



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/07958/2020

THE IMMIGRATION ACTS

Heard at Field House
On 19 November 2021

Decision & Reasons Promulgated
On 15 December 2021

Before

UPPER TRIBUNAL JUDGE PERKINS
DEPUTY UPPER TRIBUNAL JUDGE O'RYAN

Between

VICTOR SAM-SHEKU
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: The Appellant did not appear and was not represented
For the Respondent: Ms J Isherwood, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by a citizen of Sierra Leone against a decision of the First-tier Tribunal dismissing his appeal against a decision of the Secretary of State by an Entry Clearance Officer refusing him entry clearance to the United Kingdom as the husband of a British citizen.
2. Permission to appeal was granted by the First-tier Tribunal. The main reason for granting permission is that the First-tier Tribunal Judge did not have regard to the decision of the Supreme Court in **MM (Lebanon) & Ors v SSHD [2017] UKSC 10** and the subsequent amendment to the Immigration Rules. The First-tier Tribunal Judge granting permission found it arguable that the proportionality assessment under Article 8 was not adequate. The grounds of appeal are rather longer and are supported by a skeleton argument but we

are satisfied that they were summarised effectively by the judge granting permission to appeal.

3. The Appellant did not appear before us and was not represented. This was slightly surprising, given the history of the case, but we have a letter on file from the Appellant's then solicitors referring to the hearing on 19 November and saying that they wish to come off the record as the "Appellant's sponsor has failed to perfect her instructions with regard to payment of Counsel's fees". This is a perfectly proper reason to discontinue acting and we agree to their coming off the record but it also a clear indication that the Appellant's then solicitors, and therefore the Appellant, had proper notice of the hearing. There was no explanation before us for the absence of any new representative for the Appellant and our clerk checked at approximately 14.35 (the hearing being listed to start at 14.30) and, as he was suspected was the case, found no-one outside the hearing room with an interest in the case. We decided therefore that we should continue with the hearing in the absence of the Appellant.
4. We had been able to discuss the case before the hearing and after hearing outline submissions and further brief further discussion I gave an extempore judgement.
5. We say immediately that we do not find merit in these grounds and we dismiss the appeal.
6. In simple terms, the Appellant relied on the financial earnings of his wife and the entry clearance found that they were not sufficient. The Appellant did not earn the requisite £18,600 in regular employment and did not prove in the prescribed way income from supplementary employment which would have been sufficient to make up the gap. The Appellant apparently expressed some surprise at the result of the application but we do not understand that at all. This is an application that could not succeed under the Rules and that much should have been apparent to the sponsor. The Appellant just did not have the evidence necessary to show that his wife's earnings were sufficient.
7. That of course is not the end of the matter. It is always possible that an appeal should be allowed on human rights grounds regardless of a failure to comply with the Immigration Rules. It is right to say that the evidence shows and there are findings that the Appellant and his wife enjoy a subsisting marriage and there is a child of the marriage, a daughter born in May 2018, and there is a clear public policy imperative for the family to be united but imperative is subject to many qualifications. An important qualification is financial provision and it is clear that the Appellant's sponsor does not meet that requirement although she does not fall short by very much. We do make the observation here that the rules set out the *minimum* financial requirements and the fact that the shortfall is small is not something that either impresses or concerns us to a great extent.
8. Now, when matters of family life are considered it would be wrong to confine consideration solely to the strict requirement of the Rules but the First-tier Tribunal Judge was entirely aware of that and at paragraph 6.6 of the Decision and Reasons referred, rather generally, to case law from the Upper Tribunal and made the findings that I have indicated and further that the child is a British citizen and that the Appellant and the sponsor are nationals of Sierra Leone.

9. Unsurprisingly, the judge found there was family life and acknowledged that the sponsor had travelled to Sierra Leone to marry the Appellant and to make subsequent visits, typically twice a year.
10. The judge also found that the sponsor had close cultural and family ties to Sierra Leone where she was educated and lived until she was aged 17 years and it was open to the sponsor to take her daughter to the United Kingdom if that was where she thought her best interests were. The judge's found that it was in the best interests of the child to stay together and did not express any particular concern about where they lived, noting that there was no good reason, or at least that none was advanced before her, for the family not establishing itself in Sierra Leone.
11. We looked at the grounds to see how the decision was criticised.
12. The first point related to the financial requirements saying how the First-tier Judge allegedly fell into error when evaluating exceptional circumstances. This makes no sense. The judge made accurate findings about the earnings and they were insufficient to satisfy the rules but the judge was alert to the possibility of there being proper reasons to allow the appeal but found none. It is not a case, as is alleged, of the judge just mindlessly applying the Rule. The judge conducted an Article 8 exercise. All the points made about **MM** mentioned above are indicative of the sort of approach that could be taken but the fact the judge did not mention the case was neither here nor there. What is plain is the judge applied her mind to other considerations looking for ways of allowing the appeal and found that the decision was wholly proportionate, given that the family could re-establish itself in Sierra Leone if that is what the parties chose to do.
13. There were general contentions about exceptionality made in the grounds but the point is there is nothing here that lays a foundation for allowing the case outside the rules. This is simply a case of a woman not earning quite enough money. There is no particular reason for the family to be together. We recognise of course that it is desirable that families are together and but there was no good reason advanced to explain why family life cannot be continued in Sierra Leone.
14. The short point is the judge considered all that ought to have been considered, reached a conclusion that was open to her and although the grounds strongly disagree with that decision they do not satisfy us there is any material error of law.
15. In the circumstances, we dismiss this appeal against the decision of the First-tier Tribunal.
16. **Notice of Decision**
17. The appeal is dismissed.

Jonathan Perkins

Signed
Jonathan Perkins
Judge of the Upper Tribunal

Dated 26 November 2021