



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-006570

First-Tier Tribunal Nos: HU/55029/2022
LH/00615/2022

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 7th May 2024**

Before

UPPER TRIBUNAL JUDGE OWENS

Between

**Alton Studdart
(NO ANONYMITY ORDER MADE)**

Appellant

and

Entry Clearance Officer

Respondent

Representation:

For the Appellant: Mr Hodgetts, Counsel, instructed by Direct Access
For the Respondent: Mr Banham, Senior Presenting Officer

Heard at Field House on 24 April 2024

DECISION AND REASONS

1. The Secretary of State appeals with permission against the decision of First-tier Tribunal Judge Raymond dated 4 October 2022, allowing Mr Studdart's appeal against the decision made by the Entry Clearance Officer on 1 August 2022, refusing him entry clearance to join the sponsor Ms Foster, his spouse in the United Kingdom.

Background

2. Mr Studdart is a citizen of Jamaica born on 5 March 1974. On 15 January 2022 he applied to join his spouse a British citizen in the UK on the basis that he could meet all of the requirements of EC-P.1.1 of Appendix FM of the immigration rules. The Secretary of State refused the application on the basis that it was not accepted that the relationship between Mr Studdart and his wife was genuine and subsisting, the sponsor's earnings did not meet the Minimum Income Requirement, there was insufficient accommodation and the sponsor had not

demonstrated that she was a British citizen. It was not accepted that it would be a disproportionate breach of Article 8 ECHR to refuse the application.

The Decision of the Judge

3. The judge considered the appeal on the papers. In a very brief decision, the judge found that although Mr Studdart did not meet the financial requirements of the immigration rules, his appeal fell to be considered under EX1 and it would be a disproportionate breach of Article 8 ECHR to deny him entry. The judge allowed the appeal pursuant to Article 8 ECHR.

Grounds of Appeal

4. The judge failed to make findings of fact on whether the sponsor was a British citizen and whether the accommodation requirements were met. The judge gave inadequate reasons for finding that Mr Studdart was in a genuine relationship with the sponsor. The judge misdirected himself in law by applying EX1 and in any event gave inadequate reasons for finding that there was a disproportionate interference in family life.

Permission to appeal

5. Permission was granted on the basis that it is arguable that the judge misdirected himself in law and gave inadequate reasons for finding that the interference in family life was disproportionate when Mr Studdart could not meet the requirements of the immigration rules.

Rule 24 Response

6. Mr Hodgetts helpfully produced a long skeleton argument addressing the grounds and other issues in the appeal, in particular the Minimum Income Requirement and accommodation requirements of the immigration rules. Mr Hodgetts conceded that the judge had made a material error in respect of accommodation by failing to make a finding on whether adequate accommodation was available, and he conceded that the specified evidence in respect of accommodation had not been submitted with the application.
7. Mr Banham for the Secretary of State was prepared to make some concessions in respect of the Minimum Income Requirement, accommodation and British citizenship requirements which are set out below.

The hearing

8. Arrangements had been made for Mr Studdart to attend by video link from Jamaica so that he could hear the arguments being put forward on his behalf. However, he was not able to get an internet connection. Mr Hodgetts indicated that his instructions were to proceed in the absence of Mr Studdart if he was unable to join the hearing. I was satisfied that Mr Studdart was content for the hearing to proceed in his absence and that it was in the interests to do so because the matters could be dealt with in his absence and because of the already long delays in determining this appeal. The sponsor Ms Foster joined the hearing by video link and confirmed that she was able to see and hear everyone in the room. We were also able to see and hear her and there were no problems with communication or connectivity.

Documentary evidence

9. There was ample documentary evidence before me which included the original bundle of documents before the judge, and a supplementary bundle of documents which was uploaded onto the First-tier Tribunal system prior to the appeal, although not before the judge, as well as a statement from the sponsor and further documentation in respect of accommodation. This evidence was accompanied by the requisite rule 15(2A) notice. Ms Foster explained that she and Mr Studdart were unrepresented and had not been aware that they had requested the appeal to be determined on the papers. She also explained that prior to the appeal being determined she had moved into new accommodation and would have provided the specified evidence, but she and Mr Studdart were litigants in person and struggled with the system. Her statement addressed in detail the progression of her relationship with Mr Studdart and the dates of the many visits to Jamaica. There was no objection to this evidence being admitted and I indicated that I would permit the evidence to be adduced in the interests of justice as it is relevant to the Article 8 ECHR assessment.

