



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM**  
**CHAMBER**

**Case No: UI-2024-002268**  
**First-tier Tribunal No:**  
**HU/01698/2022**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On the 25 September 2024**

**Before**

**UPPER TRIBUNAL JUDGE BRUCE**  
**DEPUTY UPPER TRIBUNAL JUDGE SAFFER**

**Between**

**CAROLINA GABRIELA ABREU MOYANO**  
**(No anonymity order made)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: No representation

For the Respondent: Mr Diwnycz, a Senior Home Office Presenting Officer

**Heard at Phoenix House (Bradford) on 23 September 2024**

**DECISION AND REASONS**

1. The Appellant was born on 27 December 1987. She is a citizen of Argentina. She appealed against the decision of the Respondent dated 14 October 2023, refusing her application for leave to remain as the spouse of Christopher Wise, a British citizen. Her application had been made on 15 April 2022.
2. The Respondent refused the application as;
  - (1) She had entered the United Kingdom as a visitor on 23 December 2021 and accordingly does not meet the requirements of [E-LTRP.2.1] of Appendix FM of the Immigration Rules,

- (2) There is no evidence that there are insurmountable obstacles or very significant difficulties to their family life continuing in Argentina,
  - (3) She can apply for entry clearance as a spouse from Argentina,
  - (4) Mr Wise can relocate to Argentina where they have family support, and in relation to [276ADE] of the Immigration Rules
  - (5) She has not lived here continuously for at least 20 years,
  - (6) There are no very significant obstacles to her integration in Argentina given the length of time she lived there and as she will have retained knowledge of the life, language and culture, and
  - (7) There are no expectational circumstances in her case.
3. She appeals against the decision of First-tier Tribunal Judge Fox who considered the papers on 6 July 2023, but whose decision does not appear to have been promulgated until 9 January 2024.

### **Permission to appeal**

4. Permission was granted by Deputy Upper Tribunal Judge Wilding on 9 July 2024 who stated:
- “3. The appellant is a litigant in person and has identified in her appeal form the following complaints about the Judge’s decision:
- a. The tribunal said that the appellant’s husband could relocate to Argentina however this is not possible due to his work schedule.
  - b. She submitted in the application for permission to appeal to the FTT that the decision indicates that there is no indication in the Tribunal file that she filed evidence, however this is wrong as she did submit the required documents in support of her appeal. She says she can provide a list of documents submitted.
  - c. In the form for permission to appeal to the Upper Tribunal she submits that her husband has provided everything for her in the UK.
4. The application for permission to appeal is not particularly strong, however one aspect leads me to pause. The appellant submits that she filed and served documents with the First-tier Tribunal in pursuing her appeal. If this is the case then arguably the Judge materially erred in law in considering the appeal without sight of evidence the appellant wished to rely on.
5. Given the appellant is a litigant in person, and that arguably she may have had an unfair hearing I grant permission to appeal. The appellant must file and serve evidence to the Upper Tribunal and to the Home Office of the documents she filed with the First-tier Tribunal in support of her appeal within 14 days of the date of the notice of this decision.
6. In these circumstances, and only because of the claim that documents were sent but not considered by the Judge I grant permission to appeal. The appellant should be under no illusions that this does not say anything about the strength of her appeal, but given the possibility of her having an unfair hearing the Upper Tribunal can consider what documents were sent which the Judge did not consider.”

### **The decision of Judge Fox**

5. Judge Fox stated the following:

“Evidence

7. The respondent’s bundle comprises 48 pages.

8. There is no indication on the Tribunal file that the appellant filed or served evidence in support of her appeal.

#### Findings

9. The appellant has failed to satisfy the burden upon her. Within her grounds of appeal the appellant has stated that the respondent has failed to provide reasons for her decision. However the respondent has stated that the appellant's status as a visitor prevents her from making an application for further leave to remain.

10. The appellant has failed to engage with the legal provisions within the Immigration Rules that prohibit visitors for applying to vary their leave from within the UK. This legal provision was sanctioned by Parliament and the appellant has failed to provide evidence to demonstrate why she should not be expected to abide by this requirement.

11. It is reasonable to conclude that the appellant satisfied the respondent that she intended to enter the UK as a temporary migrant for a period and purpose as stated by her. There is no reliable evidence to demonstrate the timing or reasons for the appellant's changed circumstances.

12. Upon the available evidence the appellant has failed to demonstrate why she should not be expected to return to Argentina to apply for entry clearance in the appropriate category. For the same reasons the appellant has failed to demonstrate that very significant obstacles exist to her re-integration.

13. For completeness I consider Article 8 ECHR in the context of family life. There is no dispute that family life exists between the sponsor and the appellant. The respondent's decision is lawful and seeks to pursue the legitimate aim of effective immigration control. This leaves the issue of proportionality.

14. It is well-established that the respondent is entitled to control the entry of foreign nationals into the territory and she is afforded a margin of appreciation in the administration of this.

