



**Upper Tribunal
(Immigration and Asylum Chamber)
IA/31487/2015**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Liverpool
On 13 March 2018**

**Decision & Reasons Promulgated
On 14 March 2018**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

**RATSAMEETHARA SREESAN
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Barton instructed by SABZ Solicitors LLP
For the Respondent: Mr Harrison Senior Home Office Presenting Officer

ERROR OF LAW FINDING AND REASONS

1. The appellant appeals with permission against a decision of the First-tier Tribunal promulgated on 7 February 2017 in which that Tribunal dismissed the appellant's appeal against the refusal of an application for further discretionary leave to remain as a spouse of her sponsor. The date of refusal is 1 September 2015.
2. Having considered the reasons for refusal, grounds of appeal and evidence made available, the Judge sets out conclusions in relation to the matter at [44 - 53] of the decision under challenge where it is written:

Conclusions on Article 8

44. I take into account that this family can if they wish live in Thailand. The family with the exception of Jessica has done so before. The right to respect for family life protected by Article 8 ECHR does not convey a right to exercise that family life where ever one wishes. The sponsor has adult children. They have their separate lives. The sponsor has lived apart from them in Thailand by choice before. They do not form a barrier to the sponsor moving to Thailand with his family.
45. I take into account that the family life of the appellant and sponsor has been developed in the United Kingdom at a time when the appellant's immigration status was precarious.
46. I take into account that there are other options open to the appellant. She could make a new application as the spouse of the sponsor. She would have to provide the necessary evidence and show that she met the financial requirements of Appendix FM. She may not be able to do so but that is not a matter that I can determine now. It is reasonable for the respondent to require the appellant to make the appropriate application, in the correct form, at the correct time, and supported by the correct evidence to enable a reasoned decision to be made upon her application.
47. The sponsor, the appellant, or both of them may have to find jobs. No evidence has been put before me to show any reason why they should not do so. Many people in the United Kingdom have to work in order to support themselves. The requirements are the same for most partners seeking leave to remain in the United Kingdom. The interference with the family life of the appellant and the sponsor is in reality no more than to require them to comply with the same Immigration Rules that everyone else in their situation has to.
48. It may not be necessary for the appellant to leave the United Kingdom in order to make her application. She is lawfully here. Even if she did have to return to Thailand to make her application she could make it quickly. The interference with family life would be limited. She could if she wished take the two children with her on a temporary basis whilst the application was made. She has family members in Thailand with whom she would be able to stay and who would no doubt be delighted to see her and the two children. In any event subject to compliance with its legal requirements the United Kingdom is not under any obligation to allow an alien seeking leave to remain in the country to remain in its territory whilst the application is dealt with.
49. I take into account those matters that I must have regard to by virtue of section 117B of the Immigration, Nationality and Asylum Act 2002. The appellant has produced no evidence that she has ever passed any English language test. Her English is on her own admission poor. She gave evidence through an interpreter. It is in the public interest that those who seek to remain in the United Kingdom are able to speak English as they will be less of a burden on taxpayers and better able to integrate into society.
50. It is in the public interest that people who seek leave to remain in the United Kingdom are financially independent. The appellant is not. The sponsor is not working. It is reasonable for the appellant to demonstrate that she will not be a financial burden to the taxpayer in respect of her accommodation, maintenance, and care.
51. The maintenance of effective immigration control is in the public interest.

