IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-003532

First-tier Tribunal No: EU/57399/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 14th of November 2024

Before

UPPER TRIBUNAL JUDGE LOUGHRAN

Between

HAMDI FARAH IGALE
(NO ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms Mavoungou instructed by Gromyko Amedu Solicitors
For the Respondent: Ms Ahmed, Senior Home Office Presenting Officer

Heard at Field House on 28 October 2024

DECISION AND REASONS

Introduction

1. The Appellant appeals with the permission of Upper Tribunal Judge Landes against the decision of First tier Tribunal Judge Spicer ('the judge') dated 5 June 2024 dismissing her appeal against the Respondent's decision of 28 November 2023 to curtail her pre-settled status under the EU Settlement scheme.

Background

2. The Appellant was born on 15 Feb 1989 in Finland. On 28 November 2020 the Appellant applied for leave to remain under the EU Settlement Scheme and on 12 December 2020 the Appellant was granted limited leave to remain under the EU Settlement Scheme valid until 13 December 2025.

3. The Appellant has three children: Manza who was born in Finland on 22 February 2016, Masud who was born in Finland on 20 March 2020 and Maryama who was born in the United Kingdom ('UK') on 6 December 2022. The Appellant gave birth to a fourth child on 18 April 2024 who died on 1 May 2024 due to medical complications.

4. In a decision dated 28 November 2023 the Appellant's leave to remain was curtailed. In the decision the Respondent explains that she received information from a case working team within the Home Office that false documentation had been provided with the Appellant's application. The Respondent stated that she was satisfied that the Appellant submitted a false document in support of her application and the false document was material to her grant of limited leave to remain. The Appellant appealed against that decision to the First tier Tribunal.

The decision of the First-tier Tribunal

5. The appeal came before First tier Tribunal Judge Spicer via Cloud Video Platform ('CVP') on 3 June 2024. The Appellant was represented by Ms Mavoungou and the Respondent was represented by Ms Ainsworth.

6. The judge treated the Appellant as a vulnerable witness because of the recent death of her child.

7. The judge identified the following issues in dispute:

   (a) Whether a false wage slip was submitted by the Appellant;
   (b) If so whether it was material to the grant of limited leave to remain;
   (c) Whether the Appellant had a continuous period of qualifying residence in the UK before 31 December 2020.

8. It was the Appellant's evidence that she arrived in the UK on 15 September 2019 and returned to Finland in January 2020 because of her second pregnancy, returning to the UK in November 2020.

9. The judge found that the Respondent had discharged the burden of proof that it was more likely than not the wage slip from Midland State Limited dated 30 November 2020 was false and that the wage slip was material to the grant of limited leave because the Appellant provided no other evidence of residence in the UK from 1 November 2020. The judge concluded that all the supporting evidence indicated that the Appellant did not return to the UK from Finland until after 9 April 2021. The judge found that it was more likely than not the Appellant left the UK in September 2019 and that her return to the UK postdated 9 April 2021. The judge found that even if she accepted the Appellant's evidence that she left the UK in January 2020 she was absent for more than twelve months. The judge considered it was in the best interests of the Appellant's children to live with the Appellant wherever she lives. The judge

concluded that it was for the Respondent to decide whether curtailment is proportionate.

The Appeal

10. The Appellant sought permission to appeal from the First tier Tribunal relying on five grounds of appeal. The Appellant submitted that the judge had erred by:

    a. Ground 1: Falling into error by finding that the Appellant was not in the UK in 2020;
    b. Ground 2: Applying an illegitimate compartmentalised approach to her consideration of whether the wage slip was false;
    c. Ground 3: Making a material misdirection in law in finding that the wage slip was material to the Appellant's grant of limited leave to remain;
    d. Ground 4: Finding the Appellant did not return to the UK until April 2021;
    e. Ground 5: Making a material misdirection in law by failing to under the assessment of whether curtailment was proportionate.

11. In support of the grounds 1, 3 and 4 the Appellant relied upon a copy of an airline ticket in the Appellant’s name for travel from Helsinki to Gatwick on 1 November 2020 that had not previously been produced.

12. First tier Tribunal Judge Saffer refused the Appellant permission to appeal on 13 July 2024. The Appellant applied to the Upper Tribunal for permission to appeal. On 21 August 2024, Upper Tribunal Landes granted the Appellant permission to appeal. Upper Tribunal Landes found that it was arguable that the judge should have found for themselves whether curtailment was proportionate. Upper Tribunal Judge Landes noted that to say that evidence was now available to show that the judge made a mistake was not sufficient but acknowledged that whether the Appellant had travelled to the UK in November 2020 was relevant and did not limit the grant of permission.

