



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-000209
(IA/18258/2021)

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 11 May 2023

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

Entry Clearance Officer, Monrovia

Appellant

and

Edward Manso Bangalie

Respondent

Representation:

For the Appellant: Mr Basra, Senior Home Office Presenting Officer
For the Respondent: Ms Saifolahi, instructed by Sabz Solicitors

Heard at Field House on 13 April 2023

DECISION AND REASONS

1. The Respondent is a national of Sierra Leone born on the 23rd February 1987. On the 11th January 2023 the First-tier Tribunal (Judge CI Sweet) allowed, on human rights grounds, his appeal against a refusal of entry clearance. The Entry Clearance Officer now has permission to appeal against that decision.
2. The facts in the case are simple. In 2017 Mr Bangalie met Ms Chenella Sharan Walker online. They stayed in regular contact, and grew close; in May 2018 she travelled to Sierra Leone to meet him. They fell in love. They married in June and she remained there, aside from intermittent trips back to the UK until 2021. On the 19th April 2021 Mr Bangalie made an application to come back to the UK with his wife. Although it was acknowledged that the salary she was then earning in Sierra Leone could not meet the 'minimum income requirement' set out in paragraph E-ECP.3.1 (her £8,280 per annum fell a long way short of the required £18,600), Mr Bangalie asserted that he was willing and able to work in the UK, and that she would get a better paid job once she was back. By the time of the appeal in January 2023 Ms Walker (now Mrs Bangalie) had returned to the UK and had

given birth to a daughter. Medical evidence was submitted to the effect that Mrs Bangalie was suffering from depression. She had suffered a series of miscarriages before her daughter was born, and had her own traumatic past; she was finding it difficult to cope without her husband. She attended the hearing and asked that the Judge allow the appeal on Article 8 grounds. She did not wish to back to Sierra Leone with the baby because she was worried about her getting ill and there being no suitable treatment there for her. She also had another daughter who was here in the UK and she didn't want to be separated from her again.

3. The Judge accepted all of this and in a very brief decision, allowed the appeal with reference to Article 8.
4. The ECO now appeals on two grounds. The first can be dealt with shortly. The Judge heard evidence from Mrs Bangalie "in some detail" about the difficulties that she had faced in Sierra Leone in obtaining treatment for her depression. The grounds assert that it was an "error" for the judge to have accepted that. It is not an error to believe a witness. That ground is rejected. In his oral submissions Mr Basra pointed out that Mrs Bangalie could only speak to her own experience, and not the prospective situation facing her daughter should the family move. This is true, but as is apparent from paragraph 9 of the Tribunal's decision the child is not in fact receiving any treatment for anything, so any such analysis would have been irrelevant.
5. The second ground reads as follows:

It is submitted that the FTTJ has failed to have any regard to the statutory public interest factors outlined at section 117B of the Nationality, Immigration and Asylum Act 2002. It is submitted that no regard has been given within the FTTJ's assessment of the proportionality balance to the appellant's ability to speak English or whether the appellant is presently financially independent. Given that the Appellant conceded that they failed to satisfy the financial requirements of the Immigration Rules, it is submitted that the FTTJ's assessment of proportionality is flawed as a result.

6. Section 117A of the Nationality, Immigration and Asylum Act 2002 establishes that where a tribunal is required to determine whether a decision made under the Immigration Acts breaches a person's right to respect for their private or family life under Article 8 the tribunal *must* (in particular) have regard to the public interest considerations listed in s117B. Here the Secretary of State does not contend that this is an appeal which could not on any rational view succeed on Article 8 grounds; rather she contends that Judge Sweet's decision is flawed for a failure to follow his statutory injunction and so the decision must be taken again.
7. The grounds refer to the case of Dube (ss117A-D) [2015] 00090 (IAC) in which a senior panel of the Upper Tribunal (Mr Justice Nicol and Upper Tribunal Judge Storey) set out what have become uncontroversial propositions about the way the Part 5A of the Nationality, Immigration and Asylum Act 2002 should be applied. The Tribunal held that the considerations are mandatory in any proportionality balancing exercise; they reflect principles of Strasbourg caselaw; they are not exhaustive; they are to be seen simply as an

expansion of the fifth *Razgar* question. Importantly, the Tribunal also held that it will not be an error of law for a Tribunal to fail to expressly refer to each of the subsections: as long as each feature of the public interest is taken into consideration, there will be no error of law. As the headnote puts it, “what matters is substance, not form”.

