



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

Appeal Number:**UI-2023-001007
HU/53854/2016**

THE IMMIGRATION ACTS

**Heard at: Field House
On: 6 June 2023**

**Decision and Reasons Promulgated
On: 10 July 2023**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHANA

Between

**MST SHAMIMA TASLIMA MONI
(ANONYMITY DIRECTION NOT MADE)**

Appellants

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Avi of Counsel
For the Respondent: Mr Lindsay, Senior Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Bangladesh born on 9 March 1999 and she appealed against the decision of the respondent to refuse to grant her leave to enter the United Kingdom pursuant to paragraph EC-P.1.1 of appendix FM of the immigration rules. First-tier Tribunal Judge RE Barrowclough in a decision dated 5 January 2023 dismissed the appellant's appeal.
2. First-Tribunal Judge R.A. Pickering granted permission to appeal in a decision dated 29 March 2023 stating, in respect of ground 2 that it is arguable that the Judge may have appeared to have imposed a higher threshold in evaluating the promise of third-party support as it does not need to constitute a binding or enforceable agreement considering the discretionary nature of the immigration rules at paragraph 35.
3. In respect of the first ground of appeal, the Judge does appear to misdirect themselves but the grounds have failed to identify how this error is material.

Having in mind the jurisprudence of restrictive grant of permission, permission was granted all three grounds.

The First-tier Tribunal's decision

4. The appellant did not meet the financial eligibility requirement because her partner and sponsor did not have the required gross annual income of at least £18,600 as required.
5. The appellant entered into a marriage with her sponsor in Bangladesh at a time when she had no valid leave to enter the United Kingdom and would have been aware of the need to meet the requirements of the immigration rules in order to live in the United Kingdom. There are no barriers or insurmountable obstacles for the appellant's sponsor's relocation to Bangladesh, the country where their relationship was established.
6. Only facts in existence at the date of the respondent's decisions or which were then in reasonable contemplation, can be taken into account. Mr Khan in his closing submissions stated that the Appendixes FM–SE that as a general rule, promises of third-party support, in order to meet the relevant financial requirements, would not be accepted, except in the limited circumstances set out in paragraph 21A of Appendix FM-SE. In order for third party support, to be taken into account, there must be credible guarantee of sustainable financial support to the applicant or their partner from a third party.
7. Paragraph 21A sets out at least some of the matters to be taken into account in assessing third party's offer of financial support, including whether there is a signed and independently verified evidence of any guarantee. In this appeal, it was submitted no such evidence had been provided, and in any event the nature of the suggested commitment was too remote and speculative, where Ms Begum had neither met the appellant nor her partner and had minimal contact with either and was not a close blood relation of the appellant.
8. As a general rule, promises of third-party support in order to meet the relevant financial requirement will not be accepted, except in the limited circumstances set out in paragraph 21A of Appendix FM-SE and paragraph 21A(8) of financial support. The first of those is that there must be a credible guarantee of sustainable financial support of the applicant or their partner from the third party. The financial assistance Ms Begum is offering comes nowhere near a binding and if necessary enforceable guarantee assigned dated and witnessed, or otherwise independently verified. Additionally, it must be borne in mind that Mr Hussain's youngest child is now seven years old, so the financial commitment involved is a lengthy one, and it is perfectly possible that this Ms Begum's circumstances and priorities may change over the years, so that a continuing financial obligation to the couple who not close blood relatives and who apparently has never met the appellant, may no longer be affordable or appropriate. Whilst it has been argued that the financial shortfall at the moment is relatively modest, that could well change, should Ms Begum's level of benefits alternative income fall following the arrival of the appellant. Therefore the appellant's appeal under the immigration rules must fail.

9. In respect of Article 8 the appellant and her sponsor by choosing to marry in Bangladesh should have been aware of not only their financial situation but also the likely impact on whether they could live together in the United Kingdom. These can not be described as exceptional circumstances. The sponsor entered into this relationship with his eyes wide open as to the potential consequences. For the same reasons refusal of the appellant's application potentially or actually does not result in unjustifiably harsh consequences for the appellant, the sponsor and her sponsor's children.
10. The maintenance of effective immigration controls and the public interest and those seeking to enter the United Kingdom should be financially independent, bearing in mind that the appellant cannot meet the financial requirements of the immigration rules pursuant to section 117A and the of the Nationality Immigration and Asylum Act 2002. Refusal of the appellant's application will not be disproportionate and will not infringe or breach her human rights under Article 8.

