



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/02686/2021
[UI-2021-000908]**

THE IMMIGRATION ACTS

**Heard at Field House
On the 25 February 2022**

**Decision & Reasons
Promulgated
On the 20 April 2022**

Before

UPPER TRIBUNAL JUDGE O'CALLAGHAN

Between

ENTRY CLEARANCE OFFICER

Appellant

and

**GLORIA AKOSUA BOATENG
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Ms J Isherwood, Senior Presenting Officer
For the Respondent: Mr N Garrod, Counsel, instructed by Justice and Law Solicitors

DECISION AND REASONS

Introduction

1. For the purpose of this decision the appellant is referred to as the 'Entry Clearance Officer' and the respondent as the 'claimant'.
2. The Entry Clearance Officer appeals against the decision of Judge of the First-tier Tribunal Farmer ('the Judge') sent to the parties on 27 August 2021 allowing the claimant's appeal on human rights grounds. The Judge allowed the appeal on the basis that the claimant met the requirements of paragraph 297 of the Immigration Rules ('the Rules').

3. Judge of the First-tier Tribunal Handler granted permission to appeal by a decision dated 15 November 2021.

Anonymity

4. No anonymity direction was issued by the Judge and no application for such direction was made before me.

Background

5. The appellant is a citizen of Ghana who was born in January 2003 and is presently aged 19.
6. Her father secured settlement in this country in February 2020 and her mother presently enjoys limited leave to remain in this country as a dependant of the claimant's father. The mother's leave expires in November 2023.
7. The claimant applied in October 2020 for entry clearance to settle in the United Kingdom with her parents. The application was made under paragraph 297 of the Rules, the provisions relevant to this appeal being:

'297. The requirements to be met by a person seeking indefinite leave to enter the United Kingdom as the child of a parent, parents or a relative present and settled or being admitted for settlement in the United Kingdom are that he:

- (i) is seeking leave to enter to accompany or join a parent, parents or a relative in one of the following circumstances:

- (a) both parents are present and settled in the United Kingdom; or

...

- (f) one parent or a relative is present and settled in the United Kingdom or being admitted on the same occasion for settlement and there are serious and compelling family or other considerations which make exclusion of the child undesirable and suitable arrangements have been made for the child's care; and

...

- (iv) can, and will, be accommodated adequately by the parent, parents or relative the child is seeking to join without recourse to public funds in accommodation which the parent, parents or relative the child is seeking to join, own or occupy exclusively; and

- (v) can, and will, be maintained adequately by the parent, parents, or relative the child is seeking to join, without recourse to public funds; and ...'

8. The Entry Clearance Officer refused the application by means of a decision dated 30 January 2021. The claimant was unable to meet the requirements of paragraph 297 of the Rules, leading to settlement, and therefore the application was considered under the five-year child route established by Appendix FM of the Rules:

‘Section EC-C: Entry clearance as a child

EC-C.1.1. The requirements to be met for entry clearance as a child are that-

- (a) the applicant must be outside the UK;
- (b) the applicant must have made a valid application for entry clearance as a child;
- (c) the applicant must not fall for refusal under any of the grounds in Section S-EC: Suitability for entry clearance; and
- (d) the applicant must meet all of the requirements of Section E-ECC: Eligibility for entry clearance as a child.’

9. The Entry Clearance Officer concluded, *inter alia*:

‘We have considered your application under paragraph EC-C.1.1 of Appendix FM. However you do not qualify for entry clearance under the five-year child route for the following reasons:

...

Eligibility financial requirement

You do not meet the eligibility financial requirement of paragraphs E-ECC.2.1. to 2.4.

Your sponsor is not exempt from the financial requirements as defined by paragraph E-ECC.3.3. I am not able to take into account any potential employment you have available to you in the UK or any offers of financial support from third parties. In order to meet the financial requirement of the Rules your sponsor needs a gross annual income of at least £22,400. However, you have provided no evidence relating to your sponsor’s employment and income or any savings that they may hold. I am therefore not satisfied that you have provided the specified documents as required under Appendix FM-SE of the Immigration Rules. I therefore refuse your application under paragraph EC-C.1.(d) of Appendix FM of the Immigration Rules (E-ECC.2.1).

You have provided no evidence of where you plan to reside in the UK. I am therefore not satisfied that there will be adequate accommodation available to you in the UK without recourse to public funds. I therefore refuse your application under paragraph EC-C.1.1(d) of Appendix FM of the Immigration Rules (E-ECC.3.4).’

10. The hearing of this appeal took place before the First-tier Tribunal sitting at Hatton Cross on 27 August 2021. Unfortunately, though the claimant's skeleton argument clearly conceded that she was unable to meet the requirements of paragraph 297(i)(a) of the Rules, and Mr Garrod admitted the same at the hearing, the Judge proceeded erroneously on the basis that "it is not in dispute that both parents are present and settled in the UK." Such conclusion is of particular concern as the Judge signed his decision on the same day as the hearing, and Mr. Garrod's submissions can properly be expected to have been fresh in the Judge's mind.
11. The Judge then proceeded to consider maintenance and accommodation issues and concluded, at [13] and [14] of his decision, that the claimant's father was employed in this country, had earnings in excess of the required threshold for Appendix FM, namely that he had a gross income in excess of £22,400, and that he resided with his wife in a three-bedroom property of which they were the sole occupants. The Judge was therefore satisfied that the appellant's father could maintain the claimant and adequately accommodate her in this country without recourse to public funds. He concluded that the claimant's appeal was to be allowed under paragraph 297 of the Rules.

