



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case Nos: UI-2023-001596
UI-2023-001597

FtT Nos: HU/54477/2022
HU/54476/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 23 July 2023

Before

UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MAHMUD KASSAM RAMZAN (FIRST APPELLANT)
NAZMABAI MAHMUD KASSAM RAMZAN (SECOND APPELLANT)
(NO ANONYMITY ORDER MADE)

Respondent

Representation:

For the Appellant: Mr N Wain, Senior Presenting Officer

For the Respondent: Mr R Solomon, Counsel, instructed by Aschfords Law

Heard at Field House on 29 June 2023

DECISION AND REASONS

Introduction

1. For the sake of continuity I shall refer to the parties as they were before the First-tier Tribunal: the Secretary of State is once more “the Respondent” and Mr and Mrs Ramzan are “the Appellants”.
2. The Respondent appeals against the decision of First-tier Tribunal Judge Leonard-Johnston (“the Judge”), promulgated on 28 March 2023 following a hearing on 23 March 2023. By that decision the Judge allowed the Appellants’ appeal against the Respondent’s refusal of their human rights claims.
3. The Appellants are Kenyan citizens born in 1955 and 1965 respectively. They are husband and wife. Their four adult children all reside in the United Kingdom, three of whom are British citizens. The Appellants came to the United Kingdom in September 2020 in possession of multi-entry visit visas valid until 2027 and 2028 respectively. Once in this country their circumstances were such that they decided to apply for leave to remain as Adult Dependent Relatives. Ordinarily, in light of the relevant Immigration Rules (contained within Appendix FM) they would have needed to return to Kenya and make an entry clearance application from that country: paragraph E-ILRDR.1.2. However, the point in time at which the Appellants wished to make an in-country application coincided with the national lockdown as a result of the Covid-19 pandemic. In light of guidance published by the Respondent at the time, the Appellants believed that they were able to make the necessary application from within the United Kingdom. They did so in February 2021. Those applications were treated as human rights claims and were refused on 7 July and 7 June 2022 respectively.

The Judge’s decision

4. The Judge set out the procedural history and the evidence before her. She found as a fact that family life existed as between the Appellants and their children in the United Kingdom: [29]. She made relevant findings of fact to the effect that the substantive requirements of the Adult Dependent Relative Immigration Rules were met: [20]-[26] and [32]. The Judge acknowledged that the Appellants were unable to meet the immigration status provision with reference to E-ILRDR.1.2: [32]. The Judge noted the Respondent's guidance, entitled "*Coronavirus (Covid-19): advice for UK visa applicants and temporary UK residents*" which had, at the time of the Appellants' applications in February 2021, stated that if an individual was seeking leave to remain on the basis of family or private life and their leave expired after 31 October 2020, they could make their application from within the United Kingdom where they would usually have to apply for a visa from abroad if that course of action had been unavailable due to the pandemic: page 12 of 18. The Judge noted that the Respondent failed to take this factor into account when refusing the human rights claims. She regarded it as deserving of weight and that it reduced the public interest in maintaining immigration control: [33]. This factor was considered in addition to the satisfaction of the substantive requirements of the Adult Dependent Relative provisions. The Judge had regard to section 117B of the Nationality, Immigration and Asylum Act 2002 as amended: [35]. She took account of the precarious immigration status of the Appellants, concluded that the family life was in effect a reformulation of a previous existing family unit, and that the United Kingdom based family members could not be expected to go and live in Kenya: [35].
5. In light of all the circumstances the appeals were accordingly allowed on Article 8 grounds.

The grounds of appeal

6. The grounds are all set out under the heading "Making a mistake as to a material fact". It was asserted that the Judge had erred by "mistakenly

concluding” that the relevant guidance allowed individuals to switch from leave as a visitor to other categories. Reference to the guidance was in the present tense (“the guidance makes no reference to ...”) and asserted that the document made no concession to that effect. It followed, stated the grounds, that the Judge had laboured under a misapprehension as to the effect of the guidance.

7. As an additional point, the grounds asserted that the Judge had failed to “correctly consider” the precarious nature of the Appellants’ status in this country as it related to family life, citing the reported decision in Rajendran (s117B - family life) [2016] UKUT 00138 (IAC).
8. Permission was granted. Following that, Mr Solomon provided a rule 24 response.