The grounds of appeal

11. The first ground of appeal is that the first-tier Tribunal Judge erred when he restricted the evidence that he can consider as at of the time of decision. As it is a human rights appeal and under section 85 (4) of NIAA 2002 the Act, the First-tier Tribunal is permitted and indeed required to also consider the appeal under section 82 (1) which states that Tribunal may consider.... any matter which it thinks relevant the substance of the decision, including a matter arising after the date of the decision. The judge made a misdirection of law.
12. The second ground of appeal is that the Judge made numerous errors on the issue of third-party support for the appellant to meet the financial requirements. The Judge by stating that third-party financial assistance offered by Miss Begum "comes nowhere near a binding and if necessary enforceable guarantee, signed dated and witnessed, or otherwise independently verified."
13. Paragraph 21A does not impose a requirement for there to be an enforceable guarantee and therefore the First-tier Tribunal Judge has not applied the correct legal test. The Judge did not consider the findings in respect of the statutory declaration signed in front of the solicitor in the stitched bundle which meets the requirements of paragraph 21A of the rules and this requires specific findings.
14. The Judge then engages in speculation when he states that Mr Hussain's youngest child is now only seven years old so the financial commitment involved is a lengthy one and her circumstances and priorities might change over the years. This also ignores the appellant's case that the sponsor will start working again if she is permitted to come to the United Kingdom as she can look after the children. This was not factored in that the third party would have to continue supporting the family indefinitely, even after the appellant's entry.
15. It was stated in **MM Lebanon and others versus (On the application of) the Secretary of State another [2017]** which confirms that third-party support could be taken into account as can potential employment. The Judge was thus required

to assess whether the sponsor is likely to start working if his wife into the United Kingdom given that the Judge states at paragraph 7 of the decision that the sponsor had a history of working until 2018 when his first wife passed away.

16. The third ground of appeal is that the appellant's assessment of Article 8 did not consider the best interests of the sponsor's minor children. It would be in their best interests for the appellant to come to the United Kingdom and they will have two parents rather than one. This has not been factored in by the Judge in this decision. The sponsor is the sole parent of three young children and is their main carer which is why he cannot work. The impact of the children having lost their mother and the benefit of having a mother figure has not been considered.
17. The Judge did not take into account whether the sponsor and his children could relocate to Bangladesh or whether such a course would be reasonable. The Judge did not consider the wider public interest as the appellant's entry would mean that the sponsor could return to work so this family could stop being reliant on public funds. Even though the family life is established outside the United Kingdom this does not fall to be by the statute.
18. The fact that even if some technicalities of the Rules may not be met with respect to the third-party support, the Judge does not identify why third-party support is not credible and would not support the family. The wider Article 8 assessment does not require a technical assessment. The Judge did not carry out a balance sheet approach in his proportionality assessment.

The hearing

19. It was argued by Mr Alvi that the judge cannot enforce additional requirements which are not included in the rules. Judge Pickering appears to have put to high threshold when he required for a binding and enforceable contract. That alone should appeal the decision. He made no mention of the statutory declaration in the bundle of documents provided by the appellant. The judge did not consider all the evidence in the appeal including that Miss Begum's support may not continue which was sheer speculation. It is not taken into account that the sponsor was working before and he had to stop working because he was looking after his children after his first wife died. The appellant when she cuts the country can also work which was not considered by the judge. The judge made no findings of these factual matters. The facts of the appeal were not contested at the hearing. His respect of article 8 the best interests of the children was not considered by the judge. It was not considered that the sponsor was the full parent of children.
20. The Senior Home Office presenting accepted that there was a technical error in the first ground of appeal but the judge took into account all the evidence in the appeal. In respect of third-party support, the judge refers to the submissions by the Home Office presenting Ofc which are correct 19. The judge found that the third-party support was not reliable or credible and gave proper reasons for that. One of the factors listed in paragraph 21 (8) (a) (vi) is whether the financial support is likely to change. It was necessary for the judge to speculate because the rules require it. In respect of section 55 and the best interests of the child was not properly raised before the first Tier Tribunal. The appellant has no parental

responsibility as she lives overseas. The children will suffer no prejudice because they are being looked after that father in the United Kingdom and the status quo will be maintained.

