IAC-FH-AR-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/00436/2015

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 9 March 2016	**On 13 April 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE HUTCHINSON

Between

SIRANUSH HAMBARDZUMYAN
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr B Hawkins, Counsel, instructed by Arlington Crown Solicitors
For the Respondent: Miss A Fijiwala, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant in this case is a citizen of Armenia, born on 29 July 1973. On 11 December 2014 the respondent refused a request that the appellant be

allowed to remain in the UK on human rights grounds. The appellant appealed that refusal. The appeal came before Judge of the First-tier Tribunal J McMahon on 1 July 2015. In a decision of 24 July 2015 Judge McMahon dismissed the appellant's appeal both under the Immigration Rules and on human rights grounds.

2. Permission to appeal was granted on 25 January 2016 on the grounds that it was arguable that the judge erred in law in finding that the appellant did not meet the suitability requirements of Appendix FM. Permission was granted on all grounds. The appeal came before me.

Ground 1 and Ground 2

3. The appellant's first two grounds were that the judge erred at [25] and [26] in considering the issue of whether the appellant gave false information in her Method of Entry questionnaire as the judge had proceeded on the basis that an individual who has a poor immigration history is more likely to be dishonest. It was submitted that this approach was wrong in principle. It was also submitted that the judge gave no reason for rejecting the appellant’s evidence that she felt very stressed and under pressure to complete the Method of Entry Questionnaire quickly.

4. The judge at [24] directed himself correctly in relation to the burden of proof being with the respondent to demonstrate that the appellant had been dishonest. At [25] of the Decision and Reasons the judge took into consideration that the appellant's poor immigration history was relevant and the judge set this out at [25]. However it is incorrect to say that this was the only consideration by the judge. The judge also considered in the round that the appellant claimed that she was feeling stressed at the time of the Method of Entry questionnaire and had stated she believed she was questioned quickly. However the judge made adequate findings for not accepting this, including that the appellant was not being questioned by an Immigration Officer but rather was completing this questionnaire in the office of her solicitor.

5. The judge gave clear reasons at [25] and [26] as to why the judge did not accept the appellant's account. There was nothing incorrect in the judge’s approach. Mr Hawkins pointed me to the fact that there was evidence before the judge as to the appellant's mental health condition. However, I note that the judge set this out at [32] (in relation to the judge's consideration of “very significant obstacles”); it is clear from a reading of the Decision and Reasons in their entirety that the judge gave very careful consideration to all the evidence before him and was clearly aware of the appellant's mental health difficulties. I am satisfied that the judge gave adequate reasons for not accepting the appellant's assertion.

Ground 3

6. This was the main thrust of Mr Hawkins' arguments both in his written grounds and orally before me. It was submitted that the judge erred at [27] of the Decision and Reasons in relation to the information in the Method of Entry questionnaire. The judge at [27] found as follows:

> "It has been submitted that the Method of Entry questionnaire should not have been taken into account on the basis it was not submitted 'in relation to the application' but had been submitted after the application had been made. I do not accept that submission. It was submitted before the decision under appeal and was submitted by the appellant as part of the application process and before that process became finalised by refusal."

7. Mr Hawkins relied on the Court of Appeal case of **Raju [2013] EWCA Civ 754**. It was Mr Hawkins' contention that the Method of Entry questionnaires are not sent out in every case and are not always completed and returned, and are concerned with removal decisions, not decisions on the substantive application. He stated it was fundamentally wrong that this information should therefore be regarded as having been provided in relation to the application.

8. However, the judge at [23] of the Decision and Reasons considered the suitability requirements under Appendix FM and correctly directed himself that was in issue was whether or not to the appellant's knowledge false information had been provided "in relation to the application".

9. I am satisfied that **Raju** should be distinguished. **Raju** related to paragraph 34G of the Immigration Rules and when an application can be said to be made, specifically in relation to what information could be considered under a points-based system application.

10. Miss Fijiwala submitted a copy of a letter dated 17 October 2014 from the respondent to the appellant's representatives indicating that there was insufficient information provided and that "in reviewing the information you have provided" the respondent required a Method of Entry questionnaire to be filled in. This was prior to the decision on the application. Indeed in the Reasons for Refusal Letter dated 11 December 2014 the respondent referred to the appellant's letters dated 12 August 2014 and 27 October 2014 (the letter relating to the Method of Entry questionnaire). This was a case where the appellant's original application had been made on 28 March 2013 and that application had been refused with no right of appeal. However this was subsequently revised. If what Mr Hawkins says is correct then the logical conclusion would be that only the information submitted as of 28 March 2013 was "in relation to the application". That cannot be the case.

