Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: UI-2021-001228
HU/00355/2021

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 12th August 2022	**On 6th October 2022**

Before

UPPER TRIBUNAL JUDGE KEITH
DEPUTY UPPER TRIBUNAL JUDGE STOUT

Between

SURATTA KONGREGDEE JEWBY
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE ENTRY CLEARANCE OFFICER

Respondent

Representation:
For the appellant: The appellant was represented by her husband, Philip Jewby
For the respondent: Mr T Melvin, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. These are the approved record of the decision and reasons which were given orally at the end of the hearing on 12th August 2022.

2. This is an appeal by the appellant against the decision of First-tier Tribunal Judge Cameron (the 'FtT'), promulgated on 29th November 2021, by which

he dismissed the appellant's appeal against the respondent's refusal to grant the appellant leave to enter the UK to settle with her husband, a British citizen. The marriage is accepted as genuine and subsisting. In essence, the sole issue identified in the impugned decision was whether the appellant had met the requirements of Appendix FM–SE of the Immigration Rules, in respect of the sponsor's income as a self-employed person. Whilst the sponsor had provided tax returns, and business bank statements, as well as a VAT certificate, the appellant had not provided the following: personal bank statements for the relevant 12 month period; in the absence of audited accounts, unaudited accounts with an accompanying accountant's certificate of confirmation, and a relevant VAT return.

The FtT's decision

3. The parties were content for the appeal to be considered on the papers. The FtT relied upon the respondent's bundle and the appellant's appeal form and accompanying documents. At §12, the FtT noted the appellant's assertion that the sponsor did not have to have a personal bank account to be a sole trader, and there were relevant VAT documents which the respondent had failed to consider. The grounds of appeal also asserted that the decision breached the appellant's right to respect for his family life.

4. However at §19, the FtT noted that although bank statements had been referred to by both parties, these were business bank statements, copies of which were in any event not before the FtT. The burden had been on the appellant to show that she met the requirements of the Immigration Rules. The FtT concluded at §21, that the absence of accounts or tax returns meant that the appellant had not shown that by virtue of the sponsor's income, she met the £18,600 minimum income requirement. The FtT went on to consider an article 8 analysis, accepting that there was family life but that the sponsor could provide the relevant required information and reapply (§31).

5. Having considered the evidence as a whole, the FtT dismissed the appellant's appeal.

The grounds of appeal and grant of permission

6. The appellant lodged grounds of appeal, which were essentially that the documentation submitted included the sponsor's VAT return. The FtT had erroneously stated that the sponsor did not earn enough to meet the minimum income requirements. This was proven by the VAT returns. The only reason for refusal was said to be that the sponsor did not have a personal bank account and there was no requirement in law for any self-employed person to hold a personal bank account. The requirements of Appendix FM–SE were illogical.

7. First-tier Tribunal Judge Dixon granted permission on 17th December 2021. The grant of permission was not limited in its scope.

The hearing before us

8. We mention at the beginning of our reasons that the appellant was in fact present in the hearing room although her husband, the sponsor, spoke on her behalf. He had initially, without criticism of him, been speaking at some length, while she was seated, unidentified to us, at the back of the room. We had assumed that because the appellant's challenge is to a refusal of entry clearance, that the sponsor was speaking on her behalf, in her absence. It transpires that she has since entered the UK on a visit visa, not a settlement visa. We make no criticism of her for doing so (that is not an issue we have been asked to consider). We refer to it as we had been addressing the sponsor, assuming the appellant's absence. Once we became aware of her presence, we did not wish in any way to curtail her ability to participate in the hearing. We checked with her that she was content for her husband to speak on her behalf. She indicated that she was. We also checked that she and her husband would be able to discuss with one another what was said and we queried whether she needed an interpreter. The sponsor indicated that the appellant understood sufficiently his explanations of what was occurring, so that no interpreter was needed. We are therefore satisfied that the appellant has been able to participate fairly in the hearing.

9. We turn now to the substance of the appeal. As well as the grounds submitted, Mr Melvin relied on the Rule 24 response, which, bearing in mind that the appellant is a litigant in person, was explained fully to her and her husband. The appeal was opposed because the appellant failed to provide personal bank statements and, in the case of unaudited business accounts, certification from an authorised accountant. Both were required under Appendix FM-SE. Those requirements had been approved by Parliament. It was for the appellant to prove her case and provide the relevant documents. The business bank documents, even if they had been before the FtT, were simply not sufficient.

