



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: HU/26102/2016

THE IMMIGRATION ACTS

**Heard at Bradford
On 11 April 2018**

**Decision and
promulgated
On 17 April 2018**

Reasons

Before

UPPER TRIBUNAL JUDGE HANSON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

KBB

(anonymity direction made)

Respondent

Representation:

For the Appellant: Mrs Petterson - Senior Home Office Presenting Officer

For the Respondent: Ms E Mottershaw instructed by the Bradford Law Centre.

ERROR OF LAW FINDING AND REASONS

1. The Secretary of State appeals with permission against a decision of First-tier Tribunal Judge Bircher promulgated on 28 February 2017 following the Judge considering the merits of the appeal on the papers at North Shields on 30 January 2017.
2. KBB is a citizen of Guinea born on 12 April 1979 who was granted entry clearance as the spouse of a settled person valid from 17

October 2013 to 17 July 2016. An in-time application for further leave to remain, on the basis of the relationship with her British national partner, was lodged but refused by the Secretary of State. At [4] the Judge notes it was accepted by the Secretary of State that the suitability requirements of Appendix FM were met although it was not accepted the eligibility requirements had been met on the basis KBB had failed to satisfy paragraph R-LTP.1.1.(c)(ii) because she had failed to meet the requirements of E-LTRP.4.1 of Appendix FM of the Immigration Rules. This provision requires an applicant to provide evidence they are (a) a national of a majority English-speaking country listed in paragraph GEN.1.6; (b) to pass an English language test in speaking and listening at a minimal of level A1 of the Common European Framework of Reference for Language with a provider approved by the Secretary of State; (c) have an academic qualification recognised by UK NARIC to be equivalent to the standard of a Bachelors or Masters degree or PhD in the UK, which was taught in English; or (d) are exempt from the English language requirement of paragraph E-KLTRP.4.2; and that paragraph EX.1 applies.

3. The Judge, having considered the evidence, concluded that KBB was exempt from the English language requirement and that she therefore met the suitability and eligibility requirements and the immigration requirements as contained within Appendix FM [10 - 15].
4. The Judge also had to consider whether the appellant fell within paragraph EX and noted that in the refusal letter KBB's partner was said to have been granted exceptional leave to remain in the UK after claiming asylum on the basis of a fear of persecution in Liberia [17], noted that the couple have a child as demonstrated by birth certificate showing on 20 November 2015 a baby boy was born [18], and found there was little evidence before the Judge to demonstrate what support if any the appellant would have if returned to Guinea and that the appellant had been in the United Kingdom lawfully throughout [18]. The Judge found neither the appellant nor her partner to be a drain on public funds and that the requirements of Appendix FM were satisfied [19].
5. The Secretary State applied for permission to appeal which was granted by another judge of the First-tier Tribunal on 7 September 2017, the operative part of the grant being in the following terms:

“The reasons for refusal letter had raised various matters, particularly concentrating on whether the Appellant had shown she was properly exempt from the English Language Requirement. The Judge dealt with those matters with good reasons, but as this appears to be a hearing on the papers, the Judge was not guided through EX 1 or EX 2 in any great detail. At [18] the Judge said he was lacking evidence as to what support the Appellant would have if she was returned to Guinea. It was arguably an error of law to allow the appeal if evidence of “insurmountable obstacles”, or “very serious hardship” was not

before him. I grant permission on all matters raised in the grounds.”

Error of law

6. It was accepted by both advocates in this case that up to and including the findings at [15] the Judge had done nothing that could be found to amount to an arguable error of law. It was submitted that thereafter, where the Judge went on to consider EX (b), any alleged error arises.
7. On behalf of the KBB it is argued that although the determination is not set out as preferred, a reading of the decision as a whole shows that the Judge did consider all aspects she was required to consider and has made appropriately reasoned findings supporting the decision to allow the appeal.
8. In relation to the English language issues; at [12 - 14] the Judge considered E-LTRP.4.2 which provides:
E-LTRP.4.2. The applicant is exempt from the English language requirement in paragraph E-LTRP.4.1. or E-LTRP.4.1A. if at the date of application-
 - (a) the applicant is aged 65 or over;
 - (b) the applicant has a disability (physical or mental condition) which prevents the applicant from meeting the requirement; or
 - (c) there are exceptional circumstances which prevent the applicant from being able to meet the requirement.
9. The Judge found that at the date of application, 15 July 2016, the appellant was suffering from a serious degenerative eye condition which resulted in her vision being so poor that it was classified as ‘severely sight impaired’. The Judge noted that in a later report, following a consultation on 19 September 2016, it was stated that the appellant had demonstrated improved eyesight which was recognised two months after the application for leave had been submitted.
10. There is nothing arguably irrational in the Judge concluding that the evidence before her established an entitlement for KBB to rely upon the fact she had a disability which prevented her from meeting the requirements of this provision at the relevant date.
11. The Judge was required to consider whether EX applied but found it did not. The findings in relating to the appellants disability and medical condition were equally applicable to this assessment. Although it is accepted by the Judge that the Secretary are Stated raised the issue of return to Guinea in the refusal notice it is not made

out that KBB would have appropriate support or that her partner, a national of Liberia, and now British citizen, would be permitted to join her. The assertion in the refusal that as KBB is over 18 years of age and at an employable age and had provided no compelling evidence to suggest she would not be able to support herself or partner through employment in Guinea, appears not to recognise the extent of KBB's retinopathy or maculopathy at the relevant date, the date of application. It is not made out that a person who at the relevant date had vision that was so poor that it could be classified as severely sight impaired will be able to find such employment or be able to provide support as asserted by the decision-maker.

12. As stated, had the Judge set out a detailed analysis of this aspect in a separate paragraph, even if at risk of repeating what she had said earlier at [10 - 12] it is unlikely permission to appeal would have been granted. There is however no authority stating that unless a judge sets out an appeal in a certain way an error of law occurs. Following a detailed reading of the decision and discussion between the advocates and the Tribunal it is clear that the Judge has addressed the relevant aspects.
13. Considering the decision as the whole, I make a finding of fact that the Judge has not erred in law in a manner material to the decision to allow the appeal, on the basis of the evidence before the Judge and need to consider the requirements of the relevant provisions at the appropriate date.

Decision

14. There is no material error of law in the Immigration Judge's decision. The determination shall stand.

Anonymity.

15. The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....
Upper Tribunal Judge Hanson

Dated the 11 April 2018