Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: OA/08926/2015

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 19 October 2017	**On 13 November 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE ESHUN

Between

ENTRY CLEARANCE OFFICER - LAGOS

Appellant

and

MRS MARYCLARET OBUMNEME AZUBUIKE-NNA
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:
For the Appellant: Mr L Tarlow, HOPO
For the Respondent: Mr O Coleman, Counsel, Perera & Co Solicitors

DECISION AND REASONS

1. The Secretary of State has been granted permission to appeal against the decision of First-tier Tribunal Judge Martins promulgated on 30th January 2017 to allow the appeal of the respondent against the refusal of the Entry Clearance Officer to grant her entry clearance as a partner, under Appendix FM of the Immigration Rules.

2. For ease of reference the respondent will now be referred to as the applicant.

3. The applicant is a citizen of Nigeria born on 18 June 1987. She married the sponsor Mr Azubuike-Nna in Nigeria on 18 August 2014. The sponsor gave evidence at the hearing before Judge Martins. He said that he met the applicant on 27 January 2011 whilst on a visit to Nigeria. They kept in contact and began a relationship. Their marriage took place on 18 August 2014 in Nigeria in the presence of family and friends.

4. The couple made an online application on 4 March 2015 and the applicant was asked to attend for interview on 6 March 2015, when they were asked to complete more forms at the British High Commission in Lagos, Nigeria. The Entry Clearance Officer refused the applicant's application because he was not satisfied that she fulfilled the relationship and financial requirements. He also concluded that the applicant's rights under Article 8 of the ECHR were not being breached and that the application did not raise any exceptional circumstances such that the applicant would fall for a grant of entry clearance outside the Rules.

Findings and Conclusions

5. The judge held as follows:

> *"41. I had the opportunity of hearing the appellant and his uncle give evidence which they did in a straightforward and helpful manner and I find them credible. On the evidence before me, I find that the appellant and sponsor are in a genuine and subsisting relationship and intend to live permanently together as husband and wife. There is evidence of their relationship since 2011, evidence of visits the sponsor has made to the appellant, their subsequent marriage, his subsequent support of her financially and in other ways.*
>
> *42. In terms of the financial requirements under the Rules, it is clear that the relevant documentation required to be presented with the application were missing and so it is clear that the appellant cannot succeed under the Immigration Rules, as there is no discretion in respect of these requirements.*
>
> *43. It is argued on the appellant's behalf however, that given the documentation that is now before the Tribunal, which clearly shows that the appellant does meet the financial requirements, given the length of time the couple have had to wait to be reunited and the length of time it will take should they have to make another application, in all the circumstances there were exceptional circumstances such that the matter can be looked at under Article 8 of the ECHR outside of the Rules and entry clearance granted, otherwise the interference in the family life of this couple is being disproportionately interfered with in the pursuance of the legitimate aim of firm immigration control.*

> *44. In this regard I do find that the appellant and the sponsor enjoy family life and have tried to make the best of their situation by regular visits by the sponsor to the appellant and constant communication. Of the fact that the situation as it stands is also an interference in their family life, there is no doubt. The sponsor reasonably has explained that having established himself in the United Kingdom, particularly from an employment point of view and the fact that he has a son here and other family members, and therefore his life in the United Kingdom, it is not possible for him to uproot himself and join the appellant in Nigeria. Clearly the interference is in pursuance of the legitimate aim of immigration control and the question is whether the interference that ensues, is disproportionate to that legitimate aim. Given my findings above I conclude that the interference is disproportionate and therefore results in a breach of the appellant and sponsor's family life.*
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> *45. Having considered all the evidence, I come to the conclusion that on the totality of it, for the reasons given above, the appellant has discharged the burden on her."*

6. First-tier Tribunal Judge Doyle granted the Secretary of State permission to appeal the judge's decision. He said as follows:

> *"2. The grounds assert that the judge allowed the appeal on Article 8 ECHR grounds after finding that the appellant could not meet the Immigration Rules. The grounds of appeal argued that the judge's findings are inadequately reasoned and do not identify circumstances sufficiently compelling to engage Article 8.*
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> *3. Between [1] and [39] the judge sets out, in detail, the issues, the grounds of appeal, the evidence and submissions. The judge's findings of fact are found between [41] and [45]. His (sic her) Article 8 assessment is found at [43] and [44].*
>
> *4. It is arguable that the findings at [43] and [44] are too brief to form an adequate analysis of proportionality. The Grounds of Appeal identify an arguable error of law. Permission to appeal is granted."*

7. Mr Tarlow relied on the grounds. He reiterated that no adequate reasons were given by the judge at paragraphs 43 and 44 as to why there were exceptional circumstances which went outside the Rules and within the ambit of Article 8.

8. Mr Coleman relied on his Rule 24 response. He said that the judge's decision is at paragraph 44. He relied on paragraph 107 of **SS (Congo) & Ors [2015] EWCA Civ 387** where the Court of Appeal reiterated the principle in **Mukarkar** that a decision cannot be said to be in error of law if

it is without irrationality or illegality. He said that this is a decision that other judges would not have made but it is within the range of a decision that a judge would make.

9. He said that the judge found the witnesses credible. The sponsor has a 12-year old child and is in employment. At the date of the hearing the applicant met the requirements of the Immigration Rules. The sponsor had provided documents evidencing the amount of tax payable, paid or unpaid for the last full financial year that is the period 6 April 2013 to 5 April 2014, self-assessment dated 27 October 2013, self-assessment statement dated April 2014, self-assessment statement dated December 2014 showing the amount brought forward from the previous statement. There were documents for the last full financial year from 6 April 2013 to 5 April 2014. There was proof of registration with HMRC as self-employed and in this regard a copy of the sponsor's tax return for 2015 to 2016 was submitted, as was notice to complete tax return for 2013 to 2014. There was also evidence of ongoing self-employment through evidence of payment of Class 2 National Insurance Contributions.

10. Mr Coleman said that the judge noted at paragraph 39 that the ongoing delay and passage of time amounted to compelling factors so as to allow the appeal under Article 8. He submitted that the judge was entitled to take into account new evidence of pre-existing facts in reaching a decision.

11. He submitted that the assessment of proportionality at 44 was entirely adequate. The judge concluded that the marriage was genuine and the financial requirements had been met and therefore the appeal fell to be allowed under Article 8. There was no error of law in doing so.

12. Following consideration of the submissions by the parties, I find that the judge's decision did not contain an error of law for the reasons stated by Mr Coleman. The judge considered all the evidence that was before her. She gave adequate reasons for her findings. Mr Tarlow failed to identify what more the judge could have said or done that would have been considered to be adequate by the Entry Clearance Officer.

13. In the circumstances, I find that the judge's decision allowing the applicant's appeal should stand.

Notice of Decision

The Entry Clearance Officer's appeal is dismissed

No anonymity direction is made.

Signed Date: 10 November 2017

Deputy Upper Tribunal Judge Eshun