Grounds of Appeal

12. The Entry Clearance Officer relies upon three grounds of appeal. Unfortunately ground 1 is no more than an assertion and ground 3 is confused. However, the core of the challenge advanced by ground 2 is that the Judge failed to give any adequate or lawful reasons for finding that the claimant's parents satisfied paragraph 297(i)(a) of the Rules, namely that they were both present and settled in the United Kingdom. The grounds observe, *inter alia*:

'It is accepted that since 25 February 2020, the appellant's father has settled status under the EUSS. However, the appellant's father was a sole applicant. His wife (the appellant's mother) was only granted limited leave to enter as a partner from 03 November 2020 until 03 August 2023 ... There are no records to indicate that the appellant's mother has since obtained settled status.

...

It is submitted that the FTTJ has incorrectly stated that the appellant's parents are both in the United Kingdom [which] **is not** equivalent to accepting that both are present and settled in the UK, as required by paragraph 297(i)(a) of the Immigration Rules.

It is submitted that the FTTJ has erred in law by making this finding. On the basis of the FTTJ's summary of the appellant's case, the appellant was not arguing that both parents were settled. When applying for entry clearance the appellant stated that her mother was 'currently applying for permission to enter or remain in the UK as a partner of a settled person' and the type of visa/application the appellant made was 'as the child dependant of a parent who is applying for (or already has) permission to be in the UK as a partner'.

The ECO has therefore considered the application under the Appendix FM child route without reference to paragraph 297. The PO Appeal Hearing Minute indicates that submissions were made with regards to Appendix FM.

The reason for there being no dispute as to the mother's immigration status is because it was mutually accepted that the mother is not settled. It is submitted that the FTTJ has made a mistake as to a material fact which could be established by objective and uncontentious evidence, which has led to a fundamentally flawed outcome.'

13. By means of the grounds of appeal the Entry Clearance Officer made the following concession:

'It is noted that the FTTJ's findings with regard to the financial threshold and maintenance requirements under Appendix FM are sound and that the appellant has provided evidence which was not available to the decision maker at the time. The appellant would now meet the requirements of the Appendix FM Child Route (as financial requirements were the only area of contention in the RFRL).'

14. In granting permission to appeal Judge Handler reasoned:

- '3. The grounds assert that the Judge misdirected himself in law and failed to give adequate reasons in making the above findings because it was not accepted by the respondent that the appellant's mother was present and settled in the UK, as defined in the Immigration Rules. The respondent says this error is material because it is relevant to the type of leave that the appellant was entitled to. This is arguable because the Judge has not reasoned why he found that the appellant's mother was present and settled in the UK with reference to her status and the definition in the Immigration Rules. Accordingly it is arguable that the Judge erred in finding that both parents were present and settled in the UK.
4. The grounds also assert that the Judge made perverse or irrational findings by making findings under financial requirements in Appendix FM when that route would not be open to a child both of whose parents were present and settled in the UK. There is less merit in this ground because the Judge's findings are accepted as sound and therefore it is arguable that this is not a material error.'

Decision on Error of Law

15. The representatives before me adopted the helpful approach of agreeing that the Judge had materially erred in allowing the appeal under paragraph 297 of the Rules and, further, accepting that the appeal should be allowed on human rights grounds as the claimant met the requirements of section EC-C of Appendix FM of the Rules.
16. Mr Garrod confirmed that he had not sought on behalf of the claimant to persuade the Judge that the settlement requirement of paragraph 297(i)(a) of the Rules was met. He confirmed that the claimant had accepted throughout that her mother could not meet the requirement that she be

settled in this country. He did tentatively suggest that an argument could be made that the claimant could succeed under paragraph 297(i)(f) of the Rules as there were serious and compelling family or other considerations arising in this matter, however he did not pursue this point before me and he was right to do so. Having considered the facts arising in this matter the personal circumstances of the claimant come nowhere close to establishing the required serious and compelling family or other considerations: *Mundeba (s.55 and para 297(i)(f)) Democratic Republic of Congo* [2013] UKUT 88 (IAC), [2014] I.N.L.R. 36.

17. In the circumstances I am satisfied that in allowing the appeal on human rights grounds under paragraph 297 of the Rules the Judge materially erred in law and that the decision of the First-tier Tribunal should be set aside. I am satisfied that the findings of fact should properly be preserved.

Re-making the Decision

18. I observe the concession made on behalf of the Entry Clearance Officer in the grounds of appeal, and confirmed by Ms. Isherwood, that consequent to the findings of fact made by the Judge the claimant should properly succeed under the five-year child route established by Appendix FM of the Rules. Having considered the findings of fact, which are favourable to the claimant with regard to both maintenance and accommodation, I agree that the approach adopted by the Entry Clearance Officer is an appropriate one.
19. In the circumstances, I conclude that the claimant satisfies the requirements of Section EC-C of Appendix FM of the Rules.

Notice of Decision

20. The decision of the First-tier Tribunal promulgated on 27 August 2021 involved the making of a material error on a point of law and is set aside pursuant to section 12(2)(a) of the Tribunals, Courts and Enforcement Act 2007. All findings of fact are preserved.
21. The decision is re-made by this Tribunal. The appeal is allowed on human rights (article 8) grounds, the claimant having satisfied the requirements of Section EC-C of Appendix FM of the Rules.

Signed: *D O'Callaghan*
Upper Tribunal Judge O'Callaghan

Date: 8 March 2022

TO THE RESPONDENT
FEE AWARD

As I have allowed the appeal and because a fee has been paid or is payable, I have considered making a fee award and have decided to make no fee award as the documentation that underpinned the successful appeal was not placed before the Entry Clearance Officer.

Signed: *D O'Callaghan*
Upper Tribunal Judge O'Callaghan

Date: 8 March 2022