



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/29670/2015

THE IMMIGRATION ACTS

Heard at Glasgow
On 24 October 2017

Decision & Reasons Promulgated
On 27 October 2017

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

GEETA BALA

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr C H Ndubuisi, of Drummond Miller, Solicitors
For the Respondent: Mr M Matthews, Senior Home Office Presenting Officer

DETERMINATION AND REASONS


1. The respondent refused the appellant's application for leave as an unmarried partner for reasons explained in her letter dated 14 August 2015.
2. The appellant gave notice of appeal to the FtT on 28 August 2015, but her case did not come on for hearing until 7 September 2016.
3. First-tier Tribunal Judge Beach dismissed the appellant's appeal for reasons explained in her decision promulgated on 13 December 2016.
4. The appellant's grounds of appeal are in her out of time application for permission to appeal dated 14 March 2017 (which in terms of the TP (UT) Rules 2008, rule 23 (1A), now stands as the notice of appeal to the UT).

5. The grounds say that the judge erred by refusing the appeal on the single ground of the maintenance requirement; the appellant and sponsor had not led evidence about it because the point was not taken in the decision; the sponsor was not asked about the £800 per month transaction in his bank account; the judge should have given the benefit of the doubt; the sponsor should be asked for further information about income; the appellant and sponsor could meet financial requirements through prospective employment and a credible job offer to the appellant; permission should be granted "to resolve this simple and narrow issue".
6. [Although the point was not mentioned before me, reference in the grounds to the sponsor's bank account and income appears to be an error; it is the appellant's bank account and income which is meant.]
7. In a decision dated 19 September 2017, the FtT extended time, admitted the application, and granted permission.
8. In a rule 24 response dated 3 October 2017 the respondent says that the judge was entitled to find that the appellant had not provided sufficient evidence that she could be adequately maintained in the UK.
9. On 23 October 2017, the appellant's current solicitors wrote to the UT stating they had just been instructed, enclosing a statement from the appellant and a letter from her employers "which we will seek to rely on at the hearing". Late lodging was due to their being instructed only on 18 October 2017 after English solicitors advised they were unable to appear.
10. At the hearing Mr Ndubuisi sought to rely also on bank statements from 19 September 2014 to 20 March 2015, showing 6 payments credited of £800 each, the source being shown as "Edinburgh Accommodation Loan".
11. The statement from the appellant, dated 20 October 2017, says she was employed from April 2013 to December 2015 "by Thistle House - Edinburgh Accommodation Ltd fro April 2013 to December 2015 ... part time ... receiving a wage of approximately £800 per month paid at times in cash and bank transfer .. I submitted my bank statement with my application which shows wage paid ... the judge did not take this into account".
12. A letter from "Edinburgh Accommodation Ltd t/a The Thistle House" dated 19 October 2017 is to similar effect.
13. The main points for consideration arising from the submissions by Mr Ndubuisi were these:
 - i)The appellant had been led to believe by her previous solicitors until recently that they could appear for her at the UT in Scotland.

- ii) There was before the FtT the respondent's bundle, p.D1, appellant's bank statement March to June 2015, 3 months [this shows 3 payments of £800.00].
 - iii) There was also at p.57 of the appellant's bundle her bank statement September to December 2015 [which shows no similar payments].
 - iv) The bank statement now tendered was to fill in the gap and show income over a 6-month period.
 - v) The appellant made her application to the respondent under rushed circumstances regarding curtailment of her leave, wrongly brought about by the respondent, as stated in the covering letter with her application. She asked for evidential flexibility to be applied if there were any shortcomings.
 - vi) It was accepted that the grounds of appeal placed before the FtT were unclear and confused.
 - vii) The error of law by the FtT was that it did not take account of the income of £800 per month which would have been enough to prove the appellant's and her partner's ability to maintain and accommodate themselves.
 - viii) The judge said at ¶ 57, "The bank statements ... show receipts of £800.00 per month ... from Edinburgh Accommodation Loan. It is unclear to me whether these relate to employment ... or to a loan payment". It was an error of unfairness not to ask for an explanation. The matter had not been queried by the respondent. The judge's remarks were not based on evidence led or submissions made at the hearing.
 - ix) There was also there an error of inadequacy of reasoning.
 - x) A decision should be substituted, allowing the appeal.
14. Parties agreed that the appellant might have succeeded at the FtT hearing by evidence which she did not produce with her application to the respondent – although that would have to show her case was a good one at the date of application, not at any later date.
15. Mr Matthews accepted that if the appellant had proved income of £800.00 per month as claimed, that would have been enough to show compliance with the rules, and that although the appeal was available only on human rights grounds, the rules in this area were of such a nature that her appeal should have been allowed.
16. The main points arising from the submissions by Mr Matthews were as follows:
- (i) The appellant made an incomplete application to the respondent, which could not have succeeded.