The hearing

9. At the outset of the hearing Mr Wain applied to amend the Respondent’s grounds of appeal. He sought to challenge the Judge’s decision on the basis that she had failed to consider the fact that the Appellants had extant leave as visitors when conducting the proportionality exercise. Mr Solomon objected to the application.
10. I refused the application to amend the grounds for the following reasons. Firstly, it was way too late in the day. There had been no written application in advance of the hearing, or even an indication that an application might be made at the hearing itself. Secondly, procedural rigor is an important aspect of proceedings in the Upper Tribunal. It goes to the proper administration of justice and also fairness to the other party in an appeal. Thirdly, further, or in any event, this was not a proposed new ground of appeal with arguable merit.
11. Mr Wain then made submissions on the grounds of appeal as drafted. He submitted that the guidance was silent on the issue of switching. The Judge should have considered the guidance as it stood at

the date of the hearing and not the Appellants' application in February 2021. The Appellants had not made entry clearance applications from within the United Kingdom then but had applied for leave to remain instead. As to the precarious family life point, Mr Wain submitted the Judge had failed to have proper regard to that factor.

12. Mr Solomon relied on his rule 24 response and submitted that the Judge had been entitled to take into account as a relevant factor the Respondent's guidance as it stood at the date of application. That guidance had permitted individuals such as the Appellants to make an application from within the United Kingdom that they would otherwise have had to make from abroad: an application as adult dependent relatives would have fallen within that category. In addition, the Judge gave ample reasons for allowing the appeals notwithstanding the guidance issue. Mr Solomon submitted that the issue of the guidance had not been raised by the Respondent at any time prior to the grounds of appeal. He emphasised that there had been no challenge to the Judge's findings of fact as regards the substantive requirements of the Adult Dependent Relative provisions.

13. Both representatives were agreed that there had been refusals of human rights claims and the Judge had had jurisdiction to consider and determine the ground of appeal under section 84(2) of the 2002 Act.

14. At the end of the hearing I reserved my decision.

Conclusions

15. I remind myself of the need to show appropriate restraint before interfering with a decision of the First-tier Tribunal, having regard to numerous pronouncements to that effect from the Court of Appeal over recent years.

16. In the present case I am satisfied the Judge did not commit any material errors of law. My reasons for this conclusion are as follows.

17. The Judge correctly took account of the fact that the Appellants could not meet the immigration status requirement of the relevant Immigration Rules: [32]. The question then was whether she had been entitled to take account of the terms of the Respondent's guidance. Contrary to the way in which the grounds of appeal were drafted, it is clear from the Judge's decision that she was looking back to the guidance as it stood in February 2021 and not as at the date of the hearing before her. In this regard I find that she made no mistake of fact. The guidance had been changed on numerous occasions over the course of time, but as at February 2021 I am satisfied that the guidance did cover the position of the Appellants. There was a degree of discussion at the hearing, but ultimately it was page 12 of 18 which was relevant (see paragraph 4, above).
18. The Appellants both had leave as visitors which was due to expire after 31 October 2020. They wished to make applications as Adult Dependent Relatives and these would in the normal course of events have had to be made from overseas. Although those applications did not arise out of family emergencies, it was not possible at that time for them to have been made abroad and that was due to the Coronavirus pandemic. In light of this, I am satisfied the Judge was entitled to conclude that there was, in effect, a switching concession (if it can be described as such), as at February 2021.
19. Mr Wain suggested that the guidance would not have applied to the Appellants in any event because they had made applications for leave to remain rather than for entry clearance. However, I cannot see how that fact would have rendered the guidance inapplicable. I am not satisfied that at that time an individual in the Appellants' situation would have had to make an entry clearance application (using relevant forms) from within the United Kingdom, as opposed to simply making a leave to remain application, as they duly did. The Respondent had been unable to provide me with anything to indicate that there was an (artificial)

requirement to have formally made an entry clearance application despite being in this country.

20. It is of note, in my judgment, that the Judge did not rely on the guidance as a sole basis for allowing the appeal: she took a variety of other factors into account, as discussed earlier. None of the findings of fact have been challenged by the Respondent. The Judge did not assume that the Respondent's guidance was the same at the date of hearing as it had been in February 2021. The Judge did not conclude that the public interest had been extinguished, but rather it was reduced in light of the guidance applicable in 2021 and the Appellants' circumstances as a whole. In summary, the Judge was entitled to consider the Respondent's guidance as a relevant factor in her overall proportionality exercise.
21. As to the precarious family life issue raised in the grounds, the Judge made specific reference to this in the second sentence of [35]. She took it into account as part of the proportionality exercise.
22. In all the circumstances, the Respondent's grounds of appeal have not been made out and her appeal to the Upper Tribunal must be dismissed.

Anonymity

23. There is no basis on which to make an anonymity direction in this case.

Notice of Decision

The decision of the First-tier Tribunal did not involve the making of an error of law. That decision stands.

The appeal to the Upper Tribunal is accordingly dismissed.

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UI-2023-001597
First-tier Tribunal Numbers: HU/54477/2022
HU/54476/2022

H Norton-Taylor

**Judge of the Upper Tribunal
Immigration and Asylum Chamber**

Dated: 13 July 2023