



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/06625/2019 (V)

THE IMMIGRATION ACTS

Heard at : Field House
On : 23 July 2021

Decision Promulgated
On: 12 August 2021

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

NAFEESA HAROON

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Jafar, instructed by Lee Valley Solicitors
For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This has been a remote hearing to which there has been no objection by the parties. The form of remote hearing was Microsoft Teams. 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 appellant is a citizen of Pakistan, born on 6 May 1989. On 23 October 2018 she made a human rights claim in an application for entry clearance under Appendix FM of the immigration rules on the basis of her family life with her husband, Muhammad Haroon Qureshi. Her claim was refused in a decision dated 27 March 2019 on the grounds that she could not meet the financial eligibility requirements of Section E-ECP of

Appendix FM. The documents submitted in regard to the sponsor's employment did not meet the requirements of Appendix FM-SE and the respondent could not be satisfied, from the documents submitted, as to the sponsor's salary from employment. The respondent considered further that there were no exceptional circumstances justifying a grant of entry clearance on Article 8 grounds outside the immigration rules.

3. The appellant appealed that decision and the appeal came before First-tier Tribunal Judge Welsh on 18 November 2019. The judge considered that the documents submitted in relation to the sponsor's employment did not meet the requirements of Appendix FM-SE and, further, that the quality of the evidence submitted was not such that she ought to find that the financial threshold required by the immigration rules was met. The judge considered Article 8 outside the immigration rules and accepted that the appellant and sponsor were married and had a child who was British and was living with the appellant in Pakistan such that Article 8 was engaged. However, the judge found that the public interest in the maintenance of effective immigration control outweighed the interference with the appellant's family life and that the respondent's decision was therefore proportionate. The appeal was accordingly dismissed.

4. The appellant sought permission to appeal that decision to the Upper Tribunal on the grounds that the judge erred in carrying out the proportionality assessment as she failed to consider the impact of the decision on the appellant's British child and that the judge's decision was contrary to the judgment in Zambrano [2011] All ER (EC) 491.

5. Permission was refused in the First-tier Tribunal but was granted by the Upper Tribunal on 1 June 2020 on a renewed application, on the grounds that the judge arguably failed to consider whether refusing the appellant entry clearance would have the effect of denying her British national child the genuine enjoyment of his rights as an EU citizen, with reference to the case of MA and SM (Zambrano: EU children outside EU) Iran [2013] UKUT 00380.

6. Further to directions made by the Upper Tribunal on 30 November 2020, the respondent made written submissions conceding that the First-tier Tribunal had materially erred by failing to have regard to the best interests of the child, by failing to give consideration to the child's British citizenship and by failing to consider why family life could not continue with all the family residing together in Pakistan. The respondent invited the Upper Tribunal to set aside the determination of the First-tier Tribunal on the limited basis that the wider proportionality assessment was flawed, but to preserve the primary findings of fact made by the FTT.

7. At a hearing on 18 March 2021, I set aside the decision of the First-tier Tribunal in accordance with the respondent's concession. It was agreed by all parties that the re-making of the decision should take place at a resumed hearing on another day owing to the fact that the sponsor wanted to submit further documentary evidence to show that he was able to meet the financial requirements of the immigration rules.

8. The matter then came before me for the decision to be re-made. The appellant had produced a further bundle showing the sponsor's financial circumstances and Mr Walker advised me that he was satisfied that the sponsor's current combined salary was over £20,000 per annum. He was satisfied that the financial requirements of Appendix FM of the immigration rules were now met and that, for the purposes of Article 8, there was no public interest in the appellant being denied entry clearance. He conceded that the appeal should accordingly be allowed under Article 8.

9. In light of Mr Walker's concession, there is no need for me to set out any detailed reasoning, save to state that the decision to refuse the appellant entry clearance is disproportionate in light of the fact that she is now able to meet the immigration rules in all respects. Accordingly, I allow the appellant's appeal on Article 8 human rights grounds.

DECISION

10. The original Tribunal was found to have made an error of law and the decision was set aside. I re-make the decision by allowing the appellant's appeal.

Signed *S Kebede*
Upper Tribunal Judge Kebede

Dated: 26 July 2021