Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/02056/2019 (V)

THE IMMIGRATION ACTS

Heard at: Field House
On: 22 October 2020

Decision & Reasons Promulgated
On: 27 October 2020

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

HIBA IFTIKHAR

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: The Sponsor, Mr Ismeal Butt
For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This has been a remote hearing to which there has been no objection from the parties. The form of remote hearing was Skype for business. A face to face hearing was not held because it was not practicable, and all issues could be determined in a remote hearing.

2. The appeal comes before me following the grant of permission to appeal to the Upper Tribunal.

3. The appellant is a national of Pakistan, born on 27 June 1996. She applied for entry clearance to the UK under Appendix FM of the immigration rules on the basis of her

family life with her partner Ismael Murtaza Butt, a British citizen. The application was refused on 11 January 2019 on the basis that the appellant could not meet the eligibility financial requirements of paragraph E-ECP.3.1 of Appendix FM of the immigration rules because the evidence submitted in relation to her sponsor's employment with ATR Universal Ltd in the form of payslips and bank statements equated to an annual salary of £18,453.32, which was below the required threshold of £18,600. The respondent considered there to be no exceptional circumstances resulting in unjustifiably harsh consequences such as to breach Article 8 of the ECHR.

4. The appellant appealed that decision. In her grounds of appeal, it was submitted on her behalf that the £73.34 shortfall in earnings was due to an accounting error made by the company's accountants, as the sponsor was contracted to be paid £18,600 a year. It was submitted further that the sponsor and his family could meet the shortfall with financial support and the appellant had also been offered a job in the family business ATR for an annual salary of £16,000. Evidence was submitted in the form of letters of support from the sponsor's aunt and uncle together with payslips and savings in a UK savings account of £97,000. The grounds relied upon the new paragraph 21A of Appendix FM-SE which permitted the respondent to consider other sources of income and funds. It was also submitted that the respondent failed to consider the appellant's and sponsor's Article 8 rights and that the decision was disproportionate.

5. The appellant's grounds of appeal were considered by an Entry Clearance Manager, who was satisfied that the decision was correct and was not prepared to exercise discretion in her favour. It was noted that no specific details had been given about the 'accounting error' and it was considered that the immigration rules precluded an offer of future employment from being taken into account.

6. The appellant appealed against that decision and, on her request, her appeal was determined on the papers by First-tier Tribunal Judge Harris, and was dismissed in a decision promulgated on 6 September 2019. The judge agreed with the ECM, that the appellant had failed to demonstrate the existence of the claimed accounting error and found that the appellant could not be assisted by the evidential flexibility provisions in Appendix FM-SE. The judge considered that the immigration rules restricted the sources of income to those in paragraph E-ECP.3.2 of Appendix FM and that they did not include offers of future employment or offers of financial support from third parties. Accordingly, the appellant could not meet the threshold of £18,600 pa. The judge considered that the exception in GEN.3.1, with reference to paragraph 21A(2) of Appendix FM-SE and acceptable additional sources of income, was not triggered unless there were exceptional circumstances that unlawfully interfered with the right to respect for family life under Article 8. He concluded that there were none in the appellant's case and that the respondent's decision was proportionate. He accordingly dismissed the appeal.

7. The appellant sought permission to appeal that decision to the Upper Tribunal and permission was granted on the basis that it was arguable that the judge ought to have considered paragraph 21A of Appendix FM-SE of the Immigration Rules.

8. In light of the need to take precautions against the spread of Covid-19, the case was reviewed by an Upper Tribunal Judge and, in a Note and Directions dated 23 March 2020, Vic-President Ockelton indicated that he had reached the provisional view that the question of whether the First-tier Tribunal's decision involved the making of error of law and, if so, whether the decision should be set aside, could be made without a hearing. Submissions were invited from the parties.

9. Neither party responded to the directions. Upper Tribunal Judge Finch then made further directions on 11 August 2020 and directed that the case be listed for a remote hearing.

10. The matter then came before me. The sponsor, Mr Butt, appeared on behalf of the appellant and confirmed that, whilst a solicitor was instructed to represent them, he was not intending to attend the hearing. In the circumstances I considered it appropriate for Mr Melvin to make his submissions first.

11. Mr Melvin submitted that the ECM had considered the grounds of appeal and found there to be insufficient evidence that the sponsor was earning sufficient for the appellant to meet the financial requirements of the immigration rules and the judge, having assessed the papers before him, had reached the same conclusion. The judge considered there to be insufficient evidence in the wage slips, a lack of evidence from the claimed new accountant, and a lack of adequate evidence from Mrs Mahmood who was said to be the director of the family business employing the sponsor. The judge may have benefitted from evidence from the sponsor and from the accountant and from further salary slips, but the appellant chose not to have an oral hearing. The judge considered GEN.3.1 of the immigration rules which could link to paragraph 21A(2) if there were exceptional circumstances and made clear findings that there were no such circumstances. The judge made sustainable findings on the evidence presented and his decision ought to be upheld.

