



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-003878

First-tier Tribunal No: EA/01393/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 16th of May 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

Deborah Folayemi Taiwo
(NO ANONYMITY ORDER MADE)

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr P O Ihebuzor (Solicitor)

For the Respondent: Mr Lawson (Senior Home Office Presenting Officer)

Heard at Birmingham Civil Justice Centre on 14 March 2024

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge M .Dixon promulgated on 10th July 2023, following a hearing at Birmingham on 16th June 2023. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a female, a citizen of Nigeria, and who is 64 years of age. She challenged the decision of the Respondent dated 27th January 2023, refusing her application of 22nd November 2022 for a family permit under the EU Settlement Scheme, in order to join her sponsoring daughter, Ms Modupe Motoni Taiwo.

The Judge's Findings

3. At the hearing before Judge Dixon, the Appellant was not legally represented. Her daughter, Modupe Motoni Taiwo attended to give evidence. The judge observed that, "there is no respondent's bundle" (paragraph 4). He went on to hear the case and made clear findings of a lack of dependency of the Appellant on the Sponsor (see paragraphs 9 to 10). The appeal was dismissed.

The Grant of Permission

4. On 25th August 2023, permission to appeal was granted to the Appellant by the First-tier Tribunal on the basis that no Respondent's bundle was provided to the Appellant or to her Sponsor. The judge had recorded (at paragraph 3) that the Respondent had refused the application on the basis that the Appellant had not demonstrated that she was dependent on her sponsoring daughter. The Appellant now complains that "in the absence of the Respondent's bundle the Appellant was not given an opportunity to prepare for the questions asked by the Respondent". In granting permission, the Tribunal observed that, "at paragraph 10(i) the judge notes no evidence was provided of land being sold to fund the Sponsor's siblings' education", which suggested that "it is only just arguable that the Appellant was not put on notice that such evidence would be required."

Submissions

5. At the hearing before me on 14th March 2024, Mr Lawson, appearing on behalf of the Respondent Secretary of State at the outset confirmed that the Respondent's bundle was only sent out on 15th June 2023, but the hearing was scheduled for 16th June 2023, which meant that it would not have arrived in time to enable the Sponsor to prepare for the hearing. He conceded that there was, in this respect, an error of law. The judge should not have proceeded with the hearing so as to make specific findings of fact against the Appellant when the Sponsor was not in a position to respond. Mr Ihebuzor, who had come prepared to argue the appeal, accepted that this must be right.

Error of Law

6. I am satisfied that the making of the decision by the judge involved the making of an error on a point of law. As the grant of permission makes clear, there was specific allegations in the refusal letter against the Appellant. Her representative at the hearing, her daughter, Modupe Motoni Taiwo, was not in a position to answer them as she had no prior notification of the allegations. This goes directly to procedural fairness and Mr Lawson is wise to concede that there is an error of law.

Notice of Decision

7. The decision of the First-tier Tribunal involved the making of an error of law such that it falls to be set aside. I set aside the decision of the original judge. This appeal is remitted back to the First-tier Tribunal to be determined by a judge other than Judge Dixon on the basis of Practice Statement 7.2.(a) because the

effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put and to be considered by the First-tier Tribunal.

Satvinder S. Juss

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

13th May 2024