



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/25357/2016

THE IMMIGRATION ACTS

Heard at Manchester
On 15 June 2018

Decision & Reasons Promulgated
On 29 June 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

MRS ANILA BLAWAL
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Schwenk, Counsel, instructed by Equity Law Chambers
Solicitors (Oldham)
For the Respondent: Mr C. Bates, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Pakistan born on 23 March 1993. On 18 July 2016 she applied for entry clearance to the United Kingdom in order to join her husband, a British citizen born on 23 December 1991. This application was refused on 10 October 2016, essentially on the basis that it was not accepted by the Entry Clearance Officer that the Appellant could meet the financial requirements of the Rules. This was due to the fact that the Entry Clearance Officer was not satisfied that the money provided in support of the application by the Sponsor was permanently in his possession, this

money being proceeds from the sale of a house by the Sponsor's father in the sum of over £68,000.

2. The appeal against this decision came before Judge of the First-tier Tribunal Robson for hearing on 1 September 2017. In a Decision and Reasons promulgated on 25 September 2017 the judge dismissed the appeal. He found at paragraph 47:

"Whilst am satisfied that some £68,000 was transferred by the father through his solicitors to the son, I consider there was insufficient evidence before me as to the overall financial position of the father demonstrating that he would not need to recall the gift, or indeed of the financial circumstances of the Sponsor, in respect of whom I have seen no financial evidence."

3. An application for permission to appeal to the Upper Tribunal was made, in time, on the basis that:
 - (i) the Appellant met all the requirements of EC-P.1.1(d) of Appendix FM of the Rules and reference was made to Appendix FM-SE at paragraph 11. It was submitted that the Sponsor provided his bank statements confirming that the requisite funds were in his bank account for more than the six month period required and that the funds were at his full disposal and that the judge had thus erred in law.
 - (ii) the judge at [42] had failed to consider the documentary evidence confirming the sale of the property and the letter from the Sponsor's father's solicitor dated 10 November 2015 confirming the gift of £68,000. It was asserted that under Appendix FM of the Rules there is no requirement to provide evidence of where a third party would reside after gifting money and that in any event the judge had failed to take into account that the Sponsor's father had clearly relocated to another address.
 - (iii) the judge had failed to give adequate reasons when considering the fact that this was a human rights appeal and had failed to take into account Section 55 of the Borders, Citizenship and Immigration Act 2009, bearing in mind that the Sponsor and Appellant had had a daughter who is a British citizen born on 22 January 2016.
4. Permission to appeal was granted by First-tier Tribunal Judge Mailer on 12 March 2018, on the basis that it was arguable that the judge took into account an irrelevant matter when considering whether the Appellant satisfied the financial requirements and that further he arguably failed to have proper regard to the child's best interests as a British citizen and has made an inadequate assessment of the Appellant's human rights claim.

Hearing

5. At the hearing before me, Mr Bates on behalf of the Respondent indicated that he accepted that there was an error of law which was material to the decision of the First-tier Tribunal Judge, in light of the fact that there is no discretion in the Immigration Rules regarding any refusal in respect of the source of funds. Mr Bates accepted that the money had been in the Sponsor's bank account for more than six months and in fact, as the judge noted at [16], the Sponsor at the hearing produced a Halifax bank

statement showing an increased balance up to 28 July 2016 of £83,236.45. Clearly, the judge accepted at the date of hearing that the money was still in the Sponsor's bank account. Mr Bates invited me not to uphold the decision of the First-tier Tribunal.

6. Mr Schwenk had nothing further to add.

Decision

7. In light of Mr Bates' helpful concession, I find a material error of law in the decision of the First-tier Tribunal on the basis that both at the date of decision and at the date of hearing before that Tribunal, at which the Appellant was unrepresented, the Appellant met the requisite requirements of the Immigration Rules *viz* E-ECP.3.1 and thus EC-P.1.1(d) of Appendix FM. I substitute a decision allowing the appeal on human rights grounds. I direct that entry clearance be granted to the Appellant forthwith.

Notice of Decision

The appeal is allowed on human rights grounds (Article 8 of ECHR).

No anonymity direction is made.

Signed: *Rebecca Chapman*

Date: 27 June 2018

Deputy Upper Tribunal Judge Chapman