



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/13902/2019

THE IMMIGRATION ACTS

Heard at Field House
by Skype for Business
On 11 March 2021

Decision & Reasons Promulgated
On 19 March 2021

Before

UPPER TRIBUNAL JUDGE GLEESON

Between

S A (BANGLADESH)
[ANONYMITY ORDER MADE]

Appellant

and

ENTRY CLEARANCE OFFICER
SHEFFIELD DMC

Respondent

DECISION AND REASONS

Representation:

For the appellant: No appearance or representation
For the respondent: Ms Alexandra Everett, a Senior Home Office Presenting Officer

Anonymity order

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) The Tribunal has ORDERED that no one shall publish or reveal the name or address of S A who is the subject of these proceedings or publish or reveal any information which would be likely to lead to the identification of her or of any member of her family in connection with these proceedings.

Any failure to comply with this direction could give rise to contempt of court proceedings.

Decision and reasons

1. The appellant appeals with permission from the decision of the First-tier Tribunal dismissing her appeal against the respondent's decision on 18 July 2020 to refuse her entry clearance on human rights grounds to join her spouse in the United Kingdom. The appellant is a citizen of Bangladesh. Her son, born in 2011 and a British citizen, lives with the appellant in Bangladesh and is her dependant in this appeal.
2. **Mode of hearing.** This error of law hearing was heard remotely by Skype for Business, both the appellant's former solicitors and the respondent having indicated that they did not object to a remote hearing.
3. **Notice of hearing.** The appellant was until recently represented by Cartwright King solicitors, and her grounds of appeal were drafted by Counsel (Ms Emma Rotherfield). However, following service of the notice of hearing, on 12 February 2021, Cartwright King informed the Upper Tribunal that their retainer had terminated: they gave no further details, simply asking for correspondence to be forwarded directly to the appellant from that date.
4. I have checked the notice of hearing: it was served both on Cartwright King and on the sponsor (the appellant's husband) at his address in Telford. I am satisfied that the appellant is aware of this hearing but neither she, nor the sponsor, arranged to attend it or for representation.
5. That would appear to indicate either that she is no longer interested in this application, or perhaps that she has taken up the suggestion in the First-tier Judge's decision that she should make a fresh application.
6. In the circumstances, I considered it appropriate to proceed with the error of law hearing in the absence of the appellant and sponsor.

Background

7. The appellant's spouse is settled here. The appellant's child, a nine-year-old British citizen at the date of hearing, was born in 2011 and lives with his mother in Bangladesh. The boy, being British, has the right to live in the United Kingdom but the parties' current arrangement is for him to remain with his mother in Bangladesh.
8. The appellant has made three previous applications for entry clearance, in 2011, 2013, and (from the Republic of Ireland) in 2017. All were unsuccessful. In answer to a question on her Visa Application Form (VAF) about refusal of a visa for any country, she disclosed the 2011 and 2013 refusals but not the 9 March 2017 refusal of her application made at the United Kingdom's Visa Application Centre in the Republic of Ireland.
9. The respondent's refusal letter noted that the appellant had produced all of the specified documents for Category A of her VAF, but that the sponsor's payslips, when converted to an annual figure, showed income of only £17104.06, although the

minimum income threshold is £18600. The sponsor did not have sufficient savings to qualify by that alternative route.

10. The respondent refused entry clearance both on suitability and income grounds. the appellant appealed to the First-tier Tribunal.

First-tier Tribunal decision

11. The First-tier Judge considered that omitting mention of the 2017 application made in the Republic of Ireland was an honest mistake and did not find that it made the appellant unsuitable for entry clearance.
12. The appellant's Counsel conceded at the hearing that the appellant could not meet the financial requirements of the Rules: see [18] in the First-tier Tribunal decision.
13. The appeal therefore turned on Article 8 ECHR outside the Rules. Documents were produced for the hearing, which the respondent had not had the opportunity of verifying, indicating that the sponsor now had two jobs and his income was above £18600. That does not invalidate the assessment that at the date of application, or even the date of decision, his income was too low: instead, as the First-tier Judge rightly identified, it means that the appellant and her son could now make an application which, if the payslips and so on were genuine, would succeed.
14. The judge took account of that possibility, and also that it remained open to the sponsor to go to Bangladesh and live with his wife and small son there. The sponsor is of Bangladeshi origin, although he is now a British citizen.
15. The core of the First-tier Judge's reasoning is at [19]-[20] and [26]-[31] of his decision. At [32], the judge found that the appellant did not fail the suitability criteria, but that she did not meet the requirements of the Immigration Rules or succeed under Article 8 ECHR.
16. The appellant appealed to the Upper Tribunal.