- (ii) It was not accepted that the respondent had responsibility for that, but even if she did, the appellant had a long time from filing her appeal until the hearing to prepare her case.
 - (iii) In her application, the appellant made her case (incorrectly) on benefits alone, not on income from employment.
 - (iv) The respondent had not waived any matter of proof of income. In her application form (p.A18) and the covering letter the appellant did not seek to rely on an income of £800.00 per month. It was not before the respondent for consideration.
 - (v) The matter was not raised in the grounds of appeal to the FtT.
 - (vi) The matter not having been waived in advance by the respondent, it was for the appellant to establish her case.
 - (vii) There was no error by the FtT on the case before it.
 - (viii) The appellant had not complied with the Procedure Rules or Practice Directions in respect of admission of evidence by the UT.
 - (ix) There was no good reason for discretion to be applied in her favour over non-compliance.
 - (x) There was no explanation for the evidence not being before the FtT, so the first limb of the test for admission of fresh evidence was not met.
 - (xi) There was no scope for any concept of evidential flexibility, when the appellant had the chance to make her case in the FtT.
 - (xii) Even if the evidence were to be admitted, the FtT's legitimate concern was not met, as even after all this time there was no explanation for all the payments appearing with the word "loan".
 - (xiii) The appellant failed to meet the rules, and the judge found against her on proportionality, outside the rules. There was no challenge to that alternative.
 - (xiv) As the appellant has the option of a further application, the outcome in any event could not be found disproportionate.
17. In reply, Mr Ndubuisi said it was the respondent who put the applicant to a rushed application; she did have the chance to put matters right in the FtT, but both the FtT and the UT had the same powers to exercise evidential flexibility, and that should enable her to make her case, even now; although a fresh application was open, and even in absence of a ground of challenge, it would not be proportionate to require that.
18. I reserved my decision.

19. The grounds are misleading in suggesting that the appellant was taken by surprise on proof of income. There had been no waiver. It was for her to advance her case, and for the judge to evaluate it.
20. The judge's finding that she was not satisfied of the nature of the £800 monthly payments was a sound one, under any of the various legal heads of challenge - neither unfair, nor lacking an evidential basis, nor unreasoned.
21. The appellant makes no case for being excused from the requirements of the rules and practice directions governing admission of fresh evidence.
22. If that stage were passed, the substantive legal tests for admission of fresh evidence are not met. There is no good reason for the evidence not being before the FtT.
23. Even if the evidence were to be admitted, and even so long after the matter was raised, it does not offer to meet the reason for the judge's legitimate doubt: why do the payments appear as a loan?
24. The respondent, the FtT and the UT have not been shown to have any legal duty to invite the appellant to improve her case, based on some vague concept of evidential flexibility.
25. Even if the appellant was pressed into a rushed application, and even if the respondent had some responsibility, any benefit she might reasonably have expected from that has long passed away. She had over a year to prepare her case for the FtT (and she could have approached the respondent in the meantime).
26. There is no scope for success on human rights grounds, the rules not being met, in absence of a ground of appeal, and given the availability of another application to the respondent.
27. The decision of the First-tier Tribunal shall stand.
28. No anonymity direction has been requested or made.



26 October 2017
Upper Tribunal Judge Macleman