Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: VA/16323/2012

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 3 June 2013	**On 6 June 2013**

Before

UPPER TRIBUNAL JUDGE MOULDEN

Between

MS KEHINDE VICTORIA OSHO

Appellant

and

ENTRY CLEARANCE OFFICER ABUJA

Respondent

Representation:
For the Appellant: the appellant did not appear and was not represented
For the Respondent: Mr C Avery a Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Nigeria who was born on 20 July 1984. She has been given permission to appeal the determination of First-Tier Tribunal Judge Rose who dismissed her appeal against the respondent's decision of 24 April 2012 to refuse her entry clearance to the United Kingdom as a family visitor under the provisions of Paragraph 41 of the Immigration Rules.

2. The respondent refused the application on the basis that the appellant had not submitted evidence that her company was operational or of the income she derived from it. Her claimed

circumstances in Nigeria were doubted and it was considered that she had not established a sufficient incentive to leave the UK at the end of the proposed visit. Her estimated funds of £200 would not be sufficient even if accommodation was provided by the sponsor, her cousin. She had not shown that she would be maintained and accommodated in the UK without working or having recourse to public funds. The refusal was made under subparagraphs (i), (ii), (vi) and (vii) of Paragraph 41.

3. The decision was reviewed and maintained by the Entry Clearance Manager. The appellant appealed. The judge heard her appeal on 15 March 2013. The appellant was represented but the respondent was not. The appellant's sponsor attended the hearing and gave evidence.

4. The judge found that the appellant had not provided a reliable account of her intentions. There was a dearth of relevant documentary evidence. She had not shown that she met the requirements of Paragraph 41, specifically subparagraphs (i), (ii), (vi) and (vii). He dismissed the appeal.

5. The appellant applied for and was granted permission to appeal. The First-Tier Tribunal Judge who granted permission to appeal thought that the grounds had little merit except for the allegation that the judge erred in law in addressing the question of adequacy of accommodation when this was not raised by the respondent in the reasons for refusal. I conclude that there is some ambiguity in the last paragraph which states; "7. That ground is arguable. Permission is granted." I will treat this is a grant of permission in respect of all the grounds.

6. This appeal was listed before me at 10 am. By 11:10 am there was no attendance by the sponsor or the appellant’s solicitors and no communication from anyone. I am satisfied that the required notice of the hearing has been given to the appellant’s solicitors. They are the solicitors on the record for the appellant and her address is given as care of them. They submitted the application for permission to appeal and there is no indication that they have ceased to act for the appellant.

7. I proceeded with the hearing in the absence of the appellant because I was satisfied that she had been notified of the hearing and that it was in the interests of justice to do so. I note that there is a Rule 24 letter from the respondent dated 29 April 2013 which submits that the judge directed himself appropriately.

8. Mr Avery submitted that, in relation to the one ground thought to have some merit, the respondent had raised the issues of both maintenance and accommodation in the refusal letter. He argued that there was no error of law and I was asked to uphold the decision. I reserved my determination.

9. I can find no-fault or error of law with the ground which alleges that because, in paragraph 12 of the determination, the judge records that the sponsor "was not asked to provide any evidence as to any knowledge that she might have had about the appellant's business", he should have raised the point either with the appellant's representative or by questioning the sponsor. It is clear from the same paragraph that the appellant's representative was aware of and addressed all the reasons for refusal. These included the lack of evidence that the appellant's company was operational or of the income she claimed to derive from it. There is no indication that the appellant was anything other than competently legally represented. The issues were clear and the representative was well aware of them. It would have been inappropriate for the judge to cross examine the sponsor.

10. I assume that the grounds which refer to the copies of the appellant's bank statements as "ineligible" must mean "illegible" which, from the copies before me, is the case. I can find no-fault with the judge's decision to consider later and better quality copies of the bank statements. The point the judge takes in paragraph 14 relates to why the appellant supplied a bank statement for a period ending 11 months earlier and has nothing to do with the replacement of illegible bank statements with legible ones.

11. The judge's reasoning in paragraph 16 of the determination does not, as the grounds allege, amount to a rewriting of the refusal letter. The respondent took the view that "you have (not) properly budgeted for your trip or that if you did so it would be reasonable to spend the majority of your funds on a short trip to the UK given you have a child to support." This is the issue which the judge properly addressed in this paragraph. Although it is not raised in the grounds I note that the judge did not fall into the same error as the respondent. He concluded that the appellant was saying that she had £2000 available for her trip, not £200.

12. The last of the grounds of appeal argues that the judge should not have addressed the issue of accommodation when this was not a point raised by the respondent. That is factually incorrect. In the refusal letter the respondent said; "Therefore, on the balance of probabilities, I am not satisfied that you will be maintained and accommodated in the UK without working or having recourse to public funds or that you are able to meet the cost of return or an onward journey as required by paragraph 41 (vi) and (vii) of HC 395." The judge's statement in paragraph 18 that there was no accommodation report was made in the context of the rest of that paragraph in which he addressed the sponsor's circumstances.

13. I find that the judge reached conclusions open to him on the evidence. There is no error of law and I uphold his determination.

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Signed. Upper Tribunal Judge Moulden Date 4 June 2013