



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Numbers: OA/07979/2013

THE IMMIGRATION ACTS

Heard at Birmingham

On 21 July 2014

Determination

Promulgated

On 19th Aug 2014

Before

UPPER TRIBUNAL JUDGE PITT

Between

SUTHILA SALAH OSMAN ABDALLA

and

ENTRY CLEARANCE OFFICER - CAIRO

Appellant

Respondents

Representation:

For the Appellant: Ms Rutherford, instructed by TRP Solicitors

For the Respondent: Mr Mills, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

The Appeal

1. This is an appeal by the appellant against a determination promulgated on 11 March 2014 of First-tier Tribunal Judge A J Parker which dismissed the appeal under the Immigration Rules for entry clearance as a spouse and under Article 8 ECHR.
2. It was common ground that the appellant could not meet the Immigration Rules for entry clearance as a spouse. As at [8] of Judge Parker's decision, the sponsor had not produced 6 months' bank statements corresponding

with the wage slips provided and did not produce a letter from an employer.

3. It was also common ground that the sponsor could not be expected to exercise his family life with the appellant in Sudan as he has been recognised as a refugee in need of protection from the Sudanese authorities. The evidence that he had been unable to obtain a visit visa for Morocco to meet his wife was also not disputed before me by the respondent.
4. It was the appellant's case before me that where those matters were so, the First-tier Tribunal judge should have found that there were insurmountable obstacles to the family life of the appellant and sponsor being exercised anywhere other than the UK and the appeal under Article 8 allowed. The finding at [18] that there were no insurmountable obstacles was an error.
5. It was also submitted that the judge erred in placing reliance on the sponsor having stated at the hearing that a future entry clearance application would succeed under the Immigration Rules. The judge was not entitled to place weight on any future application succeeding. The outcome of any application had to be uncertain and the sponsor's subjective opinion on it should not have been taken into account. The judge was also in error in finding that waiting a further 8 months for a future entry clearance application was not disproportionate.
6. My difficulty with the case made out for the appellant is, simply, that it did not appear to me, in a free-standing Article 8 proportionality assessment, that finding it reasonable to expect her to make a new entry clearance application, whether or not there appeared to be any likelihood of success in such an application, was an erroneous position for the First-tier Tribunal to take. That is so even if the couple cannot exercise their family life elsewhere.
7. The public interest is expressed by way of the Immigration Rules which include the documentary requirements relating to the sponsor's financial position. They were not met here. The failure to meet the Immigration Rules is the starting point of the Article 8 proportionality exercise; see Haleemudeen v SSHD [2014] EWCA Civ 558 at [47].
8. The appellant argues that the public interest cannot outweigh her family life with the sponsor if he cannot join her in Sudan and they cannot live anywhere else together. It was for the First-tier Tribunal to make that assessment, however. Judge Parker accepted much of what was put forward on her behalf including at [24] that she would not be a burden on the public finances. It remained open to him to find that the decision was proportionate, the couple not being "permanently separated" thereby, as at [25] as the appellant could reapply for entry clearance. The circumstances here, where the substantive Immigration Rules were not met, are not the same as Chikwamba v SSHD [2008] UKHL 40 where

return to seek entry clearance was required even though it was conceded that the substantive Immigration Rules were met.

9. The manner in which the First-tier Tribunal dealt with Gulshan (Article 8 - new rules - correct approach) [2013] UKUT 00640 is equally immaterial where a free-standing Article 8 assessment was conducted from [22] onwards.

Decision

16. The decision of the First-tier Tribunal does not disclose an error on a point of law and shall stand.

Signed: 
Upper Tribunal Judge Pitt

Date: 18 August 2014