



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/19360/2015

THE IMMIGRATION ACTS

Heard at Field House
On 13 June 2018

Decision & Reasons Promulgated
On 1 August 2018

Before

UPPER TRIBUNAL JUDGE CONWAY

Between

MRS NGOZI COMFORT MADJERY CHIKEZIE
(NO ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Khan of Counsel

For the Respondent: Ms Willocks-Briscoe, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Nigeria born in 1975. She appealed against a decision of the Respondent made on 21 April 2015 to refuse her application for leave to remain on the basis of family life with Mark Gareth Richards (the Sponsor) and on the basis of private life.
2. The basis for the refusal was that the relationship was not believed. Also, it had not been shown that the Sponsor's income reached the required level. Further, the

Appellant had not shown evidence of the required English language skills. In addition, she had not shown evidence of twenty years' residence.

3. She appealed.

First-tier Hearing

4. Following a hearing at Hatton Cross on 25 September 2017 Judge of the First-tier Sullivan dismissed the appeal.
5. Her findings are at paragraph 16 ff. In summary, she found that the Appellant is in a genuine and subsisting relationship with the Sponsor [17]; that there would be insurmountable obstacles to family life between the Appellant and Sponsor, who is a British citizen, continuing outside the UK [17].
6. She went on to find that the Appellant, however, had not shown that she has the required English language skills. Also, that the required evidence of financial resources had not been shown.
7. Next, the judge spent several paragraphs in a detailed analysis of the period of residence claimed by the Appellant concluding, (at [27]) that "*she has proved her presence in the United Kingdom from June 1998*".
8. The main findings in the remaining paragraphs, in the context of the proportionality assessment, were that the Appellant despite not satisfying the English language requirement under the Rules has the English language skills to begin to integrate into society. Also, more recent documentation indicated that the Sponsor has the resources to ensure that the Appellant is independent of public funds.
9. However, the judge concluded that there would not be significant interference with family life by requiring the Appellant to return to Nigeria and seek entry clearance. Separation would not be of "*significant duration*."

Error of Law Hearing

10. The Appellant sought permission to appeal which was granted on 10 April 2018.
11. At the error of law hearing before me Mr Khan's point was brief, namely, that the judge having found that paragraph EX.1 applied, the Appellant had satisfied the Immigration Rules. The fact that she satisfied the Rules was a heavy consideration which weighed in favour of the Appellant. The judge having found that Appendix FM was satisfied erred in failing to identify any sensible reason why the Appellant should leave her husband and family and return to Nigeria to make an entry clearance application.
12. Ms Willocks-Briscoe in even briefer response essentially left the matter for me. She agreed that a finding that paragraph EX.1 applied meant that the finding that the financial and English language requirements were not met was redundant. Her only

other comment was to question whether the post paragraph [17] findings indicated inconsistency in the judge's mind.

Consideration

13. The application was made under the family (partner) route and on the basis of private life.
14. On the former, Section R-LTRP.1.1 of Appendix FM sets out the requirements to be met for limited leave to remain as a partner. It states:

“... ”

- (c) (i) *the applicant must not fall for refusal under Section S-LTR: Suitability leave to remain; and*
- (ii) *the applicant meets all of the requirements of Section E-LTRP: Eligibility for leave to remain as a partner; or*
- (d) (i) *the applicant must not fall for refusal under Section S-LTR: Suitability leave to remain; and*
- (ii) *the applicant meets the requirements of paragraphs E-LTRP.1.2-1.12. and E-LTRP.2.1; and*
- (iii) *paragraph EX.1. applies”.*

15. In this case there is no issue as to suitability. The judge found that the Appellant could not meet all the eligibility requirements being unable to satisfy the financial requirements (E-LTRP.3.1) and the English language requirement (E-LTRP.4.1).
16. However, the judge found that all the relationship requirements (E-LTRP.1.2-1.12) were satisfied. Such included that the Appellant and the Sponsor are in a genuine and subsisting relationship that being an issue taken against the Appellant by the Respondent. No issue is now taken against the judge's finding on that matter and it is one which on the evidence she was entitled to reach for the reasons she gave.
17. The Appellant is not in the UK as a visitor or with leave granted for a period of six months or less (E-LTRP.2.1).
18. Paragraph EX.1 states that the paragraph applies if:
 - “(b) *the applicant has a genuine and subsisting relationship with a partner who is in the UK and is a British Citizen ... and there are insurmountable obstacles to family life with that partner continuing outside the UK.”*
19. The judge's finding that paragraph EX.1 applies is not challenged and is unassailable for the reasons she gave.

20. The result is, the Rules having been met, the public interest is discharged. The judge should have stopped there and allowed the appeal on human rights grounds. In not doing so she erred.
21. I did not agree with Ms Willocks-Briscoe's tentative suggestion that the decision was undermined by contradictory findings. The judge's findings in the first part of her decision were clear. The rest were redundant. They did not damage the findings initially made. She erred in concluding that the Appellant should return and seek entry clearance to show compliance with Appendix FM-SE. Having found that the Appellant satisfies paragraph EX.1 there is no sensible reason why such is required. It is superfluous.
22. I set aside the decision to be remade. It was indicated that no further evidence was to be led. For the reasons stated the appeal is allowed.
23. I would add that, in any event, the judge having made the unchallenged finding that the Appellant "*has proved her presence in the UK since June 1998*" also now satisfies paragraph 276 ADE (1) (iii) having lived continuously in the UK for over 20 years should such further application be necessary.

Notice of Decision

The decision of the First-tier Tribunal showed error of law. It is set aside and re-made as follows:

The appeal is allowed.

No anonymity order made.

Signed

Date

Upper Tribunal Judge Conway