



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-002815
First-tier Tribunal No:
HU/60658/2022
LH/01053/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 08 July 2024

Before

UPPER TRIBUNAL JUDGE OWENS

Between

ENTRY CLEARANCE OFFICER

and

MAIMANU JARJU
(NO ANONYMITY ORDER MADE)

Appellant

Respondent

Representation:

For the Appellant: Ms Rushforth, Senior Presenting Officer

For the Respondent: Mr Sharma, Counsel, instructed by Frances Stella Maris Solicitors LLP

Heard at Cardiff Civil Justice Centre on 13 June 2024

DECISION AND REASONS

Introduction

1. This is an appeal against the decision of First-tier Tribunal Judge Richards-Clarke promulgated on 27 June 2023 allowing Ms Jarju's human rights appeal against a decision of the Entry Clearance Officer dated 28 November 2022 to refuse her entry to the United Kingdom as the child of a person present and settled in the United Kingdom. Permission to appeal was granted by First-tier Tribunal Judge Chohan on 24 July 2023.
2. Ms Jarju is a national of Gambia born on 18 October 2004. She applied for entry clearance as the child of her father, Mr Jarju who is a British citizen pursuant to paragraph 297 of the Immigration Rules. The application was refused on 28 November 2022 on the basis that the Ms Jarju's father did not have sole responsibility for her pursuant to paragraphs 297(1)(e) of the Immigration Rules.

There was a further issue because she did not meet paragraph A39 of the Immigration Rules because she had not presented a valid TB certificate confirming that she was free from the disease.

Decision of the First-tier Tribunal

3. The judge heard evidence from the sponsor in respect of sole responsibility and made positive factual findings that paragraph 297(1)(e) of the Immigration Rules was met because Mr Jarju has sole responsibility for his daughter. The judge also found that Article 8 ECHR is engaged in respect of family life between the sponsor and his daughter. The judge then carried out a proportionality exercise balancing the public interest in maintaining immigration control against the interference in Ms Jarju and her father's family life. The judge took into account that although Ms Jarju did not meet paragraph A39 of the Immigration Rules because she does not have a current medical certificate from an approved medical centre, that she is free from active TB and has provided two medical certificates indicating that she is free of TB, the first of which was from an approved clinic. The judge found, given that she met the requirements of paragraph 297(i)(e), the decision to refuse the appellant's application would be unjustifiably harsh and disproportionate.

Grounds of Appeal

4. The grounds of appeal are as follows.

Ground 1 - Misdirection in law. The judge made a finding that the sponsor has failed to show that he can accommodate and maintain Ms Jarju without recourse to public funds. She therefore does not meet paragraph 297(iv) and (v) of the Immigration Rules.

Ground 2 - The judge's approach to paragraph A39 is flawed. The judge glosses over the importance of this. The fact that Ms Jarju has not provided the required TB certificate may jeopardise the UK population.

Rule 24 Response

5. I was provided with a detailed Rule 24 response. The focus of the response is that the maintenance and accommodation requirements were not in issue in this appeal. This finding was not open to the judge because the refusal letter does not raise maintenance and accommodation, the review does not take issue with maintenance and accommodation nor does the schedule of issues or the counter-schedule. At [8] of the determination the judge records the issues in dispute which do not include maintenance and accommodation. In summary the judge was not seized of the issue of maintenance and accommodation. Further, the judge misdirected herself that 297(v) is a sub-Section of 297(i)(f) whereas 297(i)(f) is a sub-Section of Section 297(i). The finding was also factually erroneous. Further, any error is immaterial because the judge would have allowed the appeal outside of the Immigration Rules in any event.

Grant of Permission

6. Permission was granted on the basis that the judge had found that the appellant did not meet the maintenance and accommodation requirements of the Immigration Rules, which calls into question whether it was proportionate to

allow the appeal under Article 8 ECHR. The judge granting permission did not limit the grant of permission but indicated that the judge was entitled to accept that Ms Jarju had previously obtained two TB certificates showing she was free of the disease and was entitled to take these into account in the Article 8 ECHR balancing exercise.

Submissions

7. At the outset of the appeal, I indicated that having read Mr Sharma's Rule 24 argument, I was in agreement with him. Ms Rushforth briefly submitted that there had been a previous determination in which this issue had been raised and that it was briefly touched on in the review in terms of accommodation, but she accepted that the issue of maintenance and accommodation was not explicitly raised in the refusal letter, nor addressed in the evidence and not in issue in the appeal.

Ground 1.

8. The grounds of appeal are poorly drafted. At [20] the judge appears to have considered the issue of maintenance and accommodation under her findings on paragraph 297(i)(f). This is odd because paragraph 297(i)(f) does not refer to "maintenance and accommodation" but to "suitable arrangements being made for the child's care in the UK". Paragraph 297(i)(f) was not raised in the refusal letter. The only issues raised were those of sole responsibility and the TB certificate.
9. It is clear from the refusal decision, the grounds of review and the way that the case was put before the Tribunal as well as the submissions made, that the issue of maintenance and accommodation was not in issue in this appeal. Ms Jarju only needed to demonstrate that she satisfied either paragraph 297(1)(e) or (f) of the Immigration Rules. The judge manifestly refers to maintenance and accommodation within the context of paragraph 297(i)(f). This was the wrong approach but was certainly not a finding that the appellant could not meet paragraph 297(iv) or (v) as asserted for the first time in the grounds of appeal. It therefore follows that the judge's reference to this was immaterial to the outcome of the appeal and in any event, there was no reasoning grounded in the evidence as to why this would be the case. It would have been procedurally unfair for the judge to have raised maintenance and accommodation when this had not been raised as an issue previously.
10. In my view the statement at [20] is not inconsistent with the judge's finding at [26] and [27] that the appellant met all of the Immigration Rules bar the requirement to have a TB certificate. This finding is rational and sustainable. The ground is not made out.

Ground 2

11. The primary findings by the judge in this appeal was that the sponsor has sole responsibility for his daughter and that they have family life together, and these are not challenged. This formed the starting point for the Article 8 ECHR balancing exercise.
12. I am satisfied that the judge's approach to Article 8 ECHR was lawful, rational and reasonable. The judge acknowledged that Ms Jarju did not meet the

Immigration Rules because she did not have the appropriate TB certificate at [26], however the judge was entitled to take into account that she had two previous medical certificates before her both indicating that the appellant is free from pulmonary tuberculosis, one was from an approved provider but had expired, the second was provided not by an approved provider because the previous test centre no longer offered tests. At [28] when balancing up the factors to take into account in the proportionality exercise including the need to protect the public from the serious infectious disease, the judge was clearly entitled to give weight to the fact that Ms Jarju was in fact free from pulmonary tuberculosis and had previously obtained a valid certificate. The judge was manifestly entitled to take into account that Ms Jarju met the other requirements of the Immigration Rules, particularly 297(i)(e) and that she would be joining her British citizen father who speaks English and is employed as a health and care worker. There is no material error in the approach of the judge to the Article 8 ECHR proportionality assessment. Ms Rushforth did not seek to argue that there was, and I am satisfied that the question of weight was for the judge.

13. On this basis, I indicated to both parties that I would uphold the decision of the Tribunal as there was no material error of law.

Notice of Decision

14. The appeal of the Secretary of State is dismissed. The decision of First-tier Tribunal Judge Richards-Clarke is upheld.

R J Owens

Judge of the Upper Tribunal
Immigration and Asylum Chamber

4 July 2023