



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: VA/22891/2012

THE IMMIGRATION ACTS

Heard at Field House

On 9th May 2013

Determination

Promulgated

On 17th June 2013

Before

UPPER TRIBUNAL JUDGE RENTON

Between

**THI NGOC DIEM NGUYEN
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

ENTRY CLEARANCE OFFICER - BANGKOK

Respondent

Representation:

For the Appellant: Mr G Merrylees, Counsel instructed by Jo & Co Solicitors

For the Respondent: Ms S Ong, Home Office Presenting Officer

DETERMINATION AND REASONS

Introduction

1. The Appellant is a female citizen of Vietnam born on 1st September 1983. She applied for entry clearance as a family visitor which application was refused on 25th May 2012 for the reasons given in a Notice of Decision of that date. The Appellant appealed, and her appeal was heard by Judge of

the First-tier Tribunal Elvidge (the Judge) sitting at Hatton Cross on 22nd November 2012. He dismissed the appeal under the Immigration Rules and on human rights grounds for the reasons given in his Determination dated 28th November 2012. The Appellant sought leave to appeal, and such permission was granted on 12th March 2013.

Error of Law

2. I must first decide if the decision of the Judge contained an error on a point of law so that it should be set aside. The Judge allowed the appeal under paragraph 320(7A) of the Statement of Changes in Immigration Rules HC 395 and also under paragraphs 41(vi) and (vii). However he dismissed the appeal under paragraphs 41(i) and (ii). At the hearing, it was argued by Mr Merrylees that the Judge had erred in law in dismissing the appeal under those paragraphs. He relied upon the grounds seeking leave and pointed out that at paragraph 49 of the Determination the Judge found that he was satisfied that the Appellant would leave the UK within the period of the six month visa. Further, the Judge had made mistakes of fact amounting to mistakes of law by not understanding that the hairdressing business had been transferred to the Appellant by her mother in April 2012, and that the Appellant had obtained a residence order in respect of her son in November 2011. The Appellant therefore had ties with Vietnam and every reason to return there.
3. In response, Ms Ong submitted that the Judge had not erred in law. He had made findings open to him on the evidence, and the grounds seeking leave amounted to no more than a disagreement with his decision.
4. I find an error of law in the Judge's decision so that it should be set aside. It is apparent from what the Judge wrote at paragraph 50 of the Determination that he decided to dismiss the appeal because he did not believe that the Appellant intended a visit of only two weeks' duration, although he accepted that she had no intention to overstay a six month visa. This decision was based at least in part on his finding that the Appellant worked in a business owned by her mother, whereas by the date of decision the Appellant owned that business. Further, the Judge found that the Appellant would be willing to leave her son in the care of her grandmother for longer than two weeks, not appreciating that the Appellant had a residence order in respect of her son. The Judge's decision is therefore based upon an erroneous understanding of the facts of the case which led him to a wrong conclusion.

Re-made Decision

5. I decided to proceed to re-make the decision of the Judge. At the hearing I heard submissions on behalf of both parties which are recorded in the Record of Proceedings.
6. The only issue in this appeal is now whether the Appellant genuinely sought entry for a limited period as stated by her not exceeding six

months; and intended to leave the UK at the end of the period of that visit as stated by her. The burden of proof is upon the Appellant, and the standard of proof is the balance of probabilities.

7. The undisputed facts of this case are that in May 2011 the Appellant visited the UK with her mother. At the time that application was made, the Appellant was a married woman with a young son living in Vietnam where her mother and sister also lived. She had regular employment and also worked part-time in her mother's hairdressing business. The stated purpose of the visit was to spend a short period in the UK seeing the Appellant's brother who was a student there.
8. The Appellant's mother returned to Vietnam after two weeks of the visit, but the Appellant remained owing to ill-health. Eventually the Appellant met a British citizen of Vietnamese origins named Duc Chu, the present Sponsor. They began a relationship and the Appellant resigned from her employment in Vietnam. Despite the relationship, the Appellant returned to Vietnam on 23rd October 2011 before her visa expired.
9. Following her return to Vietnam, in November 2011 the Appellant divorced her husband and obtained custody of her son. In January 2012 the Sponsor visited Vietnam and married the Appellant. He returned to the UK about a month later. In April 2012 the Appellant's mother assigned to her the hairdressing business. The Appellant and her mother then applied for entry clearance to come to the UK for a period of three months in order to visit the Sponsor, the Appellant's husband, and to have a wedding celebration for his relatives who had been unable to attend the marriage in Vietnam.
10. Although the presence of the Appellant's husband in the UK might arouse suspicions as to the Appellant's intentions, I find credible her evidence that she intends to return to Vietnam at the end of her visit. I come to that conclusion on the basis of the immigration history of the Appellant and her family who have always complied with immigration requirements. It is true that in respect of her previous visit the Appellant stated that she would visit for a short period but remained for six months. However I attach little weight to this fact because I consider it more significant that notwithstanding the relationship between the Appellant and the Sponsor which had then developed, the Appellant returned to Vietnam in accordance with the terms of her visa. The Appellant has ties with Vietnam in that she is the proprietor of a business there and her mother, sister, and more to the point, her son live there. I am therefore satisfied that the Appellant intends no more than a visit to the UK after which she will return to Vietnam in accordance with the terms of her visa.

Decision

11. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision.

I re-make the decision by allowing the appeal.

Anonymity

The First-tier Tribunal did not make an order pursuant to Rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and I find no reason to make one.

Signed

Dated 17th June 2013

Upper Tribunal Judge Renton

TO THE RESPONDENT
FEE AWARD

In the light of my decision to re-make the decision of the First-tier Tribunal by allowing the appeal, I have considered whether to make a fee award. Although I have allowed the appeal, I decide to make no fee award because I have decided the appeal on the basis of facts which were not known to the Entry Clearance Officer.

Signed

Dated 17th June 2013

Upper Tribunal Judge Renton