Concession - Minimum Income Requirement

10. Mr Banham conceded at the outset of the appeal that Mr Studdart met the Minimum Income Requirement at the date of his application. He conceded that the respondent had mistakenly calculated the sponsor's net income rather than her gross income and that the respondent had also failed to apply his own policy "Family life: adequate maintenance and accommodation version 5" in respect of furlough payments. In summary, this policy has the effect that where an individual received a lower payment because of the furlough scheme prior to 31 October 2021 (as Ms Foster did in September 2021) that this income should be treated as if she had received the full amount. The respondent's calculation was therefore incorrect. At the date of the original decision and hearing, the sponsor's income was £18,720 which exceeded the Minimum Income Requirement at the date of the application which was £18,600. Mr Banham also conceded that the sponsor had submitted the specified evidence in support of the appeal including a letter from her employer, the appropriate wage slips and bank statements. It was agreed that the judge had made an error of fact when he found that the Minimum Income Requirement was not met. Technically this error was not material because the appeal was allowed on proportionality grounds. The respondent now accepts that this requirement is met.

Concession -British citizenship

11. Mr Banham asked Ms Foster to produce her British passport. She showed her original British passport to the hearing room. There is a lack of clarity as to whether the British passport was uploaded with the original application. Ms Foster was adamant that it was provided, however the Entry Clearance Officer did not produce the document in his bundle and stated in the decision that it had not been submitted. In my view it would be rather surprising if Mr Studdart and Ms Foster had not uploaded this core document since the entire basis of the application was premised on his family life with a British citizen. The document also appeared in the supplementary bundle and so should have been before the judge at the hearing. Mr Banham having had sight of the original document practically and helpfully indicated that the respondent now accepted that Ms Foster is a British citizen and that the error by the judge in failing to make a

specific finding is not material to the outcome of the appeal. I am satisfied that there was no material error on the part of the judge in failing to find that Ms Foster is a British citizen and that it was appropriate for the Secretary of State to make this concession.

Ground - genuine and subsisting marriage

12. Mr Banham submitted that the judge's finding that the couple were in a genuine and subsisting relationship was inadequately reasoned. The judge made a very brief reference to this in the decision at [3] and in the context of his findings on EX1 which were flawed (see below). He submitted that this was unsatisfactory.
13. Mr Hodgetts submitted that this issue was dealt with in the refusal. The reason given by the Entry Clearance Officer for not accepting that the marriage was genuine and subsisting was the lack of sufficient evidence. The only evidence put forward in the application was the marriage certificate. By the date of the appeal Mr Studdard had uploaded a large number of WhatsApp messages between himself and Ms Foster. The judge manifestly had sight of the 250 Whatsapp messages at pages 78 to 297 of the appellant's bundle which are referred to at [4]. There was also evidence before the judge of money transfers from Ms Foster to her husband which are reproduced at pages 57 to 64 in the supplementary bundle. He submitted that the judge was entitled to come to a different view given the quantity of the messages which had been sent over a number of years and the other evidence of commitment. There were also photographs. At [1] the judge engaged with how and when the couple had met which was addressed in the grounds of appeal.
14. I am in agreement with Mr Hodgetts that Mr Studdart explained the history of the development of the relationship in the grounds of appeal and the judge had regard to this at [1]. The grounds explained that the couple met when Ms Foster was on holiday in Jamaica in 2015/2016 because they had been long time family friends and the friendship developed into a relationship maintained by visits and electronic communication which had lasted for 6 years by the date of the judge's decision. The couple were married on 17 December 2021 in Jamaica. The marriage certificate was before the judge. I am satisfied that a judge does not need to set out all of the evidence in an appeal. He had sight of the "sea of evidence" before him. It is manifest from the decision that the judge accepted that the WhatsApp messages and photographs were sufficient evidence of the relationship and addressed directly the reasons given by the Entry Clearance Officer for refusing the initial application which was the lack of supporting evidence in the initial application. The judge's reasoning at [3] and [4] was tolerably clear, and it can be logically inferred from the albeit brief decision that when the judge erroneously found that the couple met the requirements of EX1, he accepted that the couple were in a genuine and subsisting relationship. This finding was manifestly sustainable and grounded in the evidence. I am not satisfied that there was a legal error in the judge's approach and this ground is not made out.

