Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: OA/05549/2015
OA/05551/2015
OA/05552/2015
OA/05556/2015

THE IMMIGRATION ACTS

Heard at Field House
On 2 May 2017

Decision & Reasons Promulgated
On 10 May 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

MRS NUSRAT ZAHID
MR WASEEM ZAHID
MR AHSAN ZAHID
[H Z]
(ANONYMITY DIRECTION NOT MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr D Chuckooa, Solicitor from Bridgewater Solicitors
For the Respondent: Mr S Whitwell, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is are appeals by the four Appellants against a decision of the First-tier Tribunal Judge Easterman (the judge), promulgated on 27 September 2016, in which he dismissed their appeals on all grounds. The first Appellant is the mother of the other three and all are citizens of Pakistan.

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2. By applications made on 31 October 2014 the Appellants sought entry clearance to join the Sponsor (Mr Zahid), who is the husband of the first Appellant and the father of the other three. The applications were refused by the Respondent on 17 February 2015. These refusals were based on an alleged failure to meet the financial requirements of Appendix FM to the Immigration Rules, with reference to the specified evidence required by Appendix FM-SE. In addition, the evidence relating to accommodation was said to be inadequate and there was, it was said, an absence of clear evidence relating to the English language requirements.

3. The Appellants duly appealed to the First-tier Tribunal. At this stage they were not legally represented.

The judge's decision

4. The Appellants had requested and paid the requisite fees for an oral hearing of their appeals. Thus on 5 September 2016 the appeals came before the judge as oral hearings. A Presenting Officer attended. There was, however, no attendance by Mr Zahid. Just prior to the hearing Mr Zahid had sent in a bundle of evidence to be relied upon, together with a covering letter. The documents were received at the hearing centre on 1 September 2016. On the second page of the covering letter Mr Zahid stated: "I am getting treatment of heart and unable to attend the honourable court and requesting you to consider my matter on paper hearing and obliged."

5. In light of this the judge quite properly considered whether or not he should proceed with the hearing in the absence of the Sponsor (see paragraphs 34 and 35). The judge concluded that he would proceed. This was on the basis that:

   (a) the Sponsor had not asked for an adjournment in his covering letter;

   (b) the bundle of evidence had been served late in the day;

   (c) it was right that the Respondent, who was represented at the hearing, should have the opportunity to consider the evidence and make any oral submissions thereon.

6. The judge then moved on to consider the substance of the appeals, namely whether or not the Appellants could satisfy the requirements of Appendix FM. The judge was, it is right to say, unimpressed with the evidence relating to the Sponsor's finances.

7. He was similarly unimpressed with the tenancy agreement provided by the Sponsor, and found that it was insufficient to show that there would be adequate accommodation for the Appellants. As to the issue of the English language requirements, the judge declined to make a specific finding on this issue.

8. He then goes on to consider whether an Article 8 claim outside the context of the Rules could succeed. At paragraphs 40 onwards he concludes that there were no compelling circumstances in this case, that there was no right for people to choose where they would reside as a family, and that there was no particular reason as to why the Sponsor could not return to Pakistan to live with his family there. He also had regard to the fact that the Rules had not been satisfied.

The grounds of appeal and grant of permission

9. The grounds of appeal appear to assert that the judge acted with procedural unfairness in proceeding in the absence of the Sponsor. They go on to assert that both the Respondent and the judge were wrong to have rejected the evidence provided in respect of the relevant requirements of the Rules.

10. By a decision dated 16 March 2017 First-tier Tribunal Judge Page granted permission essentially on the basis that there may be procedural unfairness and that the Sponsor should be given the opportunity to argue the point at an oral hearing before the Upper Tribunal.

The hearing before me

11. Subsequent to the grant of permission the Appellant obtained legal representation. Mr Chuckooa sought to rely on the grounds of appeal and maintained the argument that the judge was wrong to have proceeded to hear submissions from the Presenting Officer. In respect of the substance of the cases Mr Chuckooa pointed out that there were payslips and an employer's letter from the Sponsor before the judge.