52. These matters count heavily against the appellant when assessing the question of proportionality. Whilst I accept that the appellant has a family life in the United Kingdom which is interfered with by the decision under appeal and that Article 8 ECHR is engaged, I find that the decision is legitimate. I further find that such interference is necessary in a democratic society both for the economic well-being of the country and for the protection of the rights and freedoms of others and that the interference is proportionate to these legitimate public ends on the facts of this appeal. The appellant does not succeed under Article 8 ECHR.
53. The appellant does not argue that she can succeed on the basis of a private life either under Article 8 or paragraph 276 ADE.
3. The appellant sought permission to appeal on grounds that are, frankly, substandard and prepared without any attention to detail. The tribunal is grateful to Ms Barton whose first job was to establish which of the grounds applied to the decision under challenge. Ms Barton confirmed it was paragraphs 1 to 4 only and that 5 to 10 related to a completely different decision.
4. The applicable grounds assert the following:
 2. The IJ findings in paragraph 24 are erroneous and vague. The Appellant was previously granted discretionary leave to remain in the UK, under the rules in place before July 2012. In the circumstances, she had no reason to lie about her relationship with Mr Chay and in fact this would have benefited her application because she would have been granted discretionary leave to remain in the UK due to no change of circumstances since the last discretionary leave to remain.
 3. Similarly, the IJ findings in paragraph 28 are erroneous and it makes it apparent that the IJ has drawn adverse inference in her case because she failed to provide requested information to the Home Office. The Appellant sent a detailed statement to the Home Office dated 05/03/2014 (in respondent's bundle) explaining the problems of her relationship and her inability to provide requested information to the Home Office. There was nothing adverse on file to suggest that the Appellant has been dishonest in her communication and/or witness statements.
 4. The IJ has attached less weight to the fact that the Appellant is the mother of her two minor British national children and she maintains regular contact and parental relationship with them.
5. Permission to appeal was granted by a judge of the Upper Tribunal on the basis it is arguable the Judge did not take into account the appellant's witness statement of 5 March 2014.

Error of law

6. At [24] the Judge found:
 24. I have seen the appellant and the sponsor and have heard what they have to say. I do not believe them. The absence of independent evidence to show that they have had separate addresses and that the conduct of the appellant throughout these proceedings leads me to doubt that the situation is as she says it is. The most likely explanation for a husband and wife living in the same house with their children is that they are in a marital relationship. That

is what I find on the evidence before me. They are not living separately under the same roof. They are living together in a genuine relationship as a family.

7. It is not made out that such findings are erroneous and vague. The appellant may have been granted discretionary leave to remain on the basis of the rules prior to July 2012 and may have been able to make an application for further discretionary leave the same basis, but no such application was made. The appellant chose to make the application for discretionary leave pursuant to Article 8. Even though the appellant may have had an entitlement under another head it was not pursued and it does not automatically follow that there was no reason for the appellant not to be less than honest in relation to her evidence. The finding at [24] is an assessment by the Judge having seen and heard both the appellant and sponsor. Even if there may have been no requirement to mislead this is the impression the witnesses gave the Judge. It is also the case that the finding by the Judge that things were not as was being claimed, as the appellant and sponsor were living together as man and wife. This finding is supported by a statement prepared for the purposes of the current proceedings in which both the appellant and sponsor refer to earlier difficulties in their relationship but that since June 2016 they have reconciled and been living together as husband and wife. There appears arguable merit in the finding of the Judge that the claim they were not living as man and wife was not true when they themselves admit that they were. No arguable legal error is made out on this ground.

8. At [28] the Judge finds:

28. I find that the real reason that she refused to provide this information was that she did not think that her application could succeed on the basis of the information she could provide. The respondent was entitled to know the basis upon which the application was being put. If the appellant expected to have her application properly considered there was an obligation on her to provide the information requested. She did not do so.

9. The Judge found in the preceding paragraph:

27. She could meet the partner route on the basis of the facts which I have found. However I find that the appellant does not meet the suitability requirements of S-LTR.1.7.(b). She failed to provide information without reasonable excuse. This is a mandatory ground for refusal. The respondent requested that the appellant to provide information about her circumstances on two separate occasions. She did not do so. On the first occasion she said that she had difficulties obtaining documents. On the second occasion on 4 August 2015 she requested an extension of time as she did not have sufficient time to prepare the original documentation.

10. The Judge also finds at [17]:

“To give the appellant’s case its most charitable interpretation she has been economical with the truth. Her original application which was made on 7 March 2014 was on the basis that she was in a marital relationship with the sponsor and lived with her two children. She confirmed that in her statement dated 5 March 2014 which accompanied the application.

