AT (Not Family Visit) Uganda [2004] UKIAT 00030

IMMIGRATION APPEAL TRIBUNAL

Date of Hearing: 2nd February 2004
Determination delivered orally at Hearing
Date Determination notified:
24 February 2004

Before:

Mr C M G Ockelton (Deputy President)
Miss B Mensah
Mr P R Moulden

Between:

ENTRY CLEARANCE OFFICER, KAMPALA

APPELLANT

and

RESPONDENT

DETERMINATION AND REASONS

1. The Appellant is the Entry Clearance Officer Kampala. He appeals with permission against the determination of an Adjudicator, Mr A McGrade, allowing the appeal of the Respondent, a citizen of Uganda, against his decision on 8th April 2003 refusing her entry clearance for a visit. Before us the Entry Clearance Officer is represented by Mr Mullen. The Respondent, (the Applicant to the Entry Clearance Officer and the Appellant before the Adjudicator) was not represented and did not appear.

2. There are a number of matters which give rise to concern in this appeal. The primary one is the way in which the papers were produced by the Entry Clearance Officer. This is very far from being the first time, even the first time today, that we have seen an Entry Clearance Officer's treatment of a visit visa application which leaves a great deal to be desired. In the present case, it is quite apparent from the papers now before the Tribunal that the transcript of the Officer's interview of the Applicant to him was produced in two separate versions. One of them ends at question 26 with the question "*Are you still fit and well?*" to which the answer was "*Yes*". The other version goes on to question 34,

that is to say contains additional questions and ends again with the question "*Are you still fit and well?*". We do not know whether there is in fact in existence a third or other versions that are longer still. In the circumstances, we can, of course, have no confidence that the second version is any more accurate or complete than the first. Visit visa applications, although they may be seen by the Entry Clearance Officer as small beer, are of great importance to those who make them and we take the view that every one deserves proper consideration.

3. The Entry Clearance Officer's principal ground of appeal in this case is that the Adjudicator, having found that the Applicant to the Entry Clearance Officer was not related to the sponsor as she claimed, should have found further that he could not be satisfied that she genuinely intended a visit for the limited time stated by her. The burden of that ground is that if the Applicant was not related as claimed to the sponsor, her credibility was in the severest of doubt and that it followed that other matters which were not so readily capable of being checked were ones on which she was not entitled to credit.

4. We prefer to look at this issue from another viewpoint. The Applicant claimed to be the mother-in-law of the sponsor, Maureen Kiconco. The sponsor was pregnant and the purpose of the visit was said to be to assist at the birth. Having looked at the evidence, the Adjudicator wrote in paragraph 14 as follows:

> "I am not satisfied on the balance of probabilities that he Appellant and Maureen Kiconco are related as the Appellant claims."

He went on, at paragraph 17, to say this:

> "Although I have rejected the Appellant's account as to her relationship with Maureen Kiconco, I am satisfied on the balance of probabilities that the purpose of this visit is to assist Maureen Kiconco after the birth of her child and that the Appellant intends to leave the United Kingdom at the end of her visit."

At the end of his determination, he wrote as follows:

> "I allow the appeal.
>
> I direct that entry clearance be granted to the Appellant."

5. That decision creates difficulties because the right of appeal for those refused entry clearance as a visitor is limited. Under section 60 of the 1999 Act which is headed "*Limitations on Rights of Appeal under Section 59*", we find the following:

> "(4) Subsection (5) applies to a person who seeks to enter the United Kingdom:
> (a) as a visitor."

We do not need to read the rest of that subsection. Subsection (5) reads, as follows:

"(5) That person:
(a) is not entitled to appeal under section 59 against a refusal of an entry clearance unless he is a family visitor."

Subsection (6) reads:

"The Secretary of State may, by regulations, make provision requiring a family visitor appealing under section 59 to pay such fee as may be fixed by the regulations."

Subsection (10):

"'Family visitor' has such meaning as may be prescribed."

6. As is well known, fees were indeed fixed under regulations but have since been revoked. However, there are still in force regulations prescribing the meaning of a family visitor. The regulations that govern this appeal are the Immigration Appeals (Family Visitor) (No 2) Regulations 2000 SI 2000 No 2446. Regulation 2, paragraph 2, of those Regulations reads as follows:

"For the purposes of Section 60(10) of the Act, a family visitor is a person who applies for entry clearance to enter the United Kingdom as a visitor in order to visit:
(a) his spouse, father, mother, son, daughter, grandfather, grandmother, grandson, granddaughter, brother, sister, uncle, aunt, nephew, niece or first cousin;
(b) the father, mother, brother or sister of his spouse;
(c) the spouse of his son or daughter;
(d) his step-father, step-mother, step-son, step-daughter, step-brother or step-sister; or
(e) a person with whom he had lived as a member of an unmarried couple for at least two of the three years before the day on which his application for entry clearance was made."

7. That gives family visitor a wide definition, but there is a distinction between those who fall within those categories and those who do not. The consequence of the Adjudicator rejecting the relationship claimed by the Applicant to the sponsor is that there is no evidence (and there was no evidence before the Adjudicator) that the Applicant fell within the category of a "family visitor". Having reached the conclusion, therefore, that he was not satisfied that the Applicant was related as claimed to the sponsor, the Adjudicator should have proceeded immediately to decide that he had no jurisdiction to hear the Applicant's appeal. It follows that his purported allowing of the appeal and direction that entry clearance be granted were made without jurisdiction and are entirely without force.

8. For those reasons, and to that extent, we allow the Entry Clearance Officer's appeal. The decision made by the Entry Clearance Officer therefore stands.

C M G OCKELTON
DEPUTY PRESIDENT