12. Mr Butt, in response, said that his wages were the amount shown as his boss could not afford to pay him more. The accountant had made a mistake in the paperwork and they only saw that later. He wanted his wife to come to the UK as he had been living apart from her for three years. He had recently visited her in Pakistan.

Discussion and Findings

13. The grounds seeking permission repeat the arguments put to the judge as to the unfairness in penalising the appellant when there was such a small shortfall in the income available from the sponsor, of only £73.34, and when there had been an error made by the company's previous accountant. The grounds also reiterate the claim made before the judge that there was further support available to the appellant and sponsor from the sponsor's aunt and uncle, Rosea Mahmood and Tariq Mahmood, as well as an offer of employment for the appellant in the family business ATR Universal Ltd, and assert that the new paragraph 21A of Appendix FM-SE permitted such evidence to be considered.

14. However, and contrary to the reasons given for permission to appeal to the Upper Tribunal to be granted, Judge Harris had full regard to the provisions of paragraph 21A of Appendix-FM at [15] to [25]. The judge properly noted that paragraph 21A only applied when the "exceptional circumstances" requirements of GEN.3.1(1) of Appendix FM were met. At [16] he set out the provisions of GEN.3.1 as follows:

> "GEN.3.1.(1) Where:
>
> > (a) the financial requirement in paragraph E-ECP.3.1., E-LTRP.3.1. (in the context of an application for limited leave to remain as a partner), E-ECC.2.1. or E-LTRC.2.1. applies, and is not met from the specified sources referred to in the relevant paragraph; and
> >
> > (b) it is evident from the information provided by the applicant that there are exceptional circumstances which could render refusal of entry clearance or leave to remain a breach of Article 8 of the European Convention on Human Rights, because such refusal could result in unjustifiably harsh consequences for the applicant, their partner or a relevant child; then
>
> the decision-maker must consider whether such financial requirement is met through taking into account the sources of income, financial support or funds set out in paragraph 21A(2) of Appendix FM-SE (subject to the considerations in sub-paragraphs (3) to (8) of that paragraph)."

15. The judge went on, at [19] to [25], to consider whether there were exceptional circumstances which could render refusal of entry clearance or leave to remain a breach of Article 8 of the European Convention on Human Rights, and provided detailed and cogent reasons for concluding that there were none.

16. As such, the judge properly concluded that the claimed sources of additional income, not being income which fell within paragraph E-ECP.3.2 of Appendix FM, could not be taken into account to meet the shortfall in the sponsor's earnings.

17. At [10] to [13], the judge also considered the appellant's claim that her husband in fact met the £18,600 threshold and that the evidence in the form of his payslips showed a shortfall due to an accounting error by the company's accountants. The judge noted the respondent's concerns about the lack of any evidence from the accountants who were blamed for the error or from the subsequent accountants, and was fully and properly entitled to reject the appellant's explanation for the reasons properly given. As Mr Melvin submitted, the appellant had chosen not to have an oral hearing at which the sponsor could present oral evidence and at which other evidence could be produced. The judge was only able to make a decision on the papers and evidence before him and it is plain from his careful assessment of the evidence that it was significantly lacking and failed adequately to support the claims made.

18. The submissions made by the sponsor at the hearing before me did not address the relevant issues. His submissions, as with the grounds of appeal, were little more than a disagreement with the respondent's and the judge's decision. The judge undertook a full

and detailed assessment of the evidence in the context of the relevant immigration rules and was fully and properly entitled to conclude that the appellant could not meet the requirements of the rules and that there were no compelling circumstances justifying a grant of entry clearance outside the immigration rules. As the judge properly observed at [24], the respondent's decision did not prevent the appellant and sponsor from ever pursuing a family life together in the UK, but the appellant could simply re-apply for entry clearance once the sponsor was able properly to demonstrate the required income. The judge properly concluded that the respondent's decision was not disproportionate and was not in breach of Article 8.

19. For all of these reasons I find no error of law in the judge's decision and I uphold the decision.

DECISION

20. The making of the decision of the First-tier Tribunal did not involve an error on a point of law. I do not set aside the decision. The decision to dismiss the appeal stands.

Signed: *S Kebede*
Upper Tribunal Judge Kebede Dated: 22 October 2020