



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-002036
First-tier Tribunal No: HU/03612/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 1 May 2023

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

Entry Clearance Officer, Manila

Appellant

and

Jewel Carmeliza Trablazon
(no anonymity order made)

Respondent

Representation:

For the Appellant: Mr J. Tablazon, Sponsor

For the Respondent: Mr A. Tan, Senior Home Office Presenting Officer

Heard at Manchester Civil Justice Centre on 10 March 2023

DECISION AND REASONS

1. The Respondent is a national of the Philippines born on the 1st August 1989. On the 24th February 2022 the First-tier Tribunal (Judge Birrell) allowed her appeal against a refusal to grant her entry clearance on human rights grounds. The Entry Clearance Officer (ECO) now has permission to appeal against that decision.
2. The reason that Mrs Tablazon wants to come here is because her husband, Mr Jerome Tablazon, lives here. Mr Tablazon is a British citizen.
3. Mrs Tablazon's application was originally refused on the ground that she had not demonstrated that her relationship with her husband was genuine and subsisting and that they intended to live with one another permanently. This issue was resolved in her favour by Judge Birrell and there is no quarrel with that finding in this onward appeal.
4. The second reason given for refusing the application remains a sticking point. That is the question of whether Mrs Tablazon could meet the financial

requirements of the rules relating to the maintenance of persons coming to the UK to settle as spouses. In his refusal letter the ECO said this:

“You have stated that you meet the financial requirements of Appendix FM through a combination of employment and cash savings. In order to meet the financial requirements of Appendix FM your sponsor needs a gross income of at least £18,600 per annum. You state that your sponsor is employed by the NHS since April 2020 and earns an annual salary of £18,005. You have submitted all of the required documentation in relation to this income.

This income is below the amount required by £595. In order to meet the financial requirements of the Rules you are also required to show that you and/or your sponsor have held at least £17,487.50 in cash savings for at least 6 months prior to your application. With your application you have submitted the following accounts :-BDO (account number ending 0508)-Philippines Savings Bank (account number ending 5927)-Barclays Everyday Saver (account number ending 9990) -Barclays Bank Account account number ending 2599) The amount in these accounts combined is less than £17,487.50.

Furthermore, the funds in these accounts have not held continuously for the past 6 months. This is not sufficient to meet the financial requirements. I therefore refuse your application under paragraph EC-P.1.1(d) of Appendix FM of the Immigration Rules. (EECP.3.1)”

5. Of this ground for refusal, Judge Birrell said this in her judgment:

15. In relation to the financial requirements the refusal letter accepts that the Sponsor evidenced that he received an income of £18005 and was therefore just short of the £18,600 required. The letter asserts that the Appellant was therefore required to show at least £17,487.50 in cash savings for at least 6 months prior to the application but nowhere does the letter explain how that figure of £17,487.50 is calculated.

16. I have looked at the Home Offices own Guidance Appendix FM 7 December 2021. It appears to me that the decision maker has miscalculated the cash saving required based on their guidance at page 44+ of that document. The Appellant by contrast has referred to that document in the calculations in their grounds of appeal at pages 16-17 and taken together with the copies of their bank statements has demonstrated that using the Respondents own formula they have had cash savings of the correct amount (£4809.64) for the 6 months prior to the date of application.

17. Given that I have found that they met the requirements of the Rules I accept that refusal of the application was disproportionate.

6. The appeal was thereby allowed.

7. The ECO now submits, in turn, that Judge Birrell was the one who miscalculated. His grounds assert that this is clear from the rules:

E-LTRP.3.1. The applicant must provide specified evidence, from the sources listed in paragraph E-LTRP.3.2., of-

(a) a specified gross annual income of at least-

(i) £18,600;

(ii) an additional £3,800 for the first child; and

(iii) an additional £2,400 for each additional child;

alone or in combination with

(b) specified savings of-

(i) £16,000; and

(ii) additional savings of an amount equivalent to 2.5 times the amount which is the difference between the gross annual income from the sources listed in paragraph E-LTRP.3.2.(a)-(f) and the total amount required under paragraph E-LTRP.3.1.(a);

or

(c) the requirements in paragraph E-LTRP.3.3. being met, unless paragraph EX.1. applies.

8. The author of the grounds then takes “the difference between the gross annual income from the sources listed in paragraph E-LTRP.3.2.(a)-(f) and the total amount required under paragraph E-LTRP.3.1.(a)” - ie the shortfall of £595 - multiplies that by 2.5, and adds it to £16,000 to arrive at a figure of £17,487.50.
9. It seems to me preposterous that the rules require individuals to have savings of £17, 487.40 in order to compensate for a shortfall of £595, but I am satisfied, having had regard to the relevant provisions, that this is indeed what they require. That being the case, I must find Judge Birrell to have erred in fact, and with a great degree of regret replace her decision with one dismissing the appeal with reference to the immigration rules.
10. I have considered whether this is an appeal that could properly be allowed under Article 8 ‘outside of the rules’. This requires me to consider whether the decision to refuse Mrs Tablazon entry clearance, with reference to the immigration rules approved by parliament, is disproportionate at today's date. Mr Tablazon explained that he now has a new job for which he is earning well in excess of the minimum income requirement. The question about the relationship has been resolved in his favour. All other things being equal, it seems to me that Mrs Tablazon would meet the requirements of the rules if she applied today. The difficulty remains that she has not made that application. When parliament approved Appendix FM, and the minimum income requirement, it also approved the very prescriptive formulations in Appendix FM-SE on how such income must be evidenced, and when. As the Court of Appeal has emphasised, most recently

in Alam and Rahman [2023] EWCA Civ 30, the fact that someone could *prima facie* meet the rules at the date of an appeal is only one factor, and that the strong public interest in the proper operation of the rules is another, which absent special features in a case would normally prevail. Here it does not appear disproportionate to expect Mrs Tablazon to make a new application, properly supported by all of the relevant documentation. Although this will be expensive, and will result in even longer separation for this genuine couple, it is proportionate. It also has the additional benefit for Mrs Tablazon of putting her, assuming that she will be successful, on the five year route to settlement, something that will in the long run save her both money and time. I am sorry my decision could not have been otherwise.

Notice of Decision

The appeal is dismissed on human rights grounds.

Gaenor Bruce
Judge of the Upper Tribunal
Immigration and Asylum Chamber
18th March 2023