



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number HU/25852/2016

THE IMMIGRATION ACTS

Heard at Field House
On 9th May 2018

Decision and Reasons Promulgated
On 11th May 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE PARKES

Between

ANALYN VILORIA
(ANONYMITY DIRECTION NOT MADE)

Appellant

And

ENTRY CLEARANCE OFFICER (MANILA)

Respondent

Representation:

For the Appellant: Mr C Talacchi (counsel, instructed by Edmans & co)
For the Respondent: Mr T Lindsay (Home Office Presenting Officer)

DETERMINATION AND REASONS

1. The Appellant who was born on the 16th of August 1967 and is a citizen of the Philippines is the spouse of the Sponsor, a British national. On the 31st of August 2016 she applied for entry clearance as the spouse. The application was refused for the reasons given in the Refusal Notice of the 27th of March 2017 and the decision upheld on review. The Appellant's appeal was heard by First-tier Tribunal Judge Callow at Taylor House on the 4th of July 2017 and dismissed in a decision promulgated on the 10th of August 2017. The Appellant was granted permission to appeal to the Upper Tribunal leading to the hearing before me.
2. In the Refusal Notice it was accepted that the Appellant met the suitability and eligibility requirements of the Immigration Rules. The Sponsor was not exempt from the financial requirements of the Immigration Rules or the evidential requirements. The Appellant had not provided the required payslips for the Sponsor or any of the supporting documentation such as matching bank statements and the employer's letter relating to the 28 days before the application. In addition the ECO was not satisfied that the accommodation requirement was met.

3. The decision was upheld by the ECM on review. It was noted that additional documentation had been submitted but the original decision was correct on the information before the ECO at the time. The Sponsor had still not provided evidence in the 6 months before the application was made. There was an unexplained payment of £7,000 which was unaccounted. The ECM did not consider that the evidential balance had tipped in the Appellant's favour.
4. In the decision the Judge stated in paragraph 2 "The appeal is to be determined upon the evidence of the circumstances appertaining at the time of the decision to refuse." The Appellant had sought for the appeal to be determined on the papers and that had led to correspondence with the Tribunal before the appeal was listed but that did not lead to any further evidence being provided. The Judge summarised the Respondent's case and the grounds of appeal before turning to the ECM review. Having then set out the relevant parts of Appendix FM and FM-SE the Judge noted in paragraph 12 that the additional documents did not assist in showing that she met the requirements at the date of the application.
5. In paragraph 13 it was noted that evidential flexibility had not been raised but that in any event the Appellant had not produced 6 months wage slips prior to the date of the application and found that the evidence did not show that the Sponsor was occupying the new accommodation he had obtained. At the end of paragraph 14, following a discussion of the legal position, the Judge found that the rules had not been met and that no significant factors or private interest had been put forward that outweighed the public interest reflected in the rules. There were no good reasons to consider her case outside the rules.
6. For the hearing there was no rule 24 reply from the ECO. It was accepted that the Appellant had not submitted the specified evidence with the application. It was argued that the Judge had erred under section 85(5) although as that relates to a new matter and the Secretary of State's consent it is not clear how that would assist the Appellant. the argument was that the Judge erred in the proportionality assessment and failed to take into account that evidence was subsequently provided.
7. In spouse applications the provisions of the Immigration Rules set out in Appendix FM and FM-SE are clear and unambiguous as to what evidence has to be provided with the application, the period of time that it relates to and what it has to show in terms of minimum earnings and accommodation. The rules have been in force for nearly 6 years now and whilst tedious in their requirements they have been upheld and so apply to this Appellant as to any other.
8. The fact that the Appellant did not submit specified evidence with the application is not disputed. For that reason the Appellant could not meet the Immigration Rules and the Judge was right to find that. The only way in which the rules could have been met is if the further information was submitted through the provisions of the rules relating to evidential flexibility and those provisions were not engaged in this decision.
9. Whether the further information provided showed that there was adequate accommodation does not assist the Appellant. The financial information was still missing the required wage slips pre-application and the submission of the documentation with the Notice and Grounds of Appeal did not address the basic problem – that they had not been submitted with the application. No explanation has been forthcoming for their absence.
10. The Immigration Rules are relevant to the assessment of proportionality in respect of human rights decisions and form the basis for the assessment of the public interest in the maintenance of immigration control. There is a clear difference between being unable to meet the

requirements of the Immigration Rules and being in a situation not contemplated by the Immigration Rules. If an Appellant does not meet the Immigration Rules then compelling reasons are required to justify a grant of leave under article 8 outside the terms of the Immigration Rules.

11. The clear aim of the provisions of Appendix FM and FM-SE is that the complete application should be reviewed by the ECO and that all evidence should be submitted with the application. The provisions of evidential flexibility allow for leeway in the presentation of evidence but the scheme is clearly intended to ensure that applications are not later supplemented by information that an ECO has not had a proper opportunity to consider.
12. In this case the Judge found that there was still information missing that should have been submitted. Putting that to one side even if the Appellant had submitted *all* the specified evidence with the Notice and Grounds of Appeal the Appellant would still not have met the Immigration Rules as the evidence had not been submitted with the application itself.
13. To justify a grant of leave outside the rules the Appellant would have to show that there were circumstances that justified her not having to comply with the requirements of Appendix FM or FM-SE. The Judge found that there were none and the grounds do not point to any factor that could be said to be compelling. The evidence that now suggested that the Sponsor did meet the financial requirements can be put together in the appropriate format and submitted with a renewed application, the Appellant is in the same position as any other spouse applicant.
14. On the evidence before the Judge the finding that the Appellant did not meet the Immigration Rules was clearly correct. The Judge properly looked for factors that would justify consideration of the appeal outside the Immigration Rules and found that there were none. The grounds do not show that the Judge erred in the approach taken or in the conclusions drawn. The decision of Judge Callow did not contain an error of law and stands as the disposal of this appeal.

CONCLUSIONS

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision.

Anonymity

The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and I make no order.

Fee Award

In dismissing this appeal I make no fee award.

Signed:



Deputy Judge of the Upper Tribunal (IAC)

Dated: 9th May 2018