



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

Case No: UI-2024-003523

First-tier Tribunal No: HU/55873/2023

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

On 10<sup>th</sup> of December 2024

**Before**

**UPPER TRIBUNAL JUDGE HANSON**

**Between**

**EMILIO TATENDA MUCHAIRI**  
**(NO ANONYMITY ORDER MADE)**

Appellant

**and**

**AN ENTRY CLEARANCE OFFICER**

Respondent

**Representation:**

For the Appellant: The Sponsor.

For the Respondent: Mr Diwnycz, a Senior Home Office Presenting Officer.

**Heard at Phoenix House (Bradford) on 6 December 2024**

**DECISION AND REASONS**

1. At a hearing at Bradford on 9 October 2024 the determination of the First-tier Tribunal, which allowed the appellant's appeal against the decision of an Entry Clearance Officer (ECO) who refused his application for leave to enter the United Kingdom as the spouse of his sponsor, Rejoice Maranatha Nyabako, was set aside.
2. The findings of the First-tier Tribunal in relation to the existence of family life between the Appellant and Sponsor and the legality of the ECO's decision are preserved findings.
3. At that hearing it was made clear to the Sponsor that there will be an opportunity between the error of law hearing and the Resumed hearing for her to provide any further evidence on which the appellant sought to rely in support of his appeal.
4. The appellant's application, dated 15 February 2023, was made under Appendix FM of the Immigration Rules on the basis of his family life with the Sponsor.

5. The ECO accepted the application did not fall for refusal on grounds of suitability, that the appellant met the eligibility relationship requirement of paragraphs E-ECP.2.1 to 2.10, but did not find he met all the eligibility requirements of section E-ECP of Appendix FM as he could not meet the eligibility of financial requirements of paragraph E-ECP.3.1 to 3.4 on the basis of the calculation of the Sponsor's gross annual income from her employment with New Horizons.
6. The ECO considered Article 8 outside the Rules but did not find it had been made out there were unjustifiably harsh consequences for the appellant or his family in the refusal, meaning he neither qualified for entry clearance on the 5-year partner route under the Rules nor the 10-year partner route on the basis of exceptional circumstances under Appendix FM.
7. It is accepted that the conclusion of the ECO that the appellant could not meet the requirements of Appendix FM at the relevant time is a legally sustainable finding as the appellant could not demonstrate that the minimum income threshold set out within the Rules could be satisfied at the relevant time.
8. Notwithstanding the timescale being set for the provision of additional material from the appellant, due on 6 November 2024, after which Ms Young the Senior Home Office Presenting Officer at the error of law hearing indicated she was willing to undertake a review, on 27 November 2024 Ms Young contacted the Upper Tribunal to enquire whether an updated bundle had been received as without it she was unable to conduct a review of the new evidence. On 29 November 2024 an email was sent by Field House to the appellant/sponsor requesting the up-to-date document are sent as soon as possible. On 2 December 2024 a bundle was received by the Upper Tribunal containing a number of documents.
9. Those documents are:
  - a. New Horizons confirming the Sponsor's employment from 1 August 2016 working 37.5 hours minimum per week at £11:44 per hour which the Sponsor states will increase following the recent budget.
  - b. A further copy of a document described as an appeal letter dated 9 October 2024 which was presented by the Sponsor at the error of law hearing.
  - c. Copies of Sponsors Barclays Bank current account statements showing income received from her employer and payments out to a Roy Willis, reference Therapy Sess, but otherwise heavily redacted to the extent it provides no other information, including start balance, money in, money out, and end balance for the relevant statements.
  - d. Copies of the Sponsor's payslips covering the period 5 January 2024 to 29 November 2024.
10. In her appeal letter the Sponsor does not dispute that the income level declared to the ECO fell below the required minimum income level. She states that was as a result of her not being well which he confirmed in a doctor's letter that had been sent to the ECO. The ECO, however, regarded that as insufficient and asked for the employer to provide a letter to prove that the Sponsor was on sick leave which the Sponsor claims would not be possible.
11. The Sponsor's case is that she struggled with severe anaemia which affected her ability to maintain constant working hours in the year the Visa was denied and that the nature of the illness made it difficult for her to predict when she will be well enough to work full shifts. She states some days she was able to work but on other days had to miss shifts due to extreme fatigue. The Sponsor stated the absences were not consecutive nor did she formally apply for sick leave as her

illness fluctuated from day to day. When she was unwell colleagues would cover her shifts that she would work as much as possible when her health allowed.