11. Paragraph S-LTR.2.2 provides as follows:

> 'Whether or not to the applicant's knowledge-

a) false information, representations or documents have been submitted in relation to the of the suitability requirements under Appendix FM

12. This does not state that the paragraph only relates to when an application is made but rather refers specifically to documents submitted in relation to an application. The fact that not every application requires this information and that a decision may well have been taken without this information, does not change the fact that this appellant submitted this information in relation to her application. There is no error of law disclosed.

Ground 4

13. It was contended that at [29] the judge erred in failing to take into account the positive factors in the appellant's favour including that she sought to regularise her status, her lack of criminal offending, her relationship with a British citizen and the implications for that relationship, as well as her medical conditions in deciding whether or not the appellant met the relevant requirements. However the reasoning at [29] related to the false information provided which meant the suitability requirements were not met. That was an adequately reasoned finding open to the judge.

14. In the alternative if I am wrong in relation to any of the above grounds, the judge at [30] went on to make alternative findings in relation to the very significant obstacles test at 276ADE and the insurmountable obstacles test at Section EX of Appendix FM (in the event that the judge was wrong in relation to his findings on the suitability requirements). The judge made clear findings from [31] to [36] of the Decision and Reasons and weighed up all the relevant factors. Although Mr Hawkins contended that the alleged error in relation to the dishonest information (and for the avoidance of doubt I find there is none) infects the entirety of the judge’s decision, I do not accept this argument. The judge made clear and detailed findings of fact in relation to the appellant's circumstances and those of her husband and was entitled to reach the subsequent decision that these did not amount to insurmountable obstacles to their family life continuing in Armenia. There was no assessment in those findings of the appellant's dishonesty, which did not come into the judge’s consideration on this part of the appeal.

Ground 5

15. Mr Hawkins submitted that the judge had accepted a number of facts in relation to the appellant and her husband and given the range of difficulties which the judge had failed to explain or give clear reasoning as to why the combination of these factors did not meet the requisite test. However, as noted above, I am satisfied that the judge did give clear and adequate reasons as to why these factors did not amount to insurmountable obstacles, or in the alternative very significant obstacles.

16. The judge took into account at [36] that both the appellant and her husband have substantial experience of living in Armenia. The judge took into account at [35] that the appellant's husband is Armenian by birth. The judge also took into account that the appellant and the sponsor have family living in Armenia and it is not a case where children are expected to move to a country of which they have little experience. The judge also took into account that there would be difficulties including as set out in the decision (and summarised by Mr Hawkins) but made detailed and adequate findings as to why even when aggregated [33] these did not meet the test of very significant obstacles. The judge correctly directed himself, including at [34] to the appropriate test. **Agyarko & Ors, R (on the application of) v SSHD [2015]** applied. Mr Hawkins' submissions amount to no more than a disagreement with the judge's clear findings.

Ground 6

17. It was Mr Hawkins submission that the judge failed to properly consider Article 8. I am satisfied that the judge gave detailed consideration to Article 8 from [38] to [48] of the Decision and Reasons and considered all the factors including but not limited to the appellant's mental health condition and that her husband is a British citizen.

18. The judge properly directed himself in relation to the statutory requirements under Sections 117A and B of the Nationality, Immigration and Asylum Act 2002 which the judge had to take into consideration. There was no substantive challenge by Mr Hawkins to that consideration.

19. The judge also gave separate consideration to the issue of whether an entry clearance application could be made to return and made findings that no adequate evidence had been submitted in relation to the specified evidence to demonstrate the financial requirements were met and therefore the judge could not place much weight on the "**Chikwamba**" point.

20. There was no evidence to support Mr Hawkin's submission that the alleged error in relation to the judge's findings on the appellant dishonestly completing the Method of Entry questionnaire (and I have found no error) infected the judge's findings in their entirety

21. I am satisfied that the appellant's arguments amount to no more than a disagreement with the judge's clearly reasoned consideration under Article 8.

Conclusion

22. There has been no error of law disclosed. The decision of Judge J. McMahon shall stand in its entirety. The appeal is dismissed.

No anonymity direction is made.

Signed Date

Deputy Upper Tribunal Judge Hutchinson

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Signed Date

Deputy Upper Tribunal Judge Hutchinson