8. Here the Entry Clearance Officer submits that the First-tier Tribunal has failed to have regard to two of the considerations listed in s117B.
9. Section 117B (2) provides that it is in the public interest that persons who seek to enter the United Kingdom are able to speak English, because persons who can speak English are better able to integrate into society, and are less of a burden on taxpayers. The ECO submits that the Judge failed to have regard to that consideration. As Mr Basra very properly accepts, this ground is misconceived, because Mr Bangalie had evidenced his ability to speak English by submitting the required certificate. That was a matter accepted by the ECO from the outset, and so was not a matter that the Tribunal was required to address.
10. Section 117B(1) provides that the maintenance of effective immigration control is in the public interest. ‘Effective immigration control’ means, in this context, the ability to comply with the Immigration Rules. Here it was accepted that Mr Bangalie could not do that, since at the date of his application for entry clearance his wife was living with him in Sierra Leone, and so earning substantially below the minimum income requirement set out in Appendix FM, and, it might be said, her former earnings in the UK. Related to that, but not precisely the same calculation, is the requirement at s117B(3) that persons who seek to enter the United Kingdom are financially independent, because such persons are not a burden on taxpayers, and are better able to integrate into society. I say not the same calculation because the Rules require the migrant to show that his or her household income will be at least £18,600 per annum. A household could be earning substantially less but still be “financially independent”. The case put for the Entry Clearance Officer by Mr Basra is that the decision below must be set aside for a failure to mention either of these provisions.
11. For Mr Bangalie, Ms Saifolahi submitted that the grounds represented a very narrow, and unrealistic, reading of the decision. The sole ground for refusing Mr Bangalie under the rules was that he and his sponsor could not meet the minimum income requirement. That was the whole point of the case: see paragraph 3 of the First-tier Tribunal’s decision. That being accepted by Mr and Mrs Bangalie the only thing left for the Tribunal to decide was whether, as it directed itself in paragraph 3, the decision would have an “unjustifiably harsh” impact on this family. The reasoning that follows, at paragraphs 8 and 9, went simply to that issue. It is therefore nonsensical to suggest that between paragraph 3, where the Tribunal correctly identified the issue, and paragraph 8 where it gave its reasons, the Tribunal forgot why the application had been refused.
12. Although I accept Mr Basra’s point that the First-tier Tribunal decision does not expressly refer to s117B of Nationality, Immigration and Asylum Act 2002, I am satisfied on balance that this is not an error such that the decision should be set aside.
13. Firstly because I accept Ms Saifolahi’s submission that the Tribunal was

plainly well aware that the rules had not been met. As she put it, that was the whole point of the case. Not only does the Tribunal set that out at its paragraph 3, but it reminds itself at the outset of its reasoning on proportionality in paragraph 8.

14. Secondly because this was not in fact a proportionality balancing exercise wholly outwith the rules. The test being applied was that at GEN 3.1 (and 3.2) of Appendix FM: whether this decision would have “unjustifiably harsh” consequences. The public interest is here reflected in that high test, and that is where the Tribunal properly focused its reasoning. The facts underpinning its finding that the test was met include the Sponsor’s personal history of the most serious trauma, her poor mental health, that she is now receiving talking therapy in the UK as well as medication, which (see ground 1 above) she found very difficult to access in Sierra Leone; the Tribunal further accepts that were he to be admitted to the UK, Mr Bangalie would be able to offer his wife support, and help her to bring up their daughter. The Tribunal also finds that in view of her health conditions it would not be reasonable to expect the Sponsor to move back to Sierra Leone with her young baby. Those were all factors that the Tribunal was plainly entitled to have regard to in finding that the test at GEN 3.1 was met.
15. Thirdly, in respect of the requirement at s117B(4) that Mr Bangalie demonstrate financial independence, it does not appear to me that the case was ever put by the ECO that this family would need to have recourse to public funds. Until she took her recent maternity leave the Sponsor has always worked, and Mr Bangalie himself is fit and able to do so. Even on the relatively meagre income Mrs Bangalie managed to earn working ‘remotely’ whilst she was in Sierra Leone, this family would have an income in excess of universal credit levels. In those circumstances the only remaining substance to ground (ii) falls away.

Notice of Decision

16. The appeal is dismissed, and the decision of the First-tier Tribunal is upheld.
17. There is no order for anonymity.

Upper Tribunal Judge Bruce
4th May 2023