the matter came before me on 13.4.18 as an appeal in the Upper Tribunal.

Error of Law

5. For the reasons briefly summarised below, I am satisfied that the decision of the First-tier Tribunal was made in error of law such that it should be set aside and remade.

6. Judge Oliver purported to allow the appeal to the limited extent that the decision of the Entry Clearance Officer was not in accordance with the law. The judge also purported to direct the Secretary of State to make a fresh decision dealing with the best interests of the claimant's granddaughter pursuant to Section 55 of the Borders, Citizenship and Immigration Act 2009 and to submit any further evidence within 6 weeks.

7. The First-tier Tribunal has no power to allow an appeal on the basis that the decision of the Secretary of State or Entry Clearance Officer was not in accordance with the law. The tribunal had to either allow or dismiss the appeal. Neither does the First-tier Tribunal have any power to 'direct' the Secretary of State or Entry Clearance Officer to make a fresh decision.

8. If Judge Oliver was concerned about the best interests of the child, it was open to the judge to determine those best interests within the appeal. It was entirely unnecessary for the judge to effectively remit the decision to the maker for that purpose.

9. In the circumstances, the decision of the First-tier Tribunal must be set aside and remade, which I do by dismissing the claimant's appeal, for the reasons summarised below.

10. The application made by the claimant was one not covered by the Immigration Rules. She did not seek settlement in the UK as an adult dependent relative but temporary admission for a period of 3 years. The purpose of that request was so that she could look after her seriously ill grandchild, whilst her own daughter continued and completed university studies. It follows that the application could not be considered as an application for a visit visa, which would be limited to a maximum stay of 6 months. There is no such immigration status as admission or leave for a period of 3 years. It follows that the application could never have succeeded under the Immigration Rules.

11. The only available ground of appeal was on human rights outside the Rules.

12. There is no dispute as to the illness of the grandchild and that this is serious condition requiring considerable personal care. As described to me by the sponsor, the child has asthma, sleep disorder, obstructive apnoea, extremely difficulties breathing at night due to restricted airways, as well

as a number of other medical complaints. The child often requires significant medical intervention. These difficulties were said to have caused or contributed to the breakdown of the sponsor's marriage. The father has refused to take responsibility or contribute to the child's care needs.

13. As noted by Judge Oliver, the sponsor had concluded that the best way for her to deal with her situation in the long term was to acquire a qualification to help provide for her daughter and herself. Her undergraduate course is due to end in 2018 and she wants to go on to study for a Master's degree. The proposal was that her mother would come from Nigeria to look after the child's needs whilst the sponsor continued her studies. By the time she completed her studies she would be able to obtain employment to pay for child care and her mother could return to Nigeria. In effect, the application was to bring the appellant to the UK as an unpaid child minder.

14. I have considered the child's best interests pursuant to s55. However, I am not satisfied at all that it is in the child's best interests to be looked after by her grandmother whilst her own mother pursues her academic objectives. The child's best interests are surely to be cared for by the sponsor directly rather than a temporary substitute. It is not in any way necessary to the child's best interests to have the claimant come to the UK for that sole purpose.

15. I note, contrary to the findings of Judge Oliver, that both the Entry Clearance Officer and the Entry Clearance Manager took into account human rights considerations, which the judge has ignored. Having read both documents it is difficult to say in what other way they could have addressed the best interests of the child and the human rights aspect. It is noted in the refusal decision that the case raises no exceptional circumstances consistent with the right to respect for family life. To have a substitute carer come whilst the sponsor attends university is a purpose unknown to the Rules and in my view a long way from a situation engaging article 8 ECHR. There is in any event no absolute article 8 right, it is qualified and has to be proportionate to the need to maintain a fair and effective system of immigration control. The claimant does not currently enjoy any family life with the sponsor or her grandchild sufficient so that denial of entry clearance is an interference which engages article 8, applying the R (Razgar) v Secretary of State for the Home Department [2004] UKHKL 27 stepped approach. The remedy for the sponsor is to seek state support from Social Services, and if necessary, postpone her educational ambitions. Her lofty goals, whilst laudable and worthwhile, do not demand the grant of entry clearance to the claimant.

16. In all the circumstances of this case, I am satisfied that the decision of the Entry Clearance Officer was entirely proportionate and not disproportionate to the article 8 rights of the claimant, the sponsor, and the granddaughter. Whilst one may have considerable sympathy for the

sponsor's plight, there is no basis to consider the refusal of entry clearance disproportionate or unduly harsh.

17. In the circumstances, the appeal cannot succeed and must be dismissed.

Conclusions:

18. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law such that the decision should be set aside.

I set aside the decision.

I re-make the decision in the appeal by dismissing it

Signed
Deputy Upper Tribunal Judge Pickup

Dated

Anonymity

I have considered whether any parties require the protection of any anonymity direction. No submissions were made on the issue. The First-tier Tribunal did not make an order pursuant to rule 13(1) of the Tribunal Procedure Rules 2014. Given the circumstances, I make no anonymity order.

Fee Award **Note: this is not part of the determination.**

In the light of my decision, I have considered whether to make a fee award pursuant to section 12(4)(a) of the Tribunals, Courts and Enforcement Act 2007.

I have had regard to the Joint Presidential Guidance Note: Fee Awards in Immigration Appeals (December 2011).

I make no fee award.

Reasons: the appeal has been dismissed.

Signed
Deputy Upper Tribunal Judge Pickup

Dated