



Upper Tribunal

(Immigration and Asylum Chamber)

Appeal Number: HU/10738/2015

THE IMMIGRATION ACTS

Heard at Glasgow

On 2nd August 2017

Decision & Reasons Promulgated

On 25 August 2017

Before

MR C M G OCKELTON, VICE-PRESIDENT
DEPUTY JUDGE OF THE UPPER TRIBUNAL DEANS

Between

MRS DEBORAH EUGENE STALTER

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mrs F Farrell, Peter G Farrell Solicitors

For the Respondent: Mr M Diwnycz, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against a decision by Judge of the First-tier Tribunal Handley dismissing an appeal against refusal of leave to remain.
2. The appellant is a national of the USA. She entered the UK in 2012 with leave as a fiancée. In the same year she was given limited leave as a spouse. In 2015 she applied for further leave as a spouse. Rather unusually in a case where leave to enter was given under the Immigration Rules, the appellant's husband is a French national exercising Treaty rights in the UK.
3. This application was considered by the Secretary of State under Appendix FM and refused because the appellant did not provide the specified documentary evidence to show that the maintenance requirement of £18,600 was satisfied.
4. In evidence to the First-tier Tribunal the appellant said she is working full time as an auxiliary nurse. The appellant's husband also gave evidence about his employment. He further stated that the couple had completed the application form themselves after making inquiries about the evidence that was required.
5. The Judge of the First-tier Tribunal found that the appellant had not met the requirements for the provision of specified documents in relation to maintenance under Appendix FM. It was argued before the First-tier Tribunal that the appellant should have been given an opportunity to submit additional evidence before the Secretary of State refused her application. The judge found, however, that this was not a case where one of a series of documents had been omitted, where a document was in the wrong format, where a copy was provided instead of an original, or where a document did not contain all the specified information. The appellant had failed to provide the required documents with her application.
6. In respect of paragraph EX.1 of Appendix FM, the judge pointed out that the test of "insurmountable obstacles" was a high hurdle to overcome. Having regard to the family circumstances, backgrounds and careers of the appellant and her husband, the judge was not satisfied that there were insurmountable obstacles that would prevent family life continuing outside the UK.
7. Turning to Article 8, the judge found the refusal decision was not a disproportionate interference with the appellant's right to respect for her private or family life. This finding took into account the fact that the appellant's husband is an EEA national exercising Treaty rights in the UK and

that there was therefore an alternative route through which the appellant would be entitled to reside here.

8. Permission to appeal was granted by the Upper Tribunal on the basis that it was arguable that the judge erred by not making a finding on whether the substantive maintenance requirement was met, which might have been material to the assessment under Article 8. The other grounds of the application were considered arguable. These included the question of whether the appellant should have been asked for additional evidence before her application was refused. It was pointed out that the appellant's husband has a right of permanent residence, which should have been taken into account in the balancing exercise under Article 8.
9. At the hearing before us, Mrs Farrell explained that she was pursuing the appeal on the instructions of the appellant after they had had a discussion about the routes she might follow. Mrs Farrell acknowledged that the documentary requirements of the Immigration Rules were not met at the time the application was made. She submitted that the appeal should nevertheless be allowed under Article 8. Mrs Farrell pointed out that the appellant had first come to the UK before the Immigration Rules changed. She had returned to the USA and then re-entered the UK. Mrs Farrell drew to our attention the Immigration Directorate Instructions on missing documents.
10. The difficulty we have with this appeal is ascertaining the basis on which the Secretary of State's refusal decision could be said to be disproportionate under Article 8. There is no evidence of any intention by the Secretary of State to remove the appellant from the UK and, as she is the spouse of an EEA national with a right to reside here, there seems to be no lawful basis for removal. It has not been demonstrated before us that it is disproportionate for the Secretary of State to require the submission of specified documents with particular categories of application. Indeed, it might be considered that all that the Secretary of State did was to refuse an application which was not made with the proper documents. In the circumstances of this appeal this does not amount to a disproportionate interference with the appellant's right to respect for her private or family life.
11. Having considered the arguments made on behalf of the appellant, we are satisfied that the Judge of the First-Tier Tribunal was entitled to reach the decision which he did and did not err in law in so doing.

Conclusions

The making of the decision of the First-tier Tribunal did not involve the making of an error of law. We do not set aside the decision.

Anonymity

No anonymity direction was made by the First-Tier Tribunal. We have not been asked to make such an order and see no reason of substance for doing so.

Deputy Judge of the Upper Tribunal Deans

23 August 2017