



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/19334/2016

THE IMMIGRATION ACTS

Heard at Glasgow
On 30 August 2018

Decision & Reasons Promulgated
On 10 September 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE DOYLE

Between

Miss FAVOUR CHIDINMA SAMUEL
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

ENTRY CLEARANCE OFFICER (Lagos)

Respondent

Representation:

For the Appellant: absent

For the Respondent: Mr A Govan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.
2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Handley promulgated on 27 March 2018, which dismissed the Appellant's appeal.

Background

3. The Appellant was born on 19/04/1998 and is a national of Nigeria. On 21 July 2016 the Respondent refused the Appellant's application for entry clearance to join her father (the sponsor) in the UK.

The Judge's Decision

4. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Handley ("the Judge") dismissed the appeal against the Respondent's decision. Grounds of appeal were lodged and on 8 May 2018 Judge O'Brien gave permission to appeal stating

1. The appellant seeks permission to appeal, in time, against a decision of First-tier Tribunal Judge Handley, who, in a decision and reasons promulgated on 27 March 2018, dismissed the appellant's appeal against the respondent's decision to refuse her application for entry clearance into the UK.
2. The grounds assert that the Judge erred in the following ways. The Judge failed to engage with evidence given by the sponsor in his asylum claim that the appellant formed part of the sponsor's household in Nigeria. The findings at paragraphs 23 and 24 of the reasons were unsupportable. The Judge failed to give adequate reasons for refusing the appeal under article 8 outside the rules.
3. It is unclear whether the Judge accepted that family life existed between the appellant and her sponsor. It is arguable that the Judge failed to consider whether the appellant satisfied the requirements of paragraph 352D (and in particular whether she was part of the sponsor's family unit when he left Nigeria), that being a significant factor in assessing the proportionality of refusal.

The Hearing

5. The Appellant did not attend the appeal nor was she represented at the appeal. I am satisfied that due notice of the appeal was served upon the Appellant and her representatives at the address that was given. No explanation is offered for the appellant's representative's absence. I am therefore satisfied that having been served notice of the hearing and not attended it is in the interests of justice to proceed with the hearing in the absence of the appellant and her representative, mindful of paragraph 38 of The Tribunal Procedure (Upper Tribunal) Rules 2008.

6. The grounds of appeal argue that the Judge's findings at [23] and [24] are unsupportable and that the Judge failed to give adequate reasons for refusing the appeal under article 8 outside the rules. The grounds argue that the Judge materially misdirected himself by failing to engage with evidence taken from the sponsor's asylum claim.

7. For the respondent Mr Govan told me that the decision does not contain errors material or otherwise. He referred me to the evidence which was before the First-tier Tribunal and told me that the paucity of evidence influenced the Judge's findings. Mr Govan asked me to dismiss the appeal and allow the decision to stand.

Analysis

8. The Judge's findings of fact start at [15] of the decision. Between [15] and [18] the Judge carefully considers paragraph 352D of the Immigration Rules. At [18] the Judge gives clear reasons for finding that the appellant cannot meet the requirements of paragraph 352D(iv). Relying on the evidence produced for the appellant, the Judge makes a finding that the appellant left Nigeria in 2006 but did not do so to seek asylum. That is a finding well within the range of reasonable conclusions available to the Judge. That finding supports the Judge's conclusion that the appellant cannot meet the requirements of paragraph 352D(iv) of the rules

9. The Judge's article 8 assessment lies between [20] and [26] of the decision. At [23] the Judge correctly focuses on the extent of contact between the appellant and the sponsor. Within [23] the Judge specifically finds that there is insufficient evidence of regular contact and bemoans the lack of evidence of financial contribution. At [24] and [25] the Judge clearly explains why he finds that the respondent's decision is not a disproportionate interference with any article 8 family life which might exist between the appellant and sponsor.

10. In Shizad (sufficiency of reasons: set aside) [2013] UKUT 85 (IAC) the Tribunal held that the Upper Tribunal would not normally set aside a decision of the First-tier Tribunal where there has been no misdirection of law, the fact-finding process cannot be criticised and the relevant Country Guidance has been taken into account, unless the conclusions the Judge draws from the primary data were not reasonably open to him.

11. In this case, there is no misdirection in law & the fact-finding exercise is beyond criticism. The decision is not tainted by a material error of law.

CONCLUSION

12. No errors of law have been established. The Judge's decision promulgated on 27 March 2018 stands.

DECISION

13. The appeal is dismissed. The decision of the First-tier Tribunal stands.



Signed
Deputy Upper Tribunal Judge Doyle

Date 4 September 2018