12. In relation to the human rights aspect, Section 117 of the Nationality, Immigration and Asylum Act 2002 places an obligation upon a court or tribunal required to determine whether a decision made under the Immigration Acts (a) breaches a person's right to respect for private and family life under Article 8, and (b) as a result will be unlawful under section 6 of the Human Rights Act 2008, when considering the public interest question, to have regard to the considerations listed in section 117 B.
13. Sections 117 B reads:

117B Article 8: public interest considerations applicable in all cases

- (1) The maintenance of effective immigration controls is in the public interest.
  - (2) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are able to speak English, because persons who can speak English—
    - (a) are less of a burden on taxpayers, and
    - (b) are better able to integrate into society.
  - (3) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are financially independent, because such persons—
    - (a) are not a burden on taxpayers, and
    - (b) are better able to integrate into society.
  - (4) Little weight should be given to—
    - (a) a private life, or
    - (b) a relationship formed with a qualifying partner, that is established by a person at a time when the person is in the United Kingdom unlawfully.
  - (5) Little weight should be given to a private life established by a person at a time when the person's immigration status is precarious.
  - (6) In the case of a person who is not liable to deportation, the public interest does not require the person's removal where—
    - (a) the person has a genuine and subsisting parental relationship with a qualifying child, and
    - (b) it would not be reasonable to expect the child to leave the United Kingdom.
14. The issue in the human rights element of the case has always been the proportionality of the decision, and whether the strength of the public policy/interest in maintaining immigration control in this particular case was outweighed by the strengths of the appellant's claim so as to create a positive obligation upon the state to grant him leave to enter the UK.
  15. The public interest element considered by the ECO was by reference to GEN.3.1. That provision reads:

GEN.3.1.(1) Where:

- (a) the financial requirement in paragraph E-ECP.3.1., E-LTRP.3.1., E-LTRP.3.7. (in the context of an application for limited leave to remain as a partner), E-ECC.2.1., E-ECC.2.5., E-LTRC.2.1., or ELTRC.2.5. 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).

(2) Where the financial requirement in paragraph E-ECP.3.1., E-LTRP.3.1., E-LTRP.3.7 (in the context of an application for limited leave to remain as a partner), E-ECC.2.1., E-ECC.2.5., E-LTRC.2.1., or E-LTRC.2.5. is met following consideration under sub-paragraph (1) (and provided that the other relevant requirements of the Immigration Rules are also met), the applicant will be granted entry clearance or leave to remain under, as appropriate, paragraph D-ECP.1.2., D-LTRP.1.2., D-ECC.1.1., D-LTRC.1.1., Appendix Adoption of the Immigration Rules.

GEN.3.2.(1) Subject to sub-paragraph (4), where an application for entry clearance or leave to enter or remain made under this Appendix, or an application for leave to remain which has otherwise been considered under this Appendix, does not otherwise meet the requirements of this Appendix or Part 9 of the Rules, the decision-maker must consider whether the circumstances in sub-paragraph (2) apply.

(2) Where sub-paragraph (1) above applies, the decision-maker must consider, on the basis of the information provided by the applicant, whether there are exceptional circumstances which would render refusal of entry clearance, or leave to enter or remain, a breach of Article 8 of the European Convention on Human Rights, because such refusal would result in unjustifiably harsh consequences for the applicant, their partner, a relevant child or another family member whose Article 8 rights it is evident from that information would be affected by a decision to refuse the application.

(3) Where the exceptional circumstances referred to in sub-paragraph (2) above apply, the applicant will be granted entry clearance or leave to enter or remain under, as appropriate, paragraph D-ECP.1.2., D-LTRP.1.2., D-ECC.1.1., D-LTRC.1.1., D-ECPT.1.2. or D-LTRPT.1.2.

16. The question therefore remains whether it is evident from the information provided by the appellant and Sponsor that there are exceptional circumstances which would render refusal of entry clearance or leave to remain a breach of Article 8 of the ECHR because such refusal could result in unjustifiably harsh consequences for him, his partner, or a relevant child.
17. The simple answer to that point is that no exceptional circumstances have been made out.
18. As the Sponsor was advised, the problem with her redacted bank statements is that it means a proper picture of her financial circumstances cannot be established to show there will be no burden on the public purse if the appellant is admitted. The Sponsor was asked whether she had the unredacted copies of the statements but she stated those that she had with her were the hard copies of the redacted statements that had been disclosed.
19. Following discussion in relation to the way forward, it appears on the basis of the information provided, only to be for the appellant to make a fresh application. Discussion in relation to the current minimum income level established it is now

£29,000 per annum. Mr Diwncyz indicated that on the basis of the calculation of the Sponsors hourly rate, she should be able to achieve this level of income although it may require her to work all the hours she can. It was not made out that this was therefore an unrealistic/unreasonable proposition.

20. Whilst I appreciate the Sponsor would like her husband to join her in the UK the simple point is that there is no evidential basis that warrants the appeal being allowed pursuant to Article 8 ECHR outside the Immigration Rules. It is not made out the appellant cannot make a fresh application which can be considered by the ECO or that family life could not continue elsewhere.

### **Notice of Decision**

21. Appeal dismissed.

**C J Hanson**  
Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**6 December 2024**