



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/06908/2017

THE IMMIGRATION ACTS

Heard at Field House
On August 10, 2018

Decision & Reasons Promulgated
On August 28, 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

MRS JELENA CVOROVIC
(NO ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Represented by the Sponsor, Dorde Cvorovic
For the Respondent: Ms Kiss, Senior Home Office Presenting Officer

DECISION AND REASONS

1. No anonymity order is made.
2. The appellant is a national of Serbia. The appellant made an application for entry clearance as a partner under Appendix FM of the Immigration Rules on March 6, 2017. The respondent refused the application on May 17, 2017 on the basis he was not satisfied the appellant was in a genuine and subsisting relationship with her spouse or that they intended to live together permanently in the United Kingdom. The appeal was refused under paragraph EC-P1.1(d) of Appendix FM of the Immigration Rules.
3. The appellant lodged grounds of appeal under Section 82(1) of the Nationality, Immigration and Asylum Act 2002. Her appeal came before Judge of the First-tier

Tribunal O'Rourke (hereinafter called "the Judge") on January 3, 2018 and in a decision promulgated the same day the Judge dismissed her appeal on human rights grounds.

4. The appellant appealed this decision on January 31, 2018, 2018. She argued that the Judge failed to take into account the evidence that had been submitted which demonstrated she and her husband were in a genuine and subsisting relationship and the Judge failed to take into account that they had a child who was a British citizen.
5. Permission to appeal was granted by Judge of the First-tier Tribunal Bird on May 16, 2018 as it was arguable the Judge had erred by failing to deal with the totality of the evidence that had been submitted and had possibly viewed the appeal in a negative light on the basis the appellant had asked for the appeal to be dealt with on the papers.
6. The appeal came before me on the above date and I asked Ms Kiss what her preliminary opinion was on the Judge's decision. Initially she had no file and I therefore provided her with a copy of the bundle of papers that had been submitted to the First-tier Tribunal together with a copy of the appeal papers. Having noted that the only issue raised was the subsistence of the relationship and the intention to live permanently in the United Kingdom together she reviewed the documents that had been before the First-tier Tribunal and agreed that there was ample evidence within the bundle, that could be relied on, to support the nature of the relationship. This factor together with the fact that at the date of application they had a child led her to conclude that there was a material error in law for the reasons given by Judge of the First-tier Tribunal Bird.
7. I asked her what her views were as to the remaking of this decision and having seen the British passport relating to their second child who had been born on January 16, 2018 together with copies of the child's birth certificate (including translation from Serbian) and acknowledging the respondent's own guidance as set out in "Family Migration-Appendix FM, Section 1.0 Family life as a Partner or Parent and Private Life, 10 year Routes" she could see no basis upon which this appeal should be refused.
8. She acknowledged that the appellant and sponsor satisfied the financial requirements of Appendix FM of the Immigration Rules and there was clear evidence of a genuine and subsisting relationship between them as evidenced by not only the documentation contained within the First-tier Tribunal bundle but also the new evidence of the second child and an indication from the sponsor that he had only just returned from visiting his family in Serbia.
9. The fact is the children are perfectly entitled to reside in this country and bearing in mind the age of the children, the youngest of them being only six months, it would clearly be disproportionate to refuse them entry.
10. I also had regard to the recent decision of TZ (Pakistan) and PG (India) and The Secretary of State for the Home Department [2018] EWCA Civ 1109 in which the

Court of Appeal made it clear that where the appellant has satisfied the Immigration Rules it would be disproportionate for the appellant to be refused entry.

11. I therefore find there is an error in law and I have proceeded to remake the decision.

DECISION

12. There was an error in law for the reasons set out above and I set aside the decision.

13. I have remade the decision and I allow the appeal on human rights grounds.

Signed

Date 10/08/2018



Deputy Upper Tribunal Judge Alis

TO THE RESPONDENT
FEE AWARD

I make no fee award as none was requested.

Signed

Date 10/08/2018



Deputy Upper Tribunal Judge Alis