



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

Appeal Number: IA/38449/2013

THE IMMIGRATION ACTS

Heard at Manchester

On 23rd May 2014

Determination

Promulgated

On 6th June 2014

**Before
DEPUTY UPPER TRIBUNAL JUDGE MCCLURE
Between**

**MRS LINDA LISA KHUNGA
(NO ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Ahmed of Bankfield Heath Solicitors

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

DETERMINATION AND REASONS

1. The Appellant, Mrs Linda Lisa Khunga, date of birth 23rd January 1972, is a citizen of Malawi. The Appellant applied for leave to remain in the United Kingdom under paragraph 276ADE and Appendix FM. As part of the application the Appellant has a dependent son. The facts pertinent to the son are relevant to the issues in the present proceedings.
2. I have considered whether any of the parties to the present proceedings requires the protection of an anonymity direction. Taking account of all the circumstances I do not consider it necessary to make an anonymity direction.

3. This is an appeal by the Respondent against the determination of First-tier Tribunal Judge Ransley who by a decision promulgated on 27th January 2014 allowed the Appellant's appeal. In essence the judge found that the child dependent qualified under paragraph 276ADE(iv) because he was under 18 and have lived in the United Kingdom continuously for over seven years since his entry in 2005. Having made that finding with regard to the dependent the judge went on to consider the Appellant's qualification under Appendix FM and found that the Appellant met the requirements of Appendix FM but that she fell for consideration within paragraph EX.1(a)(ii).
4. It is against that that the appeal is currently brought. In the first instance the Respondent is alleging that it is reasonable to expect the Appellant's child to leave the United Kingdom and as such the requirements of EX.1 of Appendix FM are not met.
5. The application in this matter was made in August 2012 and therefore the relevant provision of paragraph 276ADE provided as follows:-

"The requirements to be met by an applicant for leave to remain on the grounds of private life.

276ADE. The requirements to be met by an applicant for leave to remain on the grounds of private life in the United Kingdom are that at the date of application, the applicant:-

- (i) does not fall for refusal under any of the grounds in Section S-LTR 1.2 to S-LTR 2.3. and S-LTR.3.1. in Appendix FM; and
 - (ii) ...
 - (iii) has lived continuously in the UK for at least twenty years (discounting any period of imprisonment); or
 - (iv) is under the age of 18 years and has lived continuously in the UK for at least seven years (discounting any period of imprisonment); or
 - (v) is aged 18 years or above and under 25 years and has spent at least half of his life living continuously in the UK (discounting any period of imprisonment); or
 - (vi) is aged 18 or above, has lived continuously in the UK for less than twenty years (discounting any period of imprisonment) but has no ties (including social, cultural or family) with the country to which he would have to go if required to leave the United Kingdom."
6. Accordingly within the original provisions of 276ADE(iv) there was no issue with regard to reasonableness. The son did not fall for refusal under any

of the grounds specified in sub-paragraph (i) of 276ADE and had lived continuously in the United Kingdom for at least seven years. Accordingly the son succeeded under paragraph 276ADE.

7. Thereafter the Appellant currently under consideration falls to be considered under Appendix FM, Section R-LTRPT requirements for limited leave to remain as a parent. The provisions provide as follows:-

“Section R-LTRP ...”

8. The provisions of relationship requirements under E-LTRPT.2.2 indicate that a child has lived continuously in the United Kingdom for seven years immediately preceding the date of the application and paragraph EX.1 applies. Paragraph EX.1 provides as follows:-

“EX.1. This paragraph applies if :

(a) (i) the applicant has a genuine and subsisting parental relationship with a child who-

(aa) is under the age of 18 years;

(bb) is in the UK;

(cc) is a British Citizen or has lived in the UK continuously for at least the 7 years immediately preceding the date of application ;and

(ii) it would not be reasonable to expect the child to leave the UK; or

(b) the applicant has a genuine and subsisting relationship with a partner who is in the UK and is a British Citizen, settled in the UK or in the UK with refugee leave or humanitarian protection, and there are insurmountable obstacles to family life with that partner continuing outside the UK.

...”

9. Therefore whilst there is no requirement to assess whether it is reasonable for the child to leave the United Kingdom in considering paragraph 276ADE in considering the parent it was within EX1 in considering the position of the parent that consideration ad to be given as to whether it was reasonable for the child to leave the UK.
10. An amendment subsequently to the provisions of paragraph 276ADE did bring into the provisions with regard to reasonableness.
11. In assessing whether or not the parent should be allowed to remain in the United Kingdom there is under EX.1 sub-paragraph 2 a requirement that it would not be reasonable to expect the child to leave the United Kingdom.
12. Accordingly in looking at the assessment made by First-tier Tribunal Judge Ransley consideration has to be given to the careful structure that the judge adopted.

13. The judge in the first instance concluded that the child met the requirements of 276ADE and that the child was to that extent not subject to removal. The judge thereafter went on to consider the position of the mother. It is in that context that the issue of reasonableness arises.
14. Being satisfied that the Appellant otherwise met the suitability and eligibility requirements of Appendix FM the judge considered specifically paragraph EX.1(a)(ii). The judge was satisfied that the Appellant was in a genuine and subsisting relationship with the child and that the child had lived continuously in the United Kingdom for seven years. The judge thereafter went on to find that it was not reasonable to expect the Appellant and Joshua to seek to resume their family life in Malawi because they had no family, social and economic ties in Malawi. The judge then considered that they had formed strong family and social ties in the United Kingdom. The judge took account of Section 55 of the Borders, Citizenship and Immigration Act 2009 and determined that it was in the best interests of Joshua who had been in the United Kingdom for eight plus years to remain in the United Kingdom with his mother. That would enable him to continue with his schooling and to enjoy the private life that he had established. There was no prospects with regard to family, social or other ties in Malawi or prospects for education that were comparable with that. The judge therefore having assessed all the factors considered that it was not reasonable for the child to be removed and therefore it was not reasonable in that context for the mother to be removed. The judge therefore found that the Appellant met the requirements of the Rules in Appendix FM.
15. Those were findings of fact that the judge was entitled to make on the basis of the evidence presented. The judge has properly assessed all the factors that she was obliged to take into account in considering Appendix FM. The judge has therefore fully justified her decision to allow this appeal under Appendix FM in respect of the Appellant.
16. In the light of that there is no material error of law within the determination. I uphold the decision to allow the appeal under the Immigration Rules. I uphold the decision to make a fee award as set out.

Signed

Date

Deputy Upper Tribunal Judge McClure