



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2023-004312

First-tier Tribunal No:
HU/57950/2022
(LH/02992/2023)

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 28th of November 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

MRS NOORIA AZIZI
(ANONYMITY ORDER NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss Heidar, Counsel

For the Respondent: Mr Wain, Senior Home Office Presenting Officer

Heard at Field House on 8 November 2023

DECISION AND REASONS

1. The Appellant is a national of Afghanistan, date of birth 15 October 1998, who on 1 April 2022 applied for leave to enter as the wife of the Sponsor, Mehraba Nishat. The Respondent refused this application on 21 October 2022.
2. The Appellant appealed this decision and his appeal came before Judge of the First-tier Tribunal Row (hereinafter referred to as the FTTJ) on 8 August 2023 who dismissed the Appellant's appeal.

3. Permission to appeal was granted to the Appellant by First-tier Tribunal Judge Cox on 4 October 2023 who found it was arguable there was an error in law because:

“ it is arguable that the judge failed to take into account the Respondent’s review, lodged on 26 April 2023. In the review, the Respondent “consented” that the Appellant now meets the requirements of Paragraph 3.1 to 4.2 of Appendix FM (i.e. the language and financial eligibility requirements).

It is also noted that the review maintained that the Appellant had not provided an applicable TB certificate and did not accept that the Appellant had been living in Iran since 2021. However, the judge makes no finding on this issue, which is potentially material, when assessing whether the Appellant was required to provide a TB certificate.

It is arguable that the judge erred in law, in that the judge failed to take into account relevant considerations when assessing proportionality.”

4. Miss Heidar adopted the grounds of appeal and submitted there had been a material error in law in that the FTTJ wrongly considered the position at the date of application whereas this was a human rights appeal which meant the relevant date for a grant outside the Rules would be the date of hearing. The Respondent and FTTJ both accepted all the financial evidence, English language and TB certificates had been submitted by that date and consequently the FTTJ wrongly concluded it would be disproportionate to refuse the Appellant entry clearance.
5. Mr Wain submitted the Appellant had not submitted the financial evidence, English language and TB certificates at the correct time. Whilst they had now been submitted this did not mean the Rules were met. The FTTJ had to consider the appeal outside the Immigration Rules and concluded the FTTJ’s finding was open to the FTTJ and consequently there was no error in law.
6. No anonymity direction was made.

DISCUSSION AND FINDINGS

7. Having heard detailed submission, I reserved my decision. For the reasons hereinafter given I am satisfied there is no error of law identified in the FTTJ’s decision.
8. Both representatives acknowledged that if evidence had been submitted at the correct time then to refuse entry clearance would be disproportionate. However, this appeal centred around documents that were not before the entry clearance officer and were only provided at a later date.

9. I was provided access to the First-tier Bundles as well as the more recent paperwork which included the First-tier Tribunal's decision, the grounds of appeal and subsequent permission.
10. The Appellant was not represented in the lower court albeit the Respondent was. Contained in the Respondent's bundle were the application form, the Appellant's tick-sheet showing what documents were included, the Appellant's passport with various untranslated stamps, letter from the Sponsor's employer dated 4 May 2022, the Sponsor's Nationwide bank statements and the Sponsor's payslips.
11. The Respondent refused the application because the Appellant failed to provide a TB certificate and her passport did not clearly show the dates she had been residing in Iran. The importance of the dates was if she had been residing in Iran then the TB certificate would not have been required. The decision letter acknowledged payslips, bank statements and employment letter had been provided but pointed out that as the application was made on 18 April 2022 the Appellant's husband had to provide evidence of his income for at least 6 months prior to that date and that the evidence satisfied the requirements of Appendix FM-SE of the Immigration Rules. The final reason for refusing the application was the lack of an English language certificate.
12. The Appellant appealed this decision arguing that the correct financial documents had been submitted and that the financial requirements had been met.
13. With regard to the TB test the Appellant claimed she had left Afghanistan and had been living in Iran since November 2021. The appeal grounds suggested that whilst she may not have met the six month residence requirement at the date of application she did now and consequently no TB certificate was required albeit one had now been submitted. Finally, with regard to the English language certificate the Appellant could not take the test in Afghanistan but had now taken and passed a test in Iran.
14. The Respondent reviewed the grounds of appeal and agreed the financial and English language requirements had now been met, but took issue with the TB certificate stating the one provided was not from an approved clinic and there was no further evidence to show she had been in Iran since November 2021. A further review was carried out by the Respondent's at the Tribunal's direction in which the Respondent confirmed the Appellant had not provided evidence to show she had been living in Iran since November 2021.
15. At the First-tier hearing the Sponsor produced a new TB certificate and stated he and the Appellant had married in Iran on 6 December 2021. He maintained his wife had fled to Iran on 22 November 2021. The only documentary evidence of this was the Appellant's passport which was

contained in the Respondent's bundle. The passport contained stamps (see pages 200, 203-205). These were not translated although the stamp on page 204 of the bundle had the date 2019 stamped on it. None of the other stamps were readable without a translation.

