



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2024-000086

First-tier Tribunal Nos: HU/57111/2022
IA/10131/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 25th of June 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

HIRAL PRAKASHKUMAR KHARVA
(NO ANONYMITY ORDER MADE)

Appellant

v

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Rehman, counsel instructed by London Imperial Immigration Services Ltd

For the Respondent: Ms Ahmed, Senior Home Office Presenting Officer

Heard at Field House on 31 May 2024

DECISION AND REASONS

1. This is the appeal of Ms. Hiral Prakashkumar Kharva, a national of India born on the 31 October 1991. She arrived in the United Kingdom with a Tier 4 (Student) Visa on the 21 September 2018. The Appellant subsequently became unwell with TB and submitted applications to remain on the basis of medical grounds, which were refused. She subsequently met and formed a relationship with her partner, Mr Vikramshin Rameschandre Baguandaes, a national of Portugal, whose family were originally from Goa in India. They met online initially in August 2021, then in person later in the year and by February 2023 the Appellant was living with her partner and his family. They had a religious marriage on the 23 April 2023 and a civil marriage on the 12 August 2023.

2. The Appellant raised the issue of her marriage as a new matter in relation to an appeal against the refusal of an application based on medical grounds. The matter came before the First-tier on the 20 November 2023 and in a decision and reasons on the 30 November 2023 the appeal was dismissed. An application for permission to appeal was made to the Upper Tribunal and in a decision and reasons dated the 13 March 2024 an error of law was found and the appeal was adjourned for remaking before the Upper Tribunal. A copy of that decision is appended.
3. Shortly prior to the resumed hearing on 31 May 2024, the Appellant's solicitors uploaded further evidence in support of the appeal, including an English language certificate issued by Trinity College, London, dated the 9 February 2024 showing that the Appellant meets A2 and obtained a distinction in spoken English. A witness statement from the Appellant also stated that her BEng degree course had been found by UK NARIC to meet the requirements of CEFRL, level C1.
4. Having had the opportunity to consider that evidence, Ms Ahmed accepted that the English language requirements of Appendix FM were now met. She also accepted that on the basis of the Sponsor's evidence, the financial requirements of Appendix FM were met, that evidence taking the form of payslips and bank statements.
5. The only issue arising was that in relation to Appendix FM-SE(2)(b) which is the provision of a letter from the employer who issued the Sponsor's payslips confirming: (i) the person's employment and gross annual salary; (ii) the length of employment; (iii) the type of employment, whether permanent, fixed term, or agency and (iv) the period of time over which the person has been or was paid the level of salary relied upon in the application.
6. Ms Ahmed submitted that (iv) was not met because the letter from the Sponsor's employer dated the 14 February 2024 at page 82 does not provide that information. However, Ms Ahmed accepted that there was a previous letter from the employer dated the 14th June 2023, which is at page 214 of the Appellant's bundle before the First-tier Tribunal, which also covered the same information and she did therefore accept that in reality, the Sponsor had been paid the level of salary of over £21,000 for more than six months. Ms Ahmed accepted that other than that admittedly small matter, the requirements of the Rules were met and consequently she had no questions for the witnesses or further submissions.
7. In his submissions, Mr Rehman sought to rely on the judgment in TZ (Pakistan) [2018] EWCA Civ 1109 which held that where the requirements of the Rules are satisfied, then that is dispositive and determinative of an Article 8 appeal. He submitted that the requirements of the Rules were indeed met and the appeal should be allowed on Article 8 grounds. In relation to the statutory public interest considerations, bearing in mind that family life had been established when the Appellant was lawfully in the UK and that that was not adversely impacted. I indicated to the parties I would allow the appeal on Article 8 grounds.

Decision and reasons

8. Ms Ahmed helpfully conceded that, in light of further evidence in the form of an English language certificate, the English language requirement of the Rules was met. Ms Ahmed further conceded in light of the updated evidence in the form of payslips and bank statements and when the Sponsor's employer's letters of 14

February 2024 and 14 June 2023 were considered together, the financial requirements of Appendix FM were met [E-LTRP.2.2 and paragraph 2(b) of Appendix FM-SE].

9. I was directed to the judgment of the Senior President in *TZ (Pakistan)* [2018] EWCA Civ 1109 at [34] that:

“where a person satisfies the Rules, whether or not by reference to an article 8 informed requirement, then this will be positively determinative of that person's article 8 appeal, provided their case engages article 8(1), for the very reason that it would then be disproportionate for that person to be removed.”

10. Given that the Home Office's representative now accepts that the Appellant is able to satisfy the relevant requirements of the Rules ie. E-LTRP 4.1 and E-LTRP.2.2 of Appendix FM and paragraph 2(b) of Appendix FM-SE, with regard to her application for leave to remain on the basis of her relationship with her partner, I allow the appeal on the basis that removal of the Appellant would be a disproportionate interference with Article 8 of ECHR.

Rebecca Chapman

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

12 June 2024