



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

Appeal Number: HU/20496/2018

THE IMMIGRATION ACTS

**Heard at Bradford
On 13 January 2020**

**Decision & Reasons Promulgated
On 23 January 2020**

Before

UPPER TRIBUNAL JUDGE LANE

Between

**AL
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Ahmed, instructed by B Assured Law

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

DECISION AND REASONS

1. By a decision promulgated on 18 November 2019, I found that the First-tier Tribunal had erred in law such that its decision fell to be set aside. My reasons were as follows:

“1. The appellant was born in 1985 and is a male citizen of Pakistan. He applied for entry clearance for settlement in the United Kingdom on the basis of family life with his British wife, SH (hereafter referred to as the sponsor). By decision dated 14 September 2018, the application is refused by the Entry Clearance Officer. The appellant appealed to the First-tier Tribunal which, in a decision promulgated on 15 May 2019,

dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. The judge did not uphold the conclusion of the Entry Clearance Officer that the relationship between the appellant and sponsor was not genuine and subsisting. At [18], the judge states that he was impressed by the evidence given by the sponsor. The judge accepted that the relationship is genuine and subsisting. However, the judge found that the appeal on human rights grounds did not succeed. He agreed with the Entry Clearance Officer that the sponsor did not meet the income requirement although she only narrowly failed to do so [25]. The sponsor has three children by a previous relationship who live with her in the United Kingdom.

3. The sponsor works but her income is insufficient to meet the required threshold under HC 395 (as amended). The sponsor and appellant argue that the working tax credits which the sponsor receives could, if there exists the likelihood of unjustifiably harsh consequences arising from the separation of the family, amount to a 'credible guarantee of sustainable financial support' to the sponsor from a third party (namely, the State). The judge rejected that submission noting that, 'sponsor receives the benefits [working tax credits] as a result of her particular circumstances and in particular the additional financial burden placed on her as a result of being single mother of three children who does not receive any maintenance from the children's father. Her outgoings as an unsupported mother of three children are inevitably substantially greater than those of a childless person. It is therefore inappropriate to treat these various benefits as a windfall somehow carries her over the minimum income threshold.'

4. It may be the case that the appellant and sponsor are unable to rely upon the payment of working tax credits as a 'credible guarantee of sustainable financial support' from a third party. However, I do not consider that they will be unable to do so for the specific reasons given by the judge. I accept the appellant's submission that the rules as to a minimum income requirement make no reference to the nature or extent of an individual's expenditure. If the judge rejected the submission that the working tax credits are to be excluded on account of the fact that sponsor has three children to support using the funds which she receives, then I find that he fell into error. It was only necessary for the appellant and sponsor to establish that the guaranteed financial support from a third party is credible and sustainable; how the sponsor deals with such support as she might receive is a matter for her.

5. This appeal raises interesting issues regarding the relevance of, in this instance, working tax credits as a potential means of third-party support under the provisions of the Immigration Rules although I observe that the appellant still has to establish that unjustifiably harsh consequences would result from the refusal of entry clearance. I am satisfied, however, for the reasons which I have set out above, that the First-tier Tribunal's reason for finding that no third-party support is available is flawed in law. The decision of the First-tier Tribunal is set aside. None of the findings of fact shall stand, save the finding that the appellant and sponsor enjoy a genuine and subsisting relationship. The decision will be remade in the Upper Tribunal.

Notice of Decision

The decision of the First-tier Tribunal is set aside. The decision will be remade in the Upper Tribunal (Upper Tribunal Judge Lane) at or following a resumed hearing in Bradford on a date to be fixed.

Directions

A. Both parties may adduce new evidence provided copies of any documentary evidence, including witness statements, are sent to the other party no less than 10 days prior to the resumed hearing.

B. The appellant's representatives shall file and serve a skeleton argument no later than 3 days prior to the resumed hearing."

2. At the resumed hearing at Bradford on 13 January 2020, Mr McVeety, who appeared for the Secretary of State, told me that the respondent now accepted the argument that working tax credits could, on the facts in this appeal, count as 'a credible guarantee of sustainable financial support' from a third party for the purpose of satisfying the income requirement of the Immigration Rules. He added that he had attended the Tribunal with the intention of conceding that the appeal should be allowed.
3. However, there is an unfortunate complicating factor in this appeal. Since the promulgation of the error of law decision in November 2019, the sponsor has lost her job. Consequently, if I now remake the decision, I do so having regard to the circumstances pertaining as at the date of the resumed hearing; the income requirement can no longer be met because the sponsor wife is not working. Mr Ahmed, who appeared for the appellant, submitted that circumstances of this couple had now been rendered exceptional. He submitted that the Entry Clearance Officer should have allowed the appeal (an argument which, in light of the respondent's current position, is incontrovertible). Moreover, had I remade the decision at the initial hearing, the correct outcome in law at that time would have led to the appellant receiving entry clearance.
4. I have considered the submissions very carefully. I am fully aware that, by allowing the appeal, a grant of entry clearance will be issued in circumstances where the Immigration Rules are not, as at this date, satisfied. However, I am reminded that the appeal is brought on human rights grounds and not under the strict provisions of the Rules. Ultimately, I need to consider the proportionality of a decision to refuse entry clearance in the light of all the circumstances of the appeal, including what I agree are exceptional circumstances which have arisen in the period between the initial and resumed hearings in the Upper Tribunal. I find that the appeal should be allowed, the exceptional circumstance of the sponsor having lost her employment more than a year after the Entry Clearance Officer should, on a correct application of the law, having granted entry clearance weighing heavily in the appellant's favour in the Article 8 ECHR proportionality assessment. Whilst I stress that the circumstances are

specific to this appeal, the primary duty of the Upper Tribunal is to deliver justice as between the parties and I consider that duty may only be met in this instance and on these facts by allowing the appeal.

Notice of Decision

The appellant's appeal against the decision of the Entry Clearance Officer dated 14 September 2018 is allowed.

Signed

Date 17 January 2020

Upper Tribunal Judge Lane

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellants are granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies both to the appellants and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.