



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: OA/01358/2014

THE IMMIGRATION ACTS

Heard at Birmingham ET
On: 4 March 2016

Decision & Reasons Promulgated
On: 21 March 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE KAMARA

Between

MRS BODUNRIN OLUBUNMI DAWODU
(ANONYMITY DIRECTION NOT MADE)

Appellant

And

THE ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Mr R Ojukotola, solicitor, SLA Solicitors
For the Respondent: Mr D Mills, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. This is an appeal against the decision of First-tier Tribunal Judge Devittie, promulgated on 27 February 2015, dismissing an appeal against a decision to refuse the appellant leave to enter the United Kingdom as a partner. FTTJ Kelly granted permission to appeal on 11 May 2016.

Background

2. The appellant applied for leave to enter the United Kingdom as a partner on 4 December 2013. The said application was refused on 7 January 2014 under paragraph EC-P.1.1(d) with reference to paragraphs E-ECP.2.1, 2.6, 2.10 and 4.1. In essence, it was said that no evidence had been provided to show that the sponsor was a permanent resident of the United Kingdom; it was not accepted that the relationship between the parties was genuine and subsisting or that they intended to live together permanently in the United Kingdom; the appellant had not provided her original degree certificate from the London Metropolitan University and furthermore, the application fell to be refused owing to a failure to meet the income requirements. On the last point, it was said that no final determination had been made owing to the Secretary of State's appeal against the (then) legal challenge to the income threshold requirement.
4. In appealing the ECO's decision, on 16 January 2014, the appellant argued that the provisions of the Rules were met; that ample evidence was before the ECO as to the financial and relationship requirements and that the appellant had submitted her master's degree certificate, which was issued by a recognised higher educational institution in the United Kingdom.
5. An Entry Clearance Manager (ECM) reviewed the decision to refuse entry, however the original decision was maintained. A request was made that the tribunal not take into consideration any additional evidence provided at the appeal.
6. In dismissing the appeal, the FTTJ did not accept that the appellant had adequately addressed all the reasons for refusal. He remarked that it was "*common ground*" that the financial requirements were not met but accepted that the English language requirement was met.

Error of law

7. The grounds argued, firstly, that the FTTJ failed to consider evidence he was required to, notwithstanding that it emanated after the date of the ECO's decision. Secondly, it was said that the FTTJ erred in making a distinction between a current and savings account, which was said to have been an irrelevant consideration. Lastly, the FTTJ was said to have erred in concluding that the funds had not been held for 28 days by reference to the last transaction rather than the date the bank statement was issued.
8. FTTJ Kelly granted permission to appeal on all grounds.

The hearing

9. Mr Mills addressed me first, having had additional time to consider the issues raised, as well as the evidence submitted on the appellant's behalf. In essence, he conceded all issues as well as the appeal itself and urged me to set aside the FTTJ's decision and remake it, by allowing the appeal under the Immigration Rules.
10. In view of Mr Mills' entirely appropriate, evidence-based concessions, I had no need to hear further from Mr Ojukotola.
11. After hearing Mr Mills' submissions, I announced that I had found material errors of law in the FTTJ's decision, much as set out in the grounds.

Decision on error of law

12. The FTTJ erred in failing to consider evidence of intervening devotion between the application for entry clearance and the hearing, DR (Morocco) [2005] UKIAT 00038 considered. Contrary to the view of the FTTJ, section 85(5) of the 2002 Act permits consideration of evidence arising after the date of the decision. In this case that evidence included evidence of a pregnancy, a birth and a substantial quantity of communications between the couple. Accordingly the FTTJ was wrong at [5(iii)] to state that he had "*difficulty*" with this evidence because it was not submitted with the grounds of appeal. Had the FTTJ considered and attached weight to the abundance of evidence before him, it would be hard to imagine he would have reached the same conclusion as to the genuineness of the relationship concerned. I would add that DNA evidence obtained after the FTTJ's decision further confirms the relationship between the child, the appellant and sponsor.
13. The FTTJ found that the financial requirements were not met because he was of the view that savings needed to be kept in a specific savings account as opposed to a current account where the funds were kept. Mr Mills confirmed that there was no such requirement in the Rules, which I note state that only a "*personal*" bank statement is required and that the guidance to caseworkers at 7.4.1 (helpfully reproduced by Mr Ojukotola) stated that savings could be held in either.
14. Secondly, the FTTJ rejected the evidence of savings because he understood that the statement was dated more than 28 days before the date of application. He reached this conclusion on the basis of the last transaction date of 31 July 2013, whereas, the entry clearance application was made on 4 December 2013. The FTTJ was mistaken in this. The bank statement was dated 27 November 2013, well within 28 days of the application and showed a balance of Naira 5,940,704.69, which Mr Mills conceded was adequate to meet the income threshold when combined with the sponsor's annual earnings. In this he had reference to Mr Ojukotola's detailed calculations, which showed that the appellant had to meet a shortfall of £32,275 owing to the sponsor's low income. The total savings shown, in two bank statements were £32,873.20. The evidence before the FTTJ showed that the financial requirements were met and he erred in finding otherwise for the reasons he gave.

15. The decision of the FTTJ is therefore set aside, with the exception of his finding that the English language requirement was met.

Decision on remaking

16. I decided, with the agreement of both representatives, to immediately remake the decision.

17. As indicated above, I find that the appellant and sponsor were in a genuine and subsisting relationship and that the financial requirements were met.

18. The FTTJ accepted that the appellant met the English language requirements and this part of his findings was preserved. I also had sight of the sponsor's United Kingdom Residence Permit showing that he was granted indefinite leave to remain in this country on 2 June 2010. All the requirements of Appendix FM are met.

19. The decision of the FTTJ is set aside and I substitute a fresh decision to allow the appeal against the refusal of the appellant's application under Appendix FM.

Decision

- (1) The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law
- (2) The decision of the FTTJ to allow the appeal is set aside.
- (3) I substitute a fresh decision to allow the appellant's appeal against the refusal of her application for entry clearance to the United Kingdom as a partner under Appendix FM of the Immigration Rules.

No application for anonymity was made and I could see no reason to make such a direction.

Signed

Date: 5 March 2016

Deputy Upper Tribunal Judge Kamara