11. The Judge noted that the response of 4 August 2015 asking for more time did not include any reference to the fact the appellant was separated from her husband at that time. The statement of 5 March 2014 speaks about difficulties in the relationship and at paragraph 8 contains the following:

“My representative has asked me to provide evidence in support of my case like the previous Home Office papers, my marriage certificate, and the children’s birth certificates but Henry seems to have hidden all of these. I have tried to look around the house for them when he is not looking but I could only find some copies. This is why do not have this evidence. I confirm though that I am still married to Henry and our marriage is subsisting, although we are fighting just now. Also I continue to live with my two young children. I am responsible for their day-to-day along with their father. Despite all the problems with me and Henry, he is a good dad and I want our children to grow up with both of their parents, so we will stay together.”

12. It is arguable, as Ms Barton submitted, that the appellant in that statement did provide an explanation for why she could not produce the documents requested by the respondent. It has not been made out, however, that this is an issue determinative of the appeal or establishes arguable legal error in relation to the findings based upon the oral evidence of the appellant and her sponsor and other material considered as a whole.
13. Ground 3 claiming the Judge attached less weight to the fact the appellant is the mother of her two minor British national children is a weight challenge. The weight to be given to the evidence was a matter for the Judge. The Judge considered the evidence with the required degree of anxious scrutiny and has made findings that are adequately reasoned.
14. In her submissions Ms Barton submitted the Judge had failed to consider section 55. This submission is without arguable merit as the Judge specifically considers the interests of the children between [30 - 43] of the decision under challenge. The heading appearing after [30] is “The Welfare of the Children”. The Judge also poses the question “Is it reasonable to expect the children to leave the United Kingdom?” indicating these were issues clearly in the mind of the Judge.
15. There is consideration of the children and the circumstances of this family leading in the decision, leading to it being concluded as provided above. The finding the appellant was not able to meet the requirements of the Immigration Rules is factually correct. Mr Harrison’s submission that the appellant in fact went out of her way to try and circumvent the Rules is a finding that is open to the Judge on the basis of the evidence.
16. The Judge noted that the children are looked after by both parents and that even if the appellant herself was removed there will be no compulsion for the children to leave the territory of the United Kingdom or the European Union. The respondents published policy in relation to British national children with non-national parents is in the public domain.
17. The advocates were asked to consider what countervailing factors exist that may make this case one in which it is reasonable to expect

the children to leave the United Kingdom. A strong factor is what appears to be the deliberate attempt to circumvent the rules by the appellant who would have been aware of her inability to satisfy the same as well as the section 117 factors identified by the Judge. The respondent's decision sets out a number of concerns that arise including it being noted the appellant had not provided evidence to show the children's welfare or safety will be adversely affected by the decision.

18. The best interests of the children were factored into the assessment and it found their welfare would not be adversely affected by going with their parents to Thailand. The Judge noted the fact the children are British Citizen's, length of time spent in the United Kingdom, which were identified as very significant factors, but found their welfare would not be adversely affected were they to travel to Thailand with their parents [38].
19. What this matter comes down to is the question of whether the Judge's conclusions in relation to the proportionality of the decision are within the range of findings reasonably open to the Judge on the evidence. The fact the children are British nationals is not an absolute bar to their leaving the United Kingdom and the Judge clearly factored in all relevant aspects into the equation before coming to the conclusion under challenge.
20. In relation to this matter, I find it has not been established that the decision is outside the range of those reasonably available to the Judge on the evidence. As such this tribunal should not interfere with the decision. The appellant may not like the decision but it has not been shown it is affected by arguable legal error to a material degree that enables this tribunal to intervene.

Decision

- 21. There is no material error of law in the Immigration Judge's decision. The determination shall stand.**

Anonymity.

22. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed
Upper Tribunal Hanson

Dated the 13 March 2018