12. Mr Whitwell submitted that there were clearly no material errors of law in the judge's decision.

Decision on error of law

13. As I announced to the parties at the hearing, I conclude that there are no material errors of law either on procedural or substantive issues. My reasons for this conclusion are as follows.

14. In respect of the procedural unfairness point, the Appellant, through the Sponsor, had sought an oral hearing and, as has been said previously, paid the requisite fee. Thus the matters came before the judge as oral hearings. The Sponsor did not attend. Instead he sent in a bundle of evidence and the covering letter referred to earlier. The covering letter asserted that due to vague medical conditions the Sponsor was unable to attend. He was requesting that the matter be considered on the papers.

15. What is quite clear from the letter is that he was <u>not</u> asking for the case to be adjourned. There was not even an implication that such a course of

action was being requested. An individual does not have to have any legal knowledge to be able to ask the Tribunal to put a case off to another date if for whatever reason they are unable to attend a hearing.

16. In this case the Appellant said in terms that he wished the matter to be considered in his absence. He may describe it as being considered "on the papers", but of course the matter was listed for oral hearing. In light of this and the late service of the evidence the judge was fully entitled when considering whether it was fair and in the interests of justice to proceed and that the Presenting Officer, who was of course present, should have time to consider the evidence and then make any relevant submissions thereon. Indeed, for the judge not to have done so would arguably have been unfair to the Respondent. The need to ensure fairness cuts both ways.

17. On this basis there is no merit whatsoever in the assertion that the judge acted unfairly.

18. Turning to the merits of the case, the judge clearly had the requirements of Appendix FM-SE in mind, as he did the evidence that had been submitted late in the day by the Sponsor. He appreciated the practical difficulties faced by individuals who are paid in cash for their employment, but clearly stated at paragraph 36 that nonetheless income had to be proved, and that the manner of proving it was defined by the specified evidence set out in Appendix FM-SE. The judge was not satisfied that this had been the case.

19. It is quite apparent from the papers before the judge and everything that I have seen on file that at no stage, either with the application, in the bundle of evidence or even subsequently, have any bank statements for the Sponsor ever been submitted in support of the application. The provision of bank statements covering the requisite period of six months prior to the making of the application is one of the three basic sources of specified evidence set out in Appendix FM-SE. The simple fact that this evidence was entirely absent meant that the appeals, insofar as they related to satisfaction of the Rules, were bound to fail. There was no error by the judge in his consideration of the financial requirements.

20. Furthermore, the judge was fully entitled to conclude that the tenancy agreement in and of itself was insufficient to show that the accommodation was adequate, particularly where three children were concerned. There was no surveyor's report or any other evidence to indicate the nature of the other rooms, who in fact lived at the property, and such like. There are no errors here.

21. For the sake of completeness, although the judge's conclusion in respect of Article 8 outside the context of the Rules has not been specifically challenged, I see no errors here whatsoever. The judge rightly considered the issue but found, as he was probably bound to, that there were no

compelling circumstances here. In particular, the fact that the Appellant did not meet significant aspects of the Rules themselves (i.e. financial requirements and adequacy of accommodation) were clearly factors that weighed heavily against the Appellants.

22. No issue of evidential flexibility ever arose from these cases. It has never been relied on, and more importantly, was never going to assist the Appellants because of the complete absence of bank statements.

23. In light of the above the decision of the judge stands.

24. I would add this one further comment. It is open to the Appellants to make fresh applications in which they may seek to adduce all relevant evidence, perhaps with the assistance of legal representation.

Notice of Decision

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

The Appellants' appeals to the Upper Tribunal are dismissed.

The decision of the First-tier Tribunal stands.

No anonymity direction is made.

Signed Date: 9 May 2017

Deputy Upper Tribunal Judge Norton-Taylor

TO THE RESPONDENT

FEE AWARD

I have dismissed the appeals and therefore there can be no fee award.

Signed Date: 9 May 2017

Deputy Upper Tribunal Judge Norton-Taylor