13. On 11 September 2024, the Respondent provided a response under rule 24 of the Upper Tribunal Procedure Rules 2008. The Respondent accepted that the judge had misdirected herself in law and was required to consider whether the decision to curtail was appropriately and proportionately made. However, the Respondent submitted that the judge had considered the arguments relied on by the Appellant as to why curtailment was disproportionate. The Respondent submitted the rest of the grounds amounted to a disagreement with well-reasoned findings. The Respondent invited the Upper Tribunal to send the manner back to the judge to ‘perfect’ the decision in the circumstances that the rest of the findings were without error.

14. On 14 October 2024, the Appellant made an application under rule 15(2A) of the Upper Tribunal procedure rules for the Upper Tribunal to admit evidence that was not available before the judge in the First tier Tribunal, the evidence being the copy of an airline ticket in the Appellant’s name for travel from Helsinki to

Gatwick on 1 November 2020 that the Appellant had submitted with her applications for permission to appeal to the Upper Tribunal.

15. The Appellant also provided a brief response to the Respondent's rule 24 response under rule 25 of the Upper Tribunal procedure rules.

16. On 25 October 2024, the Respondent provided a further rule 24 response in advance of the hearing on 28 October 2024. The Respondent clarified that the extent of the concession made in the earlier response was that the judged erred by failing to consider whether curtailment was proportionate. It was submitted that the error was immaterial as the judge considered the relevant factors and would have come to the same conclusion. In respect of the new evidence the Respondent submitted that the judge cannot be impugned for not considering evidence which was not before her. The Respondent considered that her earlier proposal to send the matter back to the judge to 'perfect' may be incorrect. The Respondent submitted that the only issue for the remaking would be the issue of proportionately if the Upper Tribunal considered that the judge's failure to address proportionality was material.

17. At the hearing before me, I heard detailed submissions from both Ms Mavoungou and Ms Ahmed. I reserved my decision which I now give.

Discussion and Findings

18. I am satisfied that the judge materially erred in law by failing to consider whether curtailment of the Appellant's limited leave to remain was proportionate.

19. The parties agree that the judge was obliged but failed to consider proportionality herself. I am satisfied that this error was material. It cannot be inferred from the determination that the judge did in fact conduct a proportionality assessment. It is not listed as an issue that the judge was required to address and at paragraph 32 the judge records that having established that the Appellant's limited leave may be curtailed "it is for the respondent to decide whether curtailment is proportionate."

20. I do not accept that the judge considered all of the factors relevant to the proportionality assessment or that it is clear from the judge's decision that she would have dismissed the appeal having undertaken the proportionality assessment herself. In the decision deciding to curtail the Appellant's limited leave to remain the Respondent considers the Appellant's children's best interests and private lives in the UK and the public interest in maintaining immigration control. I note that the judge refers to the Appellant's children's best interests in the determination. However, there is no consideration of their lives in the UK and no reference to the public interest.

21. I am not satisfied that the judge erred in any of the other ways relied on by the Appellant. The Appellant relies on new evidence - a copy of an airline ticket in the Appellant's name for travel from Helsinki to Gatwick on 1 November 2020 in support of those grounds. I admit the new evidence under rule 15(2A) of the Upper Tribunal procedure rules. However, I am not persuaded that it demonstrates that the judge made a material error of law. It may indicate that the judge (through no fault of her own) made a mistake of fact. I am satisfied that the new evidence may impact on a judge's findings in respect all of the issues in the appeal. Accordingly, it is not appropriate to preserve any findings of fact.

Notice of Decision

22. For the reasons given the judge made a material error of law. Accordingly, the determination dated 5 June 2024 is set aside. No findings are preserved.

23. There will need to be a fresh hearing. Applying the guidance in *AEB v SSHD* [2022] EWCA Civ 1512, taking into account the nature and extent of the fact finding needed in this case, I remit the matter to the First-tier Tribunal to be re-heard by a different judge.

24. I have not been asked to make an order for anonymity and on the facts, I see no reason to do so.

G. Loughran

Judge of the Upper Tribunal
Immigration and Asylum Chamber

11 November 2024