



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/24333/2016

THE IMMIGRATION ACTS

Heard at Field House
On 7th June 2018

Decision & Reasons Promulgated
On 26th June 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE LEVER

Between

MRS AGNES TEYE
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Wilcox of Counsel
For the Respondent: Mr Tarlow

DECISION AND REASONS

Introduction

1. The Appellant born on 26th May 1960 is a citizen of Ghana. The Appellant had made application for entry clearance as a partner under Appendix FM of the Immigration Rules. That application had been refused by the Respondent on 20th September 2016.

2. The Appellant had appealed that decision and her appeal was heard by Judge of the First-tier Tribunal Sweet sitting at Taylor House on 19th September 2017. He allowed the appeal.
3. The Respondent made application for permission to appeal on 4th October 2017. Permission was granted on all grounds by First-tier Tribunal Judge Shimmin on 21st March 2018. It was said that it was arguable that the judge had erred in failing to adequately reason the findings made and consider the case law submitted at the hearing and had also failed to make adequate findings on issues regarding the Appellant's immigration history. A Rule 24 response had been issued by and on behalf of the Appellant on 1st May 2018 opposing the Respondent's Grounds of Appeal. The matter comes before me in accordance with directions to decide firstly whether an error of law had been made by the judge in the First-tier Tribunal.

Submissions on Behalf of the Respondent

4. It was submitted by Mr Tarlow that he adopted the Grounds of Appeal and accepted that the outstanding point was the consideration of paragraph 320(11) of the Immigration Rules.

Submissions on Behalf of the Appellant

5. I was referred to the Rule 24 response. I was reminded that in terms of the assertion that case law presented had not been followed by the judge that in reality the Home Office were not present at the First-tier hearing. In terms of the case of **ZH [2009] EWCA Civ 8** the ratio of **ZH** was to look at the motive behind the deceit. It was submitted that the judge had dealt with the issue within his discretion aware of the case of **ZH**. I was also referred to the case of **PS** where it was said that if paragraph 320(11) was applied too stringently then there was no motive for a person to leave the UK and apply for entry clearance from abroad and they would simply remain illegally. It was further noted that in this case the Appellant had left voluntarily in 2016 to make a proper application and that came from the evidence of the Sponsor.
6. At the conclusion of the submissions I reserved my decision to consider the case.

Decision and Reasons

7. As noted by Mr Wilcox in submissions the Respondent was not represented at the hearing before the First-tier Tribunal.
8. The judge had identified the relevant refusal letter being the Entry Clearance Officer refusal letter dated 20th September 2016. He also made reference at paragraph 8 to a previous refusal letter dated 24th September 2015 in which the Respondent had conceded the Appellant and Sponsor had resided together for over two years and were in a genuine and subsisting relationship. Finally he had noted the Entry Clearance Manager review letter dated 2nd February 2017. In that letter the ECM again conceded the question of cohabitation but stated that refusal under paragraph 320(11) of the

Immigration Rules remain suitable. He further found the decision was proportionate under Article 8(2).

9. The judge had noted therefore that the only issue to be determined under the Immigration Rules was the matter concerning paragraph 320(11). At paragraph 14 the judge stated "The burden of proof is on the Appellant and the civil standard of the balance of probability applies". At paragraph 18 he stated "The only issue for consideration is whether the Respondent rightly used his discretion to refuse the application under paragraph 320(11) of the Immigration Rules".
10. The judge at paragraphs 19 to 20 had correctly identified that paragraph 320(11) contained two aspects, namely a factor in (i) to (iv) and the presence of other aggravating features. At paragraph 19 he identified the Appellant came within paragraph 320(11)(i) and (iv). At paragraph 20 he had looked at the aggravating features with the case law of **PS [2010] UKUT 440** and **ZH [2009]** in mind. He gave reasons why he found that discretion should have been exercised differently by the Respondent.
11. Those reasons were a summarised explanation of the evidence he had heard from the Appellant's two daughters. Whilst the judge's decision to exercise discretion in favour of the Appellant may not have been the decision in every court it was a not unreasonable decision. It was based on the evidence heard by the judge where those drafting the Grounds of Appeal on behalf of the Respondent were not even present or able therefore to comment upon that evidence. It was based on and with in mind case law to which he was referred and the judge gave proper reasons for reaching his decision.

Notice of Decision


12. There was no material error of law made by the judge in this case and I uphold the decision of the First-tier Tribunal.

No anonymity direction is made.

Signed



Date



Deputy Upper Tribunal Judge Lever