16. At paragraph [18] the FTTJ accepted the Appellant had now passed her English language test albeit this had not been passed at the date of application. The certificate relied on was dated 8 February 2023 and clearly post-dated the date of the application by almost ten months.
17. At paragraph [17] the FTTJ recorded that the Sponsor accepted that bank statements for November 2021 and March 2022 had been missing although they had now been provided.
18. With regard to the TB certificate the FTTJ recorded there was still no documentary evidence that the Appellant had been in Iran since November 2021 and consequently a TB certificate had been required.
19. Given these findings the FTTJ concluded at paragraph [22] that the Immigration Rules had not been met and at paragraph [23] the FTTJ stated the appeal would be considered under article 8 ECHR and the relevant date was now the date of hearing.
20. Permission to appeal had been sought as it was argued the FTTJ had erred because the decision appeared to be based on the fact the Rules had not been met at the date of application and that if the documents were all now in order then it was disproportionate to require her to lodge a fresh application. In granting permission to appeal it was found arguable the FTTJ had overlooked the Respondent's review dated 26 April 2023 and that the FTTJ had not made a finding on the TB certificate.
21. Dealing firstly with the TB certificate the FTTJ was not satisfied the Appellant had demonstrated she was in Iran from November 2021. Whilst the Sponsor claimed this was the case the FTTJ noted that despite the Respondent raising this as an issue no documentary evidence of her residence there at that time had been submitted. Looking at what was before the FTTJ I am satisfied the finding at paragraph [19] was one open to the FTTJ. The stamps in the passport did not demonstrate the date she was admitted to Iran and in the absence of this information the FTTJ was entitled to accept the submission advanced by the Respondent.
22. As regards the financial documents the FTTJ recorded in his decision that the Sponsor accepted bank statements for November 2021 and March 2022 had been missing. These documents should have been before the entry clearance officer and consequently Appendix FM-SE of the Immigration Rules had not been met. It was also accepted the English language certificate had not been obtained at the relevant date and the FTTJ accepted the Respondent had not been required to chase all these documents.

23. Whilst all these documents were now available this did not mean the Appellant met the Immigration Rule when the application was submitted. The consequence of this is that the principles of TZ (Pakistan) v Secretary of State for the Home Department [2018] EWCA Civ 1109 do not apply in this appeal.
24. Consequently, the FTTJ was correct to state the appeal could only succeed under article 8 ECHR and the relevant date was the date of hearing. The FTTJ proceeded to identify the relevant factors and noted the following:
- a. The Appellant lived in Iran and was two months pregnant at the date of hearing.
 - b. The Appellant and Sponsor have a family life.
 - c. The Appellant spoke English and was financially independent albeit these were neutral factors.
 - d. The application had not met the requirements of the Immigration Rules and the maintenance of immigration control was in the public interest.
 - e. Any interference was minimal as the Appellant simply had to lodge a fresh application with the correct documents.
25. The FTTJ found it was reasonable for the Respondent to require the correct information to be provided at the correct time and in the correct form to enable a reasoned decision to be made and that the maintenance of immigration control outweighed any interference with their family life.
26. The grounds effectively challenge this finding. Article 8 ECHR is discretionary whereas if someone met the Rules at the correct time the application would have to be granted and the maintenance of immigration control would not be a factor to be considered. Once someone does not meet the Rules it becomes a significant factor to be considered following Section 117B of the 2002 Act.
27. Whilst another Judge may have reached a different conclusion that does not mean this decision was wrong. The FTTJ considered all the facts and ultimately sided with the Respondent and upheld the decision to refused the application.
28. I therefore find there is no material error in law and the FTTJ's findings were open to him.

Notice of Decision

The decision of the First-tier Tribunal did not involve the making of an error on points of law. I uphold the decision.

Deputy Judge of the Upper Tribunal Alis
Immigration and Asylum Chamber
20 November 2023