21. The fact that the sponsor may work and not rely on public funds as a neutral point and does not make a difference.
22. In reply it was submitted that the appellant gave incorrect directions in this respect of ground one. He said that section 55 is a mandatory requirement and material point for the Judge to have considered.

Findings as to whether there is a material error of law in the decision

23. The Judge misdirected himself when he stated that he cannot consider evidence which was not before the respondent at the time of decision. As it is a human rights appeal and under section 85 (4) of NIAA 2002 the First-tier Tribunal is permitted and indeed required to consider the appeal under section 82 (1) against the decision of the Tribunal may consider.... any matter which it thinks relevant to the substance of the decision, including a matter arising after the date of the decision.
24. However, there were no submissions made as to what material difference this would have made to the decision. There was no evidence which was referred to me which the Judge excluded in making his decision. I therefore find that although the Judge misdirected himself, it was not a material error and therefore there is no merit in this ground.
25. The Judge had misgivings about the third-party support promised by Ms Begum for the appellant to meet the financial requirements as the sponsor was reliant on public benefits and therefore she could not meet the financial requirements of the immigration rules.

26. Paragraph 21A (8a) of Appendix FM–SE states:

In determining the genuineness, credibility and reliability of the source of income, financial support or funds relied upon under sub-paragraph (2), the decision-maker will take into account all the information and evidence provided, and will consider (in particular):

- (a) in respect of a guarantee of sustainable financial support from a third party:
- a. (i) whether the applicant has provided verifiable documentary evidence from the third party in question of their guarantee of financial support;
- b. (ii) whether that evidence is signed, dated and witnessed or otherwise independently verified;
- c. (iii) whether the third party has provided sufficient evidence of their general financial situation to enable the decision-maker to assess the likelihood of the guaranteed financial support continuing for the period of limited leave applied for;
- d. (iv) whether the third party has provided verifiable documentary evidence of the nature, extent and duration of any current or previous financial support which they have provided to the applicant or their partner;

- e. (v) the extent to which this source of financial support is relied upon by the applicant to meet the financial requirement in paragraph E-ECP.3.1., E-LTRP.3.1., E-ECC.2.1. or E-LTRC.2.1. of Appendix FM (as applicable); and
 - f. (vi) the likelihood of a change in the third party's financial situation or in their relationship with the applicant or the applicant's partner during the period of limited leave applied for.
27. The Judge stated that the financial assistance that Ms Begum is offering comes nowhere near a binding, and if necessary, enforceable guarantee, signed dated and witnessed, or otherwise independently verified. The grounds of appeal take issue with this direction and permission was granted on this ground. I accept the argument of Mr Avi that the Judge probably placed too high a bar on third-party support but it did not lead to material error.
28. What must not be lost sight of, is that it is always for the applicant to satisfy the ECO that any third party support relied upon is indeed assured. If he fails to do so, his application will fail. That this may be difficult was recognised by Collins J himself in the **Arman Ali** case [2000] INLR 89, 103: 'I do not doubt that it will be rare for applicants to be able to satisfy an entry clearance officer, the Secretary of State or an adjudicator that long-term maintenance by a third party will be provided so that there will be no recourse to public funds. But whether or not such long-term support will be provided is a question of fact to be determined on the evidence.'
29. In his decision the Judge gave several reasons for his misgivings. The first of these was that Miss Begum had never met the appellant or her sponsor and was not a blood relative and found that the offer of assistance in these circumstances is too remote and speculative. The Judge was right to consider that this was not a credible offer of third-party support and to find that that third-party support from somebody that the appellant and her husband have never met and was not a close blood relation is not a credible offer of support.
30. Paragraph 21A (8) above provides that the Judge take into account several factors. The decision-maker must consider whether such financial requirement is met through taking into account the sources of income, financial support or funds set out in paragraph 21A(2) of Appendix FM-SE. I am satisfied that the Judge did not fall into error of law with respect to its consideration of the appeal under the Immigration Rules. It is not right to say, as is contended in the written grounds, that it failed to consider paragraph 21A or failed to correctly apply it.
31. The Judge had to determine was whether there might be a change of the third-party's financial situation or in their relationship with the applicant or the applicant's partner. The grounds of appeal called the Judge's consideration of the likelihood of change, as speculation. The Judge was entitled to consider the likelihood of a change in the third party's financial situation or in their relationship with the applicant or the applicant's partner. The Judge was entitled to consider whether this third-party support would continue as the sponsor's child was only seven years of age which would mean the support would be required for a very long time.

