



**Upper Tribunal
(Immigration and Asylum Chamber)
HU/05127/2016**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

Decision & Reasons

On 22 March 2018

Promulgated

On 13 April 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE BAGRAL

Between

ENTRY CLEARANCE OFFICER - PRETORIA

Appellant

and

**ANITAH MUWANGUZI
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr C Avery, Senior Home Office Presenting Officer

For the Respondent: No legal representation (Mr S Lwetutte - Litigation Friend)

REMITTAL AND REASONS

Introduction

1. This is the Entry Clearance Officer's (ECO) appeal against the decision of First-tier Tribunal Judge Shore promulgated 28 December 2017, allowing the appeal of Mrs Anitah Muwanguzi, against the decision of the ECO, dated 1 February 2016, to refuse her application made pursuant to Appendix FM of the Immigration Rules (the Rules) for entry clearance to join her partner in the UK. It is relevant to note that Mrs Muwanguzi's partner is a British citizen resident in the UK with her two children who are also British citizens.

2. While this an appeal by the ECO, hereinafter, I shall refer to the parties as they were before the First-tier Tribunal; the ECO as the respondent and Mrs Muwanguzi as the appellant.

Hearing before the First-tier Tribunal

3. At her appeal hearing before the First-tier Tribunal ("FtT") the appellant was represented by her partner (sponsor) and Mr Lwetutte, acting as he did before me as a litigation friend, and the respondent was represented by Ms Lambert. Before the FtT the appellant did not dispute that she could not meet the financial requirements of Appendix FM of the Rules. The appeal was argued on her behalf on the basis that refusal of entry clearance was unlawful in consequence of the respondent's failure to consider the best interests of her children, and that, refusal infringed her human rights contrary to Article 8 of the ECHR. The FtT heard evidence from the sponsor and while it was not satisfied that the financial requirements of the Rules were met or that the sponsor had four other children in the UK, it accepted the sponsor's evidence that he lived in the UK with the appellant's two children. The FtT found that as the sponsor and two children were all British citizens it was not reasonable to expect them to relocate to Uganda. It further found that there had been a failure by the ECO to consider the best interests of the children. The FtT thus concluded that the decision to refuse entry clearance was not in accordance with the law.
4. Further still, the FtT stated that in balancing the public interest against the family life established between the appellant, the sponsor and their children; their status as British citizens and the effect of requiring them to relocate to Uganda, that refusal of entry clearance infringed Article 8 of the ECHR. Accordingly, the FtT allowed the appeal.
5. The ECO sought permission to appeal on the grounds that the FtT failed to have proper regard to the public interest when carrying out the proportionality assessment, in that, it did not have full regard to the provisions of s.117B of the Nationality, Immigration and Asylum Act 2002 (2002 Act) and/or that it did not give adequate reasons for its decision given that the children had been born overseas and there was no consideration of why they would not be able to adapt to life in Uganda given their young ages.
6. On 24 January 2018, Designated First-tier Tribunal Judge McCarthy granted permission to appeal on all grounds.
7. Thus, the matter came before me to decide in the first instance whether the FtT materially erred in law. The task of the tribunal in that regard was explained to the sponsor and Mr Lwetutte. Mr Avery briefly amplified the grounds of appeal in submissions and Mr Lwettue urged the tribunal not to penalise the appellant and her family for any error the FtT may have made. Mr Lwetutte also filed a skeleton argument which I had not seen prior to the hearing and in consequence the tribunal indicated that it

would pronounce its decision after consideration of the same at a later date, which I now do.

Discussion and Decision

8. For the reasons summarised below, I found such error of law in the making of the decision of the FtT as to require the decision to be set aside.
9. In this case the only viable ground of appeal was on human rights grounds. The FtT was obliged to consider whether the refusal of entry clearance infringed the human rights of the appellant and anybody else affected by that refusal contrary to Article 8 of the ECHR. That assessment was to be conducted through the lens of the Rules, which the FtT found could not be met. It was also incumbent on the FtT to consider and have regard to the public interest criteria by reference to s.117B of the 2002 Act and to provide adequate reasons for the conclusions reached taking into account all relevant factors. This I find it failed to do.
10. The FtT's entire basis for allowing the appeal under Article 8 appears to be that it was unreasonable to expect the appellant's British family members to relocate to Uganda. At [41] the FtT stated thus:

"The balance that I undertook were the public interest in refusal of entry leave (sic), to which I gave considerable weight, and the family life with the Sponsor and her daughters that the Appellant has established. I also considered the British citizenship of the Sponsor and the children and the effect of requiring them to relocate to Uganda would have on them."
11. I find that the FtT failed to conduct an adequate Article 8 Razgar assessment and failed to conduct the crucial proportionality balancing exercise by reference to the public interest factors it was mandated to consider by reference to s.117B of the 2002 Act. Nor did the FtT consider the respondent's submission at [27] that it was not disproportionate to preserve the status quo by expecting the sponsor to continue to look after the children in light of the personal circumstances, namely, that the children were born overseas and that a choice had been made to separate them from their mother. All these matters were relevant to a proper assessment of whether the refusal of entry clearance was disproportionate.
12. I find, therefore, that the FtT erred in its assessment of proportionality and these errors clearly impinge on the FtT's lawful assessment of whether the ECO's decision to refuse entry clearance leads to a breach of Article 8 ECHR, the sole ground deployed by the appellant in the appeal before the FtT.
13. Taking all of this into account, while I have considered the skeleton argument on behalf of the appellant which seeks to reargue her case, I conclude that the FtT erred and that the correct course is for me to set aside the decision of the FtT and to remit the appeal back to the FtT to consider afresh.

Notice of Decision

The decision of the FtT is set aside.

The appeal is remitted to the FtT to be determined afresh by a judge other than Judge Shore.

Signed:

Deputy Upper Tribunal Judge Bagral
2018

Date: 25 March