

NM (Family visit- meaning of "spouse") Jamaica [2005] UKIAT
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Heard at Field House
On: 18 February 2005

APPEAL NO: VV/01232/2004

IMMIGRATION APPEAL TRIBUNAL

notified:

Date Determination

1st April 2005

Before

:

Mr D K Allen (Vice President)
Mr F T Jamieson
Mrs L H S Verity

Between

()

APPELLANT

and

Entry Clearance Officer - Kingston

RESPONDENT

Representation:

For the appellant: Ms Laleen Scott, Sponsor.

For the respondent: Mr A Sheikh, Home Office Presenting Officer.

DETERMINATION AND REASONS

1. The appellant is a citizen of Jamaica who appeals to the Tribunal with permission against the determination of an Adjudicator, Mr D M Brennan, promulgated on 4 March 2004, in which he dismissed her appeal against the Entry Clearance Officer's decision of 2 November 2003 refusing entry clearance for the purpose of a family visit.
2. The appellant wished to visit a lady she described as her sister-in-law,(), who lives in the United Kingdom. The Adjudicator concluded at paragraph 8 of his determination that

the relationship between the appellant and () had not been defined. Since the appellant had no husband, if they were sisters-in-law it could only be because () was the appellant's brother's wife. The Adjudicator, however, would have expected them, if that was the case, to have the same surname. He considered that it would only be the case if the appellant were applying for entry clearance in order to visit her husband's wife that the relationship would qualify under Regulation 2(1) of the Immigration Appeals (Family Visits) Regulations 2003. Otherwise he saw no reason to doubt the appellant's explanation of her personal and financial circumstances and did not consider that the reasons for her visit cast any doubt on her good faith. He accepted that the appellant and () have a close relationship and did not consider that () offer to pay for the trip called the purpose of the visit into question. If she had a right of appeal then he would have been disposed to allow it.

3. In the grounds of appeal it is contended that the relationship is that of a sister-in-law owing to the common-law relationship between the applicant and the sponsor's brother. It is said that the appellant and her common-law husband have a son who is now twenty four years old and the relationship is subsisting and therefore the sponsor is clearly the sister-in-law of the appellant as stated. It is suggested that the Adjudicator confused himself with legal marriages as being the only situation concerning which the sponsor could be the sister-in-law of the appellant. Permission to appeal was granted on the basis that it was arguable that common-law relationships fall within the aegis of the Immigration Appeals (Family Visitor) Regulations.
4. At the hearing before us(), the sponsor, appeared on behalf of the appellant, and Mr A Sheikh appeared on behalf of the Entry Clearance Officer.
5. () said that in common-law terms she saw the appellant as her sister-in-law. The appellant had acted on her behalf when the witness's father was ill and also visited the witness's sister in Jamaica who is handicapped and kept in touch with her. She saw the appellant as a member of the family and the reason for inviting her was to thank her.
6. Mr Sheikh argued that the literal approach to the law had to be adopted and "spouse" had to be interpreted as meaning husband or wife.
7. This appeal raises a short point on the construction of the Immigration Appeals (Family Visitor) Regulations 2003.
8. Regulation 2 of those Regulations states as follows:

2(1) For the purposes of Section 90(1) of the Nationality, Immigration and Asylum Act 2002, a "member of the applicant's family" is any of the following persons –

- (a) the applicant's spouse, father, brother, son, daughter, grandfather, grandmother, grandson, granddaughter, brother, sister, uncle, aunt, nephew, niece or first cousin;
- (b) the father, mother, brother, or sister of the applicant's spouse;
- (c) the spouse of the applicant's son or daughter;
- (d) the applicant's stepfather, stepmother, stepson, stepdaughter, stepbrother or stepsister; or
- (e) the person with whom the applicant has lived as the member of an unmarried couple for at least two to three years before the day on which his application for entry clearance was made.

8. We agree with Mr Sheikh that the word "spouse" in Regulation 2(1)(b) can only properly be interpreted as meaning husband or wife. () cannot properly be described as the sister of the applicant's spouse. () is not married to her brother, though it is clear from what she has said that their relationship is a long standing one. It is nevertheless the case that the word "spouse" has a specific meaning. It is perhaps relevant to note also that, as we have set out at Regulation (2)(1)(e), provision is made for an applicant to visit a person with whom they have lived as a member of an unmarried couple in certain circumstances, and we consider that this clearly contrasts with the use of the word "spouse" in Regulation 2(1)(b). Accordingly we conclude that Mr Sheikh is right to contend that the literal interpretation of the word "spouse" is required to be adopted in this case and therefore this application falls outside the Regulations. We endorse the Adjudicator's regret at this situation in this particular case, given the clearly sound reasons for () to make the offer to () to visit her and the absence of any doubt as to the good faith of this application. Nevertheless we must apply the law as it is, and as a consequence it is clear that there is no error of law in the Adjudicator's determination, and accordingly this appeal must be dismissed.

D K Allen
Vice President