32. This paragraph 21A is available to decision-makers in order to provide a degree of flexibility and was inserted into the Immigration Rules in consequence of what had been said in **MM and others [2017] UKSC 10** concerning the rigidity of certain of the rules as to financial standing. It is evident from the terms in which the paragraph is expressed, there is a threshold requirement that the flexibility provisions contained therein will only be applied in exceptional circumstances as prescribed in GEN.3.1 of Appendix FM.
33. The Tribunal was aware of that exceptionality requirement. The Judge in the written reasons, applied it and concluded, as was open to it, that the prescribed exceptional circumstances were not present. It was clear from the decision why he reached that view and in all the circumstances of this case, the reasoning of the Judge was adequate. The Judge as required to, and indeed did apply the full rigour of the Immigration Rules with respect to the financial requirements.
34. The grounds of appeal further argue that the Judge did not take into account that the appellant will work when she comes to the United Kingdom. Paragraph 8 (b) states that “in respect of prospective earnings for suitable employment or self-employment of the applicant or their partner the appellant has to show, at the date of application, a specific offer of employment has been made, or a clear basis for self-employment exists. In either case, such employment or self-employment must be expected to commence within three months of the applicant’s arrival in the United Kingdom, if the applicant is applying for entry clearance”. There was no such evidence before the Judge.
35. It was also argued that the Judge did not consider or take into account any potential employment by her sponsor. I was referred to the case of **MM Lebanon** which confirms that third-party support could be taken into account as can potential employment. The grounds argue that the Judge was thus required to assess whether the sponsor is likely to start working if his wife came into the United Kingdom given that the Judge states at paragraph 7 of the decision that the sponsor had a history of working until 2018 when his first wife passed away. The sponsor is on state benefits which is why the appellant could not meet the financial requirements of the immigration rules. It would be a matter for the appellant to make an application demonstrating the sponsor’s earnings by providing cogent evidence of his employment to determine the reliability of this employment as set out in paragraph 8 (b) of Appendix FM-SE.
36. I find that given these requirements, there was no credible evidence before the Judge for him to conclude that the appellant’s or her sponsor’s work would meet the requirements set out in paragraph 8(b) in respect of the financial requirements.
37. I also find that the Judge’ assessment of Article 8 was adequately reasoned. He found that the decision of the appellant and her sponsor to marry when they must or should have been aware of not only their financial situation but also it is likely to impact whether they could live together in the United Kingdom. The Judge said that the sponsor willingly entered into such an arrangement with his eyes open as to the potential consequences. He said that the respondent’s decision does not amount to harsh consequences, her sponsor or his children. He stated that Article

8 does not provide an individual with the choice to exercise their private life in the country of their choosing and, whilst it is accepted degree of hardship will be encountered, this does not amount to unjustifiably harsh consequences. The Judge took into account section 117A and B of the Nationality Immigration and Asylum Act 2002 and found that the refusal of the appellant's application was not disproportionate and does not amount to a breach or infringement of her or her sponsor's or his children's human rights under Article 8.

38. I find that there is no material error in the decision of the First-tier Tribunal Judge. The Judge gave cogent reasons for finding that the appellant could not meet the financial requirements of the immigration rules because her sponsor is living on benefits. There is no perversity in his reasoning and his conclusion and I uphold the decision. I find that no differently constituted Tribunal would not come to different conclusion on the facts of this case.

Decision

Appeal dismissed

Signed by

Deputy Judge of the Upper Tribunal
Mrs S Chana

Dated this 2nd day of June 2023