Permission to appeal

17. Upper Tribunal Judge Norton-Taylor granted permission to appeal on two grounds: first, that the specified evidence appeared to have been provided but that the judge had not made a finding on the evidence before him as to the satisfaction or otherwise of the financial requirements; and second, that the judge had arguably erred in his application of the exceptional circumstances argument.

Rule 24 Reply

18. On 15 October 2020, considerably out of time, the respondent made her Rule 24 Reply. The core of her submission was this:

“3. The respondent submits that it was accepted that the appellant could not meet the financial requirements of the Immigration Rules at the date of application.

Although the sponsor claimed that his income met the income threshold by the date of hearing, the Judge of the First-tier Tribunal gave adequate reasons for finding the evidence before him was insufficient to be satisfied that the requirements of the Rules are met. The respondent submits that there was no error in finding that if the sponsor could produce evidence to demonstrate that his income now met the income threshold, this evidence could be used to support a fresh application for entry clearance.

4. The respondent submits that the judge of the First-tier Tribunal gave adequate reasons for finding that the delay caused by requiring a fresh application would amount to only limited interference and that there were no exceptional or sufficiently compelling circumstances to justify allowing the appeal on Article 8 grounds. ...”

19. No point has been taken on the timeliness of the respondent’s Reply.
20. That is the basis on which this appeal came before the Upper Tribunal.

Analysis

21. At the hearing today, in the absence of any appearance by or on behalf of the appellant, Ms Everett relied on the refusal letter and the Rule 24 Reply.
22. I reserved my decision which I now give.
23. As regards the challenge to the judge’s finding that the appellant could not meet the requirements of the Rules on financial grounds, this is unarguable because the appellant’s Counsel conceded that point at the First-tier Tribunal hearing.
24. The additional job which the sponsor husband claims to have taken on is one in which he is paid in cash for working in a restaurant. The judge did consider the documents the sponsor produced at [28] and observed that:

“28. ...There are issues concerning the wage slips from the second job working in a restaurant. The sponsor said that he is paid in cash. His employer produced a letter confirming that. Some of the wage slips referred to BACS payments.

29. Documentation has been provided concerning the sponsor’s income but I do not have the means of confirming the validity that the respondent has [available to her]. If the sponsor is able to establish that his income is as claimed, the appellant would succeed in a new application. ...”

25. It is not right to say that the judge overlooked the copy documents produced. His reasons are proper, intelligible, and adequate to support the conclusion that this is not a *Chikwamba* situation where the documents produced are so obviously genuine that there is no point making the appellant apply again.
26. In relation to Article 8 generally, the appellant contends that there are exceptional circumstances, primarily the willingness of the sponsor’s mother to support him, and the best interests of the child. The appellant contends that the judge did not engage with the appellant’s case and that his reasoning is inadequate. The First-tier Judge

did find that it would be in the child's best interests to live with both parents, but section 55 of the Borders, Citizenship and Immigration Act 2009 does not apply to him while he remains outside the United Kingdom. It is a matter for his parents where he lives.

27. The First-tier Judge did not err in concluding that there was nothing exceptional in the circumstances of this family for which entry clearance should be given outside the Immigration Rules.
28. This appeal is dismissed.

DECISION

29. For the foregoing reasons, my decision is as follows:

The making of the previous decision involved the making of no error on a point of law

I do not set aside the decision but order that it shall stand.

Signed *Judith AJC Gleeson*
Upper Tribunal Judge Gleeson

Date: 11 March 2021