



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-003375
First-tier Tribunal No:
HU/55672/2022 (IA/08184/2022)

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 06 November 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellants

and

MR SADAQAT MEHMOOD
(NO ANONYMITY ORDER MADE)

Respondent

Representation:

For the Appellant: Mr Tan, Senior Home Office Presenting Officer
For the Respondent: Mr Sinker, Counsel

Heard at Manchester Civil Justice Centre on 19 October 2023

DECISION AND REASONS

1. Whilst it is the Respondent who is seeking leave to appeal today, I have hereinafter referred to the parties as they were identified in the First-tier Tribunal. Mr Mehmood will be referred to as the Appellant and the Secretary of State for Home Department will be referred to as the Respondent.
2. The Appellant is a national of Pakistan, born on 12 July 1998, who on 15 February 2022 applied for leave to enter on family life grounds to join the Sponsor, Saana Hamid.
3. The Respondent refused his application in a decision sent out on 1 August 2022 because:

- a. She was not satisfied the Appellant satisfied the financial eligibility requirements contained in paragraphs EECF 3.1 to 3.4 of Appendix FM to the Immigration Rules.
 - b. She concluded that Paragraph EX.1 of Appendix FM to the Immigration Rules was not met.
 - c. There were no exceptional or compelling circumstances to merit a grant of discretionary leave outside of the Immigration Rules under article 8 ECHR.
4. The Appellant appealed to the First-tier Tribunal on 26 August 2022 and his appeal was listed before Judge of the First-tier Tribunal Chowdhury (hereinafter referred to as the FTTJ) on 4 April 2023 and in a decision promulgated on 11 May 2023 the FTTJ allowed the appeal finding:
- a. The decision disproportionately interfered with the Sponsor's and Appellant's article 8 rights (paragraphs [20] and [22]).
 - b. "The Appellant would not be a burden on the taxpayer as he would be maintained and accommodated by his wife and her grandmother without recourse to public funds ... I find the Appellant will be provided with third party support on the balance of probabilities" (paragraph [23]).
 - c. "I find this is a compelling case, for which the consequences of refusing leave are unjustifiably harsh, not only for the Appellant, but more particularly for his wife who is suffering from a debilitating condition. She is in effect prevented solely by reason of her medical condition from living with her husband in her home country where she has the means to both support and accommodate him without recourse to public funds" (paragraph [24]).
 - d. "I have conducted the balancing exercise and have resolved it in the Appellant's favour based upon the very specific circumstances of their case and the very compassionate circumstances. This is a finely balanced case with compassionate factors in favour of the appellant. It is on that basis, and having given careful consideration to the negative factors, that I find the balance ultimately to favour the appellant" (paragraph [25]).
 - e. "Taking into account the totality of the evidence before me I find that on the balance of probabilities, the Appellant has demonstrated that the decision to refuse leave is disproportionate in all the circumstances" (paragraph [26]).

5. Permission to appeal was granted by First-tier Tribunal Judge Buchanan on 15 August 2023 who found:

“.... it is arguable as contended by the respondent that there are inadequate reasons for concluding that the appellant “23 ... would be maintained and accommodated by his wife and her grandmother without recourse to public funds”. There is no reference to the evidence which might support that conclusion. Standing that at paragraph [14] the conclusion is drawn that the appellant does not meet the income threshold requirements as at date of hearing; and that at paragraph [22] a salary of £16,200 is the only income mentioned; the grounds are arguable.”

6. Mr Tan relied on the grounds of appeal and submitted there was an error in law because the FTTJ’s finding that the Appellant and Sponsor would not be a burden on the public purse was not founded on any evidence in the bundle save the Sponsor’s witness statement. The FTTJ erred by making such a finding without having any evidence of the grandmother’s financial situation. Furthermore, if reliance was placed on third-party support then the FTTJ should have had regard to the Immigration Rules and Appendix FM-SE of the Immigration Rules on third-party support.
7. Mr Sinker opposed the application and submitted the decision was well-balanced and the FTTJ concluded, as she was entitled to, that it would be disproportionate to refuse the Appellant entry clearance.
8. No anonymity order is made.

DISCUSSION AND FINDINGS

9. Having heard submissions from the two representatives I indicated there was no error in law and that I would give my reasoning in this decision.
10. The FTTJ concluded at paragraph [17] of her decision that the Appellant and Sponsor would be accommodated at the grandmother’s house which would mean smaller utility bills and she reached this conclusion based on the Sponsor’s statement. This finding was not challenged by the Respondent.
11. Permission was given on the basis that financially the Appellant and Sponsor had not demonstrated the Sponsor could be supported without recourse to public funds.
12. It was accepted by all parties at the original hearing the Sponsor was earning £16,200 per annum which was £1,600 short of the amount necessary to meet the financial requirements of the Immigration Rules.
13. The FTTJ was fully aware, as stated in paragraph [17] of her decision, that the Appellant was unable for the foreseeable future to meet the minimum

income requirements which was why she considered this appeal outside the Rules.

14. The FTTJ had regard to paragraph [11] of the Sponsor's statement in which the Sponsor stated, "my grandma pays for most things in the house which is a real help for me". The FTTJ accepted this evidence and clearly had regard to this when deciding whether the Appellant could be maintained even though the minimum income requirement was not met. Whilst she did not have any evidence of the grandmother's income she did have evidence that the Sponsor earned £16,200 and that the Appellant and Sponsor would be living in the Sponsor's grandmother's home which would mean lower expenses.
15. There was no challenge to the FTTJ's findings in paragraphs [22] to [26] of her decision about what the FTTJ took into account and I am satisfied the FTTJ took the financial information into account as well as the Sponsor's medical situation and family conditions and concluded there were exceptional or compelling circumstances to find refusing entry clearance was disproportionate.
16. I am satisfied the decision reached was one open to the FTTJ as it was adequately reasoned both factually and legally.

Notice of Decision

There is no error in law I uphold the decision.

Deputy Judge of the Upper Tribunal Alis
Immigration and Asylum Chamber

6 November 2023