



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/01135/2017

THE IMMIGRATION ACTS

Heard at Field House
On 24 May 2018

Decision & Reasons Promulgated
On 1 June 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

FARHANA SHAHID
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr F Aziz, Solicitor from Maidstone Solicitors
For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is a challenge by the Appellant against the decision of First-tier Tribunal Judge Caswell (the judge), promulgated on 30 October 2017, in which she dismissed the Appellant's appeal against the Respondent's refusal of entry clearance, dated 6 January 2017. That refusal was in respect of an application made on 6 December 2016 in which the Appellant sought leave to enter the United Kingdom as a spouse of a British citizen (the Sponsor). The application was refused on two grounds: first that the relationship was not genuine and subsisting; second that the financial requirements of Appendix FM had not been met.

The judge's decision

2. At [18] the judge found that the Appellant's relationship with the Sponsor was in fact genuine and subsisting, and always had been. At [19] to [21] the judge found the financial requirements under Appendix FM had been, and continued to be, met. All seemed to be going in the Appellant's favour until [22]. Despite the positive findings in respect of the Rules, the judge concluded that he had to dismiss the appeal. This was because, as he put it, he was bound to apply the Razgar step-by-step approach notwithstanding satisfaction of the Rules. In so doing, he found that whilst there was family life between the Appellant and Sponsor, there would be no interference with it since the Sponsor could go and live with the Appellant in Pakistan. The judge concludes by stating that if a fresh application were made it would have every prospect of success.

The grounds of appeal and grant of permission

3. The succinct grounds assert that having made the positive findings in respect of the relationship and the financial requirements, the judge erred by then dismissing the appeal.
4. Permission to appeal was granted by First-tier Tribunal Judge Birrell on 9 April 2018.

The hearing before me

5. At the outset Mr Melvin observed that in light of the judge's favourable findings on the relationship and financial requirements issue the decision would appear to be "difficult to defend". He did make it clear that there was no concession here but it was acknowledged that having found that the disputed requirements of the Rules had in fact been met, the judge should arguably have stopped at that point and allowed the appeal.
6. In light of the circumstances in this case I did not find it necessary to ask Mr Aziz for any submissions.

Decision on Error of Law

7. As I announced to the parties at the hearing, I conclude that the judge materially erred in law and that pursuant to my discretion under section 12(2)(a) of the Tribunals, Courts and Enforcement Act 2007 I should set her decision aside.
8. Whilst it is true that satisfaction of the relevant Rules (in this case Appendix FM) is not always necessarily determinative of an Article 8 claim, it will be an extremely significant factor. The Rules provide the framework set down by the Respondent

himself as to where the proper balance lies between the public interest on the one hand and the rights of individuals on the other. Satisfaction of the Rules quite clearly greatly reduces the weight attributable to the public interest. In this case there were no other possible issues counting against the Appellant and it has certainly not been suggested by Mr Melvin that the Appellant needed to show anything other than that she complied with the requirements of Appendix FM. It does not appear as though the Presenting Officer before the judge made any submissions to the contrary.

9. The judge was simply wrong to have dismissed the appeal on the basis that he did.

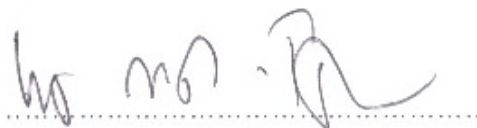
Remaking the Decision

10. Having set aside the judge's decision I now remake it for myself.
11. In light of the specific findings of fact relating to the Appellant's relationship with the Sponsor and the satisfaction of the financial requirements at all material times I conclude that the provisions of Appendix FM to the Rules were and continue to be met. There are no other relevant factors in this case counting against the Appellant. I therefore allow the appeal based squarely on satisfaction of Appendix FM, I find that the Respondent's decision constituted a disproportionate interference with the Appellant's family life with the Sponsor and is therefore unlawful under section 6 of the Human Rights Act 1998.
12. No anonymity direction is made.

Notice of Decision

The decision of the First-tier Tribunal contains an error of law and is set aside under section 12(2)(a) of the Tribunals, Courts and Enforcement Act 2007.

I remake the decision by allowing the Appellant's appeal on the basis that all of the requirements of Appendix FM are satisfied and the Respondent's refusal of her human rights claim is unlawful under section 6 of the Human Rights Act 1998.



Signed

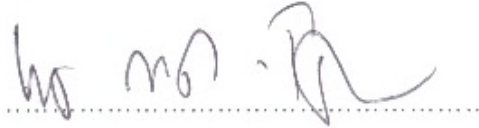
Date: 30 May 2018

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 reduced fee award of £100.00. Although the Appellant has won her appeal, relevant evidence was only placed before the First-tier Tribunal late in the day. A reduction in the award is justified.

A handwritten signature in blue ink, appearing to read 'Norton-Taylor', is written over a horizontal dotted line.

Signed

Date: 30 May 2018

Deputy Upper Tribunal Judge Norton-Taylor