



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/05605/2016

THE IMMIGRATION ACTS

Heard at Field House
On 18th June 2018

Decision & Reason Promulgated
On 27 July 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE FARRELLY

Between

Mrs. RIFFAT IRFAN
(NO ANONYMITY DIRECTION MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Mr. M. Iqbal, Counsel, instructed by Naqvi and Co Solicitors
For the respondent: Ms A Everett, Home Office Presenting Officer

DETERMINATION AND REASONS

Introduction

1. The appellant has been granted permission to appeal the decision of First-tier Tribunal Judge SJ Walker who, following a hearing at Taylor House on 22 June 2017, dismissed the appellant's appeal.

2. The appellant is a national of Pakistan who applied on 2 November 2015 for entry clearance along with her 4 children to join her husband and sponsor, Mr Irfan Anwar. Her application was refused on 24 January 2016. This was on the basis the financial requirements set out in appendix FM, evidenced in accordance with appendix FM SE, had not been met.
3. The application indicated that her sponsor was the director of a limited company and was an employee. Regarding his work as an employee the payslips submitted did not cover the required 6-month period. Regarding his directorship, the company documentation required had not been provided nor the corresponding payslips and any P60 and personal bank statements.
4. The appeal was restricted to consideration of whether the decision breached the appellant's article 8 rights. Regarding his work as an employee he had a zero hours contract and his income varied, dependent on the work undertaken. The judge found he had provided the required evidence, so this income could be considered. His earnings were calculated as equivalent to a yearly income of £26,081.14 p. The judge concluded that he did not receive a salary as a director of a limited company but rather received dividends and so this fell to be treated as non-employment income. The judge also found there was insufficient evidence as to the sponsor's dividend income and so this could not be considered.
5. The judge then considered the sponsor's savings and, applying an averaging formula, arrived at £1343.79 p which could be considered. Added to the gross annual income this gave a total of £27,424.93 p. However, there was a shortfall of £2175.07 from the required amount under the rules for the sponsor and the 4 children. The judge took this into account in considering the proportionality of the decision. The judge then referred to the absence of updated evidence on finance and concluded that it had not been shown a fresh application would meet the requirements. No other features were identified which would justify allowing the appeal.

The Upper Tribunal

6. Permission to appeal was granted on the basis it was arguable that in considering article 8 the judge had not had regard to the fact that at least some of the appellants could have succeeded under the rules on the income and savings found.
7. In the application on behalf of the appellant reference was made to the Supreme Court decision of R (MM (Lebanon)) v SSHD [2017] UKSC 10 which held that the minimum income requirements in the rules were not contrary to article 8 but that the section 55 duty stood on its own and had to be considered separately.

8. At hearing Mr. Iqbal relied on the grounds for which permission had been granted. No challenge was made to the judge's findings as to the income and savings established. The judge had found this totalled £27,424.93 p. The argument was that this was sufficient for the appellant and 3 of the children. The submission was that it would breach section 55 and be disproportionate to then exclude the remaining appellant.
9. Ms Everett opposed the appeal, submitting the argument was misconceived. She said that the application had been made as a family unit. It was open to them to reapply when they had sufficient funds.
10. In response, Mr. Iqbal made the point that there were 5 separate applications resulting in 5 decisions.

Consideration

11. It is accepted on behalf of the appellant that the financial requirements under the rules were not met in respect of the total 5 applications made. The argument is that the sponsor's income was sufficient for 4 of the applicants and on this basis the rules were met for them. The remaining applicant should have succeeded on the basis it would be not in his best interest to divide the family unit.
12. Although individual applications were made this was on the basis that this was a family unit applying to join their sponsor. The rules provide for a financial calculation based upon the numbers in the family unit seeking entry clearance.
13. When the rules were created a principal objective was to achieve Convention-compliant decisions in the generality of cases. The aims of the minimum income requirement have been found to be entirely legitimate: to ensure, so far as practicable, that the family couple do not have recourse to welfare benefits and have sufficient resources to be able to play a full part in British life.
14. However, the rules will not cover all the situations and an applicant may have a valid claim to enter. Consequently, the rules are only one part of the decision-making process and regard must be had to the situation not adequately covered by the rules.
15. First-tier Tribunal Judge Walker in the opening paragraph pointed out the limited ground of appeal. Whilst not dealing directly with the rules the judge was required to attach considerable weight to the rules. The rules reflect the Secretary of State's exercise of her constitutional responsibility for immigration policy. The issue is not whether there has been a "near miss"

from the figure in the rules, but the weight to be given to any factors weighing against the policy relied on by the Secretary of State to justify.

16. Both parties were represented in the First-tier Tribunal. The bulk of the decision deals with the financial requirements in the rules and an assessment of the evidence in relation to that. There is nothing to indicate that the argument now being advanced of severing the applications was made before the judge. The submissions recorded at paragraph 30 were that the income did meet the rules. The judge records they were not addressed on article 8 outside the rules. Whilst the tribunal must make its own judgement generally they are not expected, short of an obvious point, to develop arguments that were not advanced. The present argument was not obvious. The judge made clear findings on the finances which have not been challenged. At paragraph 42 the judge stated that if the appeal were under the rules it would fail.
17. The judge correctly pointed out in the following paragraph that that conclusion was an important factor in considering the proportionality of the decision in relation to article 8. Although no separate argument had been advanced on article 8 outside the rules the judge went on to consider the situation as at the date of hearing and noted no further evidence had been provided in relation to income. The judge dealt with the article 8 points that had been raised in the grounds of appeal. The judge concluded that this was not a Chickwamba situation. At paragraphs 48-50 the judge went on to consider the effect of the decision upon the appellants and their sponsor.
18. I find that the judge properly dealt with the appeal presented and considered the interests of the family and saw nothing that rendered the decision disproportionate. As a generality I do not find the argument that family applications can be severed in the way suggested. Whilst there may be specific situations where this could be advanced with more force, dependent upon the individual circumstances, I see nothing here which would have justified that. Tribunal's are reminded that article 8 is not a general dispensing power.

Decision.

I find no material error of law established in the decision of Judge SJ Walker. Consequently, that decision dismissing the appeals shall stand.

Francis J Farrelly

Deputy Upper Tribunal Judge