IAC-FH-CK-V1

Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: HU/05200/2020**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 6 September 2021	**On 9 September 2021**

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

MISS SANDRA NAMIREMBE
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr E Da Silva, Fountain Solicitors
For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

DECISION AND REASONS

The appellant appeals with permission against a decision of First-tier Tribunal Judge Suffield-Thompson promulgated on 11 March 2021 in which she dismissed the appellant's appeal against a decision of the Secretary of State made on 11 November 2019 to refuse her entry clearance to the United Kingdom. The application in this case was for entry clearance as the daughter of Mrs Betty Nassali ("the Sponsor") and the claim was that she is entitled to enter the United Kingdom as a dependant of the sponsor, who has been recognised as a refugee.

It is, I think, important to note that there has been a previous application for family reunion to join the sponsor who has been recognised as a refugee. That application was refused, as the judge noted in her decision at paragraph 29.

The basis for the making of the new application was that the appellant's circumstances had now changed in that she had been forced into a marriage against her will, had been ill-treated and is suffering as a result. The Secretary of State did not accept that. It was conceded at the appeal before the First-tier Tribunal by Mr Da Silva, who appeared below as he does today, that the appellant could not meet the requirements of the Immigration Rules and that the case needed to be considered on the basis of exceptional circumstances outside the Rules.

The judge set that out in her decision at paragraphs [23] to [26] and directed herself that she needed to consider:

> (1) whether the case raised compassionate factors or exceptional circumstances in line with the published police guidance,
>
> (2) whether the appellant has a family life within the meaning of Article 8 with the sponsor, and
>
> (3) if so, does the decision to refuse entry clearance amount to a disproportionate breach of the right to a private and family life either for the appellant or the sponsor.

The judge then went on to set out the respondent's policy document at paragraph 27, directing herself as to two specific factors which she needed to consider, that is whether the appellant was dependent on the immediate family in the country of origin and not leading an independent life and second, that there are no other relatives to whom she could turn and therefore have means of support.

The judge then considered the evidence, setting out her findings over a number of paragraphs. She did not accept that much of what she was told was credible, she did not accept that the appellant had been subjected to a forced marriage and she did not accept that the appellant would be unable to stay with Miss Nadera Ritah, with whom she had been staying. She also found that there were not in this case exceptional circumstances. The judge then went on to find that the appellant did have a family life with her mother, that they are in regular contact but found that the interference in this case was in pursuance of a legitimate aim, namely the maintenance of lawful immigration policy, and thus that the interference was proportionate, noting that they remain in touch by phone and messages and that they could visit each other.

The appellant sought permission to appeal on four discrete grounds. Permission was granted on only ground 2, that the judge had failed to consider a crucial piece of evidence, that is medical documentary evidence set out in the supplementary bundle at pages 17 to 22, before reaching her decision.

In that ground, i is averred also that the finding on ill health was ambiguous, suggesting the judge's phrase "I have nothing before me to suggest she is in ill health" might mean either that there was no evidence or that the evidence provided was insufficient. Permission was granted by Judge Ford on 14 May 2021 who stated at paragraph 3 that the only arguable ground was that relating to the failure to take into account ill health evidence.

The Secretary of State responded by way of a letter dated 18 June 2021 pursuant to Rule 24 of the Tribunals Procedure (Upper Tribunal) Rules 2008. When the matter came before me Mr Da Silva relied on his skeleton argument. He also sought to adduce further evidence which had come into being since permission had been granted. This is in the form of updated medical reports.

I deal first with the application for new evidence to be taken into account. It is only rarely that evidence will be taken into account where, as here, it was not before the First-tier Tribunal and where the issue is still whether that Tribunal made an error of law. I note the submission that it was admissible and could not have been obtained with reasonable diligence sooner but that test also requires it to be shown that if not decisive, it would certainly have had a major effect. In this case the evidence is not evidence that was in existence at the time of the hearing, it is further evidence which, it is said, goes to show that the appellant's ill health has deteriorated. I am not satisfied therefore that he meets this test, nor am I satisfied, looking at the evidence and taking it at its highest, that it is capable of making a decisive difference had it been before the judge.

I accept that the judge did not take into account the evidence set out at pages 17 to 22 but the question in this case is whether that was material. Contrary to the submission from Mr Da Silva, I am not satisfied that this evidence showed a deterioration. The earliest evidence is from 2019 and indicates that the appellant suffering from panic attacks, continued worries, palpitations and fears and felt isolated. She was advised to try relaxing exercises, she was prescribed diazepam and to take sufficient sleep. The next document in time is from 7 November 2020 and again is in note form, indicating panic disorder and depression, also suicidal thoughts, and the letter dated 12 November 2020 records the history, indicating she had previously been on benzodiazepine, sertraline and fluoxetine, she had been diagnosed with panic disorder and she presents with poor attention and so on. The diagnosis is panic disorder and/or anxiety disorder and depression. Again, she appears to have been prescribed fluoxetine and recommended to take relaxing exercise such as yoga support groups and take sufficient sleep.

I bear in mind that the judge did direct herself in line with the Home Office's policy but it is important to note that in this case the judge set out the whole of that policy and the policy applies where all of the four subpoints are reached and the judge in this case had given good reasons why she had not accepted what she had been told and that the requirements of the policy were not met. I am not satisfied, taking the evidence not taken into account at its highest and in combination with the other evidence and sustainable findings, that it shows

that the appellant was capable on any rational view on the basis of this evidence of meeting the requirements of the policy.

That, however, is not the end of the matter because, as the judge correctly says, consideration has to be given to Article 8 and the balancing exercise.

I consider that there is merit in the respondent's submission in the Rule 24 letter that there is simply no basis on which it could be said that the appellants circumstances come near the stringent criteria to show that where the requirements of the Immigration Rules are not met. It was for the appellant to demonstrate that the consequences of refusing her leave are so compelling and serious such as to outweigh the public interest in immigration control. As is submitted, there is no evidence that she is unable to get medical attention for her ill health. Indeed, on the contrary, she appears to be getting proper treatment. She has had a diagnosis, recommendations as to lifestyle and prescriptions of drugs. There is no indication that she is unable to get the drugs or to engage with the suggested help, and in the circumstances, whilst the judge should have factored these into account, I am not satisfied, having had regard to the high threshold that has to be shown in this case, that the judge's error in this case was material.

It was open to the judge to conclude for the reasons given that although there was family life in this case that respect to that was outweighed by the public interest in the maintenance of immigration control and for these reasons I uphold the decision of the First-tier Tribunal as I am not satisfied that it involved the making of a decision affecting the outcome of the appeal.

Notice of Decision

1. The decision of the First-tier Tribunal did not involve the making of an error of law and I uphold it.

Signed Date

Jeremy K H Rintoul 08/09/2021
Upper Tribunal Judge Rintoul