Ground - EX1 misdirection in law

15. It was accepted by both parties that the judge erroneously referred to EX1 at [3] which does not apply to applications for entry clearance under EC-P.1.1 of Appendix FM. The correct provision is GEN 3.2. I accept that the judge misdirected himself in this respect and also gave inadequate reasons for finding that the balance of proportionality fell in favour of Mr Studdart. This error was

material to the outcome of the appeal because it was the erroneous basis on which the appeal was allowed. I set aside the judge's finding that the decision to refuse entry clearance was disproportionate.

Ground - Accommodation

16. Mr Hodgetts conceded that the judge had failed to make a finding in respect of adequacy of accommodation which was raised in the refusal and that this ground is made out. This is also material to the outcome of the appeal as it was relevant to the proportionality assessment.

Decision on error of law

17. I set aside the decision allowing the appeal pursuant to Article 8 ECHR on the basis that the judge failed to make a finding in respect of inadequacy of accommodation and made a material misdirection in law in referring to EX1 and that his proportionality assessment was inadequately reasoned.
18. I preserve the following finding:
- a) The couple were married and in a genuine and subsisting relationship. The relationship condition was satisfied as at the date of the judge's decision.

Disposal

19. Both parties were in agreement that it was appropriate to re-make the appeal immediately without a further hearing.

Re-making decision

20. The respondent has made a concession that Ms Foster is a British citizen, and that the eligibility condition is satisfied in this respect. The respondent has also conceded that the sponsor was able to meet the Minimum Income Requirement at the date of the application because she had provided specified evidence that she was earning a gross income of over £18,600. In accordance with Begum (employment income; Rules/Article 8) [2021] UKUT 00115 (IAC) this means that the financial requirement is met as at the date of the human rights assessment which is the date of the hearing because Mr Studdart was required to meet this provision as at the date of the application.
21. I additionally find that since the original application and decision Ms Foster has had several pay rises and still meets the former Minimum Income Requirement of £18,500. Although by the date of the re-making hearing, the Minimum Income Requirement have increased, I am satisfied that Mr Studdart is protected by the transitional provisions at HC 590. His application for entry clearance was made prior to 11 April 2024 and the lower Minimum Income Requirement continues to apply to him. The concession made by the Secretary of State is appropriate.
22. Mr Banham also conceded that Mr Studdart has demonstrated that he now meets the accommodation requirements of the immigration rules. This matter can be determined at the date of the re-making hearing. I find from the evidence

before me that Ms Foster is now living in a one-bedroom flat which she rents and that her landlord has permitted her husband to join her there. She has provided her tenancy agreement, a property report and documents to demonstrate that she lives at the property. I find that the evidential requirements in respect of accommodation are also met.

23. For the sake of clarity, I also add that from the evidence before me as at the date of the re-making hearing there is no doubt that the couple continue to be in a genuine and subsisting relationship because the sponsor has provided evidence of her numerous visits to Jamaica and further evidence of Whatsapp communication between the couple from May 2021 onwards as well as evidence of money remittances. Ms Foster's presence at the hearing also demonstrated her ongoing commitment to her husband.
24. On that basis I find that Mr Studdart can meet all of the requirements of the immigration rules at EC-P.1.1 of Appendix FM which, absent any other negative factors, (none of which have been raised in this appeal) is dispositive of the proportionality balance in accordance with TZ (Pakistan) [2018] EWCA Civ 1109.
25. I find that there is family life between Mr Studdard and Ms Foster and that there is no public interest in denying Mr Studdart entry to the UK because he can meet the requirements of the immigration rules. It would therefore be a disproportionate breach of Article 8 ECHR to deny him entry.

Notice of decision

26. The appeal is allowed pursuant to Article 8 ECHR.

R J Owens

Judge of the Upper Tribunal
Immigration and Asylum Chamber

1 May 2024