10. The grounds of appeal appear to accept the appellant could not satisfy the requirements of the Immigration Rules, due to a lack of a personal bank account for the sponsor. The grounds did not, the Rule 24 response says, challenge the proportionality assessment in the FtT's decision, including the point that the appellant could make a further application and therefore the respondent submitted that the FtT had not erred in law.

The appellant's submissions

11. We asked Mr and Mrs Jewby to let us know straightway if they did not understand anything discussed with us, as they were litigants in person. We began by outlining the case, as we understood it: the respondent's

decision; the appellant's appeal to the FtT; and the FtT's subsequent decision. We emphasised to Mr Jewby that we had to be satisfied that there was an error of law in the FtT decision, instead of us simply rehearing the appellant's appeal.

12. Mr Jewby submitted that had proved his income. Specifically, he had provided VAT returns and business bank account statements. The accounts themselves had been verified by HM Revenue & Customs, who were satisfied with the accuracy of his accounts. He explained that he had previously had a personal bank account, which was a joint bank account with his ex-wife. We do not go into the details of that, suffice it to say that that account had previously been frozen because of some disagreement over the finances with his ex-wife. That matter had now been resolved, but that was why the appellant had not provided details of the sponsor's personal bank account.

13. At the heart of the appellant's appeal was that Mr Jewby had significant income, more than enough to meet the minimum income requirements, and he did not know what more he could do. The appellant was present with him on a visit visa and would otherwise have to leave the UK. He felt that he was being forced to leave the UK with her.

The respondent's submissions

14. Mr Melvin relied upon the Rule 24 response. Without any discourtesy to Mr Melvin, his submissions were brief and we do not repeat them in full. The Immigration Rules were clear. It was also clear that the appellant did not meet them and those Rules had been approved by Parliament. It was no error of law for a judge to consider the Immigration Rules.

15. Equally, even if it were suggested that there had been a challenge to the proportionality assessment, it was simply open for the appellant to leave the UK and then re-apply, providing the relevant documentation.

Discussion and conclusions

16. Whilst we had sympathy with the appellant, we are satisfied that there was no error of law by the FtT either in respect of the analysis of Appendix FM–SE, or the proportionality analysis outside the Rules by reference to article 8 ECHR. The thrust, although not the sole reason for the refusal, had been the absence of personal bank statements. As the refusal letter makes clear at §7(f), the following documents are required: *"personal bank statements for the same period as the tax return(s) showing that the income from self-employment has been paid into an account in the name of the person or in the name of the person and their partner jointly"* (emphasis added). There is thus a rationale for the requirement for personal bank statements which is spelt out in the Rules. The FtT did not err by approaching the human rights appeal, first, by considering whether the appellant's application met the Immigration Rules. Taking her case at its highest, her application did not meet the Rules.

17. The FtT then went on to consider her appeal under Article 8 ECHR, outside the Rules. Mr Melvin suggested that there was no substantive challenge to the proportionality assessment. We are very conscious that the appellant is a litigant in person and so may not have referred expressly to proportionality in the appeal, but intended nevertheless to challenge that assessment. Indeed, the gist of Mr Jewby's submission, powerfully expressed to us today, was his concern that he would otherwise be forced to leave the UK, which was, in essence, a challenge to the FtT's proportionality assessment.

18. However, we are also satisfied that the FtT's analysis on proportionality was clear, reasoned, and contains no error of law. The FtT had concluded, in terms, that it remained open to the applicant to make a further application for entry clearance. In fact, as Mr Jewby revealed, a further unsuccessful application was made. We say no more about the details of that second application because that is not a matter before us today, but the fact that a further application was made, illustrates the correctness of the FtT's conclusion. The FtT did not err in law.

Decision on error of law

19. We conclude that there are no errors of law in the FtT's decision. Therefore the appellant's challenge fails and is dismissed.

Notice of Decision

The decision of the First-tier Tribunal did not involve the making of an error on a point of law.

The decision of the First-tier Tribunal stands.

No anonymity direction is made.

Signed J Keith Date: 27th August 2022

Upper Tribunal Judge Keith