



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/10526/2015

THE IMMIGRATION ACTS

Heard at Field House
On 10 October 2017

Decision & Reasons Promulgated
On 24 October 2017

Before

THE HONOURABLE LORD BURNS
DEPUTY UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

MRS MAKUTA MARIAN TARAWALI
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Quee, Solicitor from Quee and Mayanja Solicitors
For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is a challenge by the Appellant against the decision of First-tier Tribunal Judge S Rodger (the judge), promulgated on 25 May 2017, in which he dismissed her appeal against the Respondent's decision of 9 October 2015. The Appellant had sought entry clearance to join her spouse (the sponsor) in the United Kingdom. The Entry Clearance Officer had refused that application on two grounds: first that the Appellant's relationship with her husband was not genuine and subsisting; second, that the English language requirement had not been met. The application had been considered under Appendix FM to the Immigration Rules.

The judge's decision

2. The judge found the sponsor to be a credible witness and went on to conclude that the relationship was in fact genuine and subsisting (paragraphs 25 to 26). In respect of the English language requirement, the judge noted the existence of a NARIC letter but found that this did not satisfy the specific evidential requirements under Appendix FM-SE to the Rules. Having regard to the evidence as a whole the judge found that the Appellant was able to speak sufficiently good English suffice to be able to integrate into the United Kingdom, that she would be maintained according to the minimum income threshold set out in the Rules, and that if she were to make a further entry clearance application this would have been, "likely to succeed" (paragraphs 28, 30, and 33).
3. Ultimately, the judge found that the inability to satisfy the particular requirements of the Rules in relation to English language evidence was, in what he described as the absence of any "exceptional or compelling" factors, decisive of the appeal.

The grounds of appeal and grant of permission

4. The somewhat lengthy grounds of appeal essentially assert that the evidence before the judge did in fact satisfy Appendix FM-SE, or alternatively that the judge applied an exceptionality test in the context of the Article 8 claim outside the context of the Rules.
5. Permission to appeal was granted by Upper Tribunal Judge Canavan on 13 September 2017.

The hearing before us

6. At the outset of the hearing Mr Clarke accepted that the judge had materially erred in law. He pointed out that the judge had accepted that the English language requirement was, in substance, met by the Appellant. Mr Clarke acknowledged that the judge had in effect accepted that as at the date of the First-tier Tribunal hearing the various requirements of the Rules had been met. Mr Clarke acknowledged that as of the date of the hearing before us the Appellant continued to meet the requirements of the Rules. That being the case, he accepted that there were no public interest considerations which could outweigh the factors in favour of the Appellant. He indicated that we could quite properly set aside the judge's decision and remake that decision by allowing the Appellant's appeal outright on Article 8 grounds (this being a human rights only appeal).
7. Unsurprisingly Mr Quee did not seek to suggest any other course of action.

Decision on error of law

8. We find that Mr Clarke's express concession in this case was properly made and in consequence, we conclude that the judge did materially err in law.
9. We set aside the decision.

Re-making the decision

10. Having set aside the judge's decision we now remake the decision in light of the evidence as a whole and the position adopted by Mr Clarke, above. We find, as did the judge, that the Appellant's relationship with her husband is and has always been perfectly genuine and subsisting.
11. There has never been any dispute as to the Appellant's ability to satisfy the financial requirements under Appendix FM. We find that these have been met.
12. As to the English language requirements, we do not seek to go behind the concession by Mr Clarke before us that the relevant requirements were met by the Appellant as at the date of hearing before the judge and as of today. Not only was there the NARIC letter, but also the original degree certificate.
13. There were, and are, no other issues in dispute relating to Appendix FM.
14. Thus, the requirements of the Rules had been met and there is nothing else the Appellant need show in order to succeed in his appeal.
15. We allow the appeal on the basis that the requirements of Appendix FM have been met in full.
16. If it were said, notwithstanding Mr Clarke's concession, that the particular requirements under Appendix FM-SE were not met in respect of the English language evidence, we would nonetheless conclude that this appeal should be allowed on Article 8 grounds outside the context of the Rules. As a matter of fact the Appellant speaks sufficiently good English so as to be able to integrate fully into life in this country, and all other aspects of the Rules are met. Even taking account of the hypothetical fact that the particular requirements of Appendix FM-SE had not been met in respect of the English language issue, this factor alone would not, even when incorporated into the general public interest factor, be sufficient to render the Respondent's decision proportionate.
17. Therefore we would allow the appeal on this alternative basis.

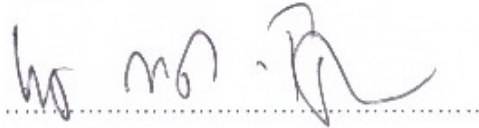
Notice of Decision

The decision of the First-tier Tribunal contains material errors of law.

We set that decision aside.

We re-make the decision by allowing the Appellant's appeal on Article 8 grounds.

No anonymity direction is made.



Signed

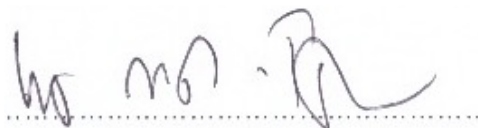
Date: 21 October 2017

Deputy Upper Tribunal Judge Norton-Taylor

TO THE RESPONDENT

FEE AWARD

As I have allowed the appeal and because a fee has been paid or is payable, I have considered making a fee award and have decided to make a whole fee award of £140.00. The Appellant has succeeded in her appeal on the basis of evidence submitted in advance of the First-tier Tribunal hearing, and the Respondent has conceded that she should have been successful at that stage at the latest.



Signed

Date: 21 October 2017

Deputy Upper Tribunal Judge Norton-Taylor