15. A fair balance must be struck between the competing interests of the individual and the interests of wider society. The appellant has failed to demonstrate that exceptional circumstances exist to warrant the application of Article 8 ECHR to effectively circumvent immigration control."

### **The Appellant's grounds seeking permission to appeal**

6. The grounds asserted that:

"I'm writing to discuss a matter that weighs heavily on my mind regarding my immigration situation, specifically the recent decision regarding the permission to appeal for the Upper Tribunal. My immigration journey has been filled with unique challenges, and the recent decision has left me feeling very troubled.

- The tribunal had no evidence, or not enough evidence, to support its decision EX.1 Requirement, mentioning it is open to my Husband to relocate to Argentina, which is not possible because of his work schedule and commitments attached is the official statement letter from S.J.M. Concerns regarding this.

- I have also attached a letter of recommendation and cause of concern from Councillor Andy Kelly Rochdale Borough Council, please find attached.

My Husband has provided everything financially for me whilst we have waited a very long time for any decisions made we have fully complied with the laws, I wish to contribute to the United Kingdom and have been promised various employment positions here in the United Kingdom if I was granted a Visa.

Throughout the process, I've emphasized the difficulties I face in returning to Argentina. My family there struggles economically, and lack a strong support system. I have no job or access to any money in Argentina. After spending almost three years here in the UK, reconnecting with my roots in Argentina is impossible, both emotionally and practically. Urge you to understand the broader impact of this decision on me and my loved ones here in the UK. In the time I have been here, I have also created a loving bond with my mother-in-law, Agnes, who is being treated for secondary cancer, (I can provide official evidence from her via her GP Doctor if

required ) the thought of leaving my husband alone and not to be here to support my family, leaves me emotionally affected due the possibility of leaving the country. The thought of returning to Argentina under these circumstances fills me with anxiety. It's not just about paperwork; it's about the stability and well-being of my family. I hope you can empathize with the gravity of this situation and its implications for our future.

I'm committed to doing whatever it takes to correct any mistakes in my immigration application. But I'm also hopeful that you can see beyond the paperwork and understand the genuine challenges we face. I'm willing to provide any additional information or documentation needed to resolve this matter. Your understanding and support during this difficult time would mean the world to me.

Please also find attached letters from a member of my Council along with my Husbands S.J.M. employer his work schedule.”

## **Submissions**

7. The Appellant said that the bundle contains everything they sent. They sent their passports and the marriage certificate. They sent the Barclays Bank statements. They sent all the documents listed in the application at page 21 (which in the Respondent’s bundle is listed at A21 and also 26, and in the stitched bundle for the Upper Tribunal is page 57). She came as a visitor. The Respondent let her apply. She sent in the GP Registration Confirmation Letter of 9 October 2022. She became unwell in August 2023.
8. There was no Rule 24 notice and we did not need to hear from Mr Diwnycz.

## **Discussion**

9. There is no material error of law for these reasons.
10. In relation to what Judge Wilding identified as ground (a) and (b) the Judge did not materially err in not considering documents not adduced about Mr Wise’s employment as the S.J.M. Concerts letter postdated the Judge’s decision. The Monzo statement, letters from Councillor Andy Kelly, and those regarding her health postdated the Judge’s decision. The Judge noted having seen the passports and marriage certificate. The application does not say which documents have been submitted, but at page 21 of the application states “Requested documents”. That lists the requested documents as being personal bank statements, the marriage certificate, correspondence addressed to them at their address, evidence of Mr Wise’s on-going employment and tax paid by him, and evidence of council tax, accommodation costs, their immigration status, and the Appellant’s English language test certificate. There is no cogent evidence those documents, with the exception of the passports, were filed either with the application, or submitted with the appeal to the First-tier Tribunal. Despite the observation by Judge Wilding the Appellant has not filed the evidence she said she filed with the First-tier Tribunal.
11. The Appellant filed no evidence before Judge Fox regarding the difficulties she says she would face integrating in Argentina, or regarding

her support for Mr Wise's mother. The issue relating to her health is a new matter as it only arose in August 2023 after Judge Fox considered the papers in July 2023. The Judge did not therefore materially err in dealing with the issues of her ability to continue her family life in Argentina, or regarding her private and family life here.

12. In relation to what Judge Wilding identified as ground (c), the fact Mr Wise provides everything for her here does not mean that Judge Fox materially erred in dismissing the appeal.
13. The fact that the Respondent permitted her to make an application does not mean that the application should have been allowed. It is open to the Appellant, should she wish, to make an application to the Respondent and provide such evidence as she feels would assist the Respondent in reaching a decision.

### **Notice of Decision**

14. The Judge did not make a material error of law.

***Laurence Saffer***

Deputy Judge of the Upper Tribunal  
Immigration and Asylum Chamber  
24 September 2024