



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-001527

First-tier Tribunal No:
EA/01949/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 26th of January 2024

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

OGECHI UGOCHI ANUEBUNWA

(no anonymity order requested or made)

Appellant

and

Entry Clearance Officer

Respondent

For the Appellant: Mr H Ndubuisi, of Drummond Miller, Solicitors
For the Respondent: Mrs R Arif, Senior Home Office Presenting Officer

Heard at Edinburgh on 24 January 2024

DECISION AND REASONS

1. The appellant is a citizen of Nigeria. The ECO refused her application for an EUSS family permit because she did not depend on her child, who is an Irish citizen. In her appeal to the FtT, however, she sought to make it her case that her child depended on her.
2. FtT Judge Austin dismissed the appellant's appeal by a decision dated 30 December 2022, declining to find this to be an exceptional case for consideration on a different basis.
3. On 9 June 2023 UT Judge Kamara granted permission, on the view that the Judge arguably erred in declining to consider the amended ground of appeal.

4. Judge Austin justified his decision by reference to SZ (Applicable Immigration Rules) Bangladesh [2007] UKAIT 37. The rule 24 response to the grounds and Mrs Arif's submissions supported that line.
5. Parties agree that the principles identified in SZ set out the correct approach.
6. Having heard submissions, I indicated my view that the application of those principles to the facts and procedural history showed that the Judge *should* have decided the case on the alternative of the child depending on the parent.
7. The application form to the ECO (p B1, respondent's FtT bundle) is framed on the dependency of the mother. The covering letter (p E1, 356/401 UT bundle) from the appellant's representatives (then acting) relies on such dependency being assumed in terms of the rules, and on no evidence being required. That was wrong. The letter, however, relies also on evidence provided to establish dependency. So it was; but that dependency ran the other way - e.g., pp 54-58, J1-5, 376 - 380/401, payment of school fees.
8. The refusal decision (D1, 353/401) is based only on absence of evidence of dependency of the mother.
9. Mr Ndubuisi said that the rules covered dependency of the mother on the child only if the child was over 18, and so the application, as primarily framed, was doomed to fail in that respect also. However, he contended that although the application was poorly advanced, there was enough, in the supporting evidence and the covering letter, to show that it fell to be decided on dependency of the child on the mother.
10. The notice of appeal (also provided by previous representatives) is entirely unhelpful. It says (at p.27, C9, 349/401) merely, "ground of appeal to be provided at a later date".
11. The proposition of dependency of the child appears to have been stated in the appellant's first skeleton argument to the FtT. It was certainly made clear when the case was first listed for substantive hearing before Judge Galloway on 20 September 2022, as recorded in a "Case Management Review and Directions" dated and issued the next day. The Judge at [3] "did not consider it in the interest of justice for the matter to be simply determined on the basis put forward in the original application". The respondent was required at direction [2] "to lodge and serve a fully reasoned review in response to ... the current skeleton argument and / or any updated skeleton argument".
12. The respondent in the review and at the hearing before Judge Austin argued (i) that dependency of the child should not be considered and (ii) that if it was, the evidence did not support the outcome sought.

13. SZ at [8] notes that the starting point is for an applicant to set out the facts, and for a decision-maker to identify and apply the correct rule, although, at [9 - 10], that is not an “all-embracing obligation to seek out and find any (or every) potentially applicable rule”, or to conduct “a roving expedition”. At [15], it is noted that the tribunal is concerned with an appeal against a particular decision and the grounds set out. At [16], exceptions are noted in terms of situations where the tribunal should consider “more than the self-evidently applicable route”.
14. In SZ, the appellant’s primary position was based on her being the adopted child of the sponsor, but it should also have been detected that her case raised the issue of being the niece of and dependent on the sponsor – even although that was not dealt with by the ECO, *or even raised for the appellant before the FtT*.
15. The issue is one of fairness, turning on its own facts; but this case was stronger for the appellant, not weaker, than SZ.
16. The application, although badly framed, contained enough for it to be resolved not only on the dependency of the mother (a plain misconception of the rules) but on the dependency of the child (the gist of the evidence submitted).
17. The grounds of appeal to the FtT were useless; but the line proposed was, eventually, made clear by new representatives.
18. The directions of Judge Galloway (at least) encouraged the appellant to expect that the FtT would decide the case on the alternative basis.
19. If not from the outset, then certainly by the time of the hearing before Judge Austin, fairness required such a decision to be made. The issue was plain by then. It did not require the tribunal to embark on a roving expedition.
20. On that view, Mr Ndubuisi sought remittal to the FtT for further decision by another judge. Mrs Arif suggested that the UT might find that the evidence did not support a successful outcome; alternatively, she agreed that the case should be remitted.
21. It is unfortunate that the case was not further developed before the UT, and that procedure is further prolonged. However, as matters stand, a full consideration of the merits is required, for the first time, which is more apt to take place in the FtT.
22. The decision of the FtT is set aside. The case is remitted to the FtT for another Judge to determine whether the appellant’s case under the EUSS, based on her child’s dependency on her, is established.

Hugh Macleman
Judge of the Upper Tribunal

Immigration and Asylum Chamber
24 January 2024