



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/25395/2016

**THE IMMIGRATION ACTS**

Heard at Manchester CJC  
On 2<sup>nd</sup> November 2018

Decision & Reasons Promulgated  
On 30<sup>th</sup> November 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

JORGE [S]  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr Wood (Solicitor)

For the Respondent: Mr McVeety (Senior HOPO)

**DECISION AND REASONS**

1. This is an appeal against the determination of First-tier Tribunal Judge Herwald, promulgated on 30<sup>th</sup> May 2018, following a hearing at Manchester on 30<sup>th</sup> April 2018. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted permission, to appeal before this Tribunal, and thus the matter comes before me.

### **The Appellant's Claim**

2. The essence of the Appellant's claim, who was born on 26<sup>th</sup> August 1973, is a citizen of Venezuela, and is a male, is that he has applied for entry clearance for leave to enter the UK as a spouse of a British citizen, [DB]. It was accepted that the Respondent was genuine and subsisting. However, it was not accepted that the Appellant met the suitability requirements of Appendix FM, and the Appellant conceded that this was indeed the case, because he could not show that his wife was in receipt of gross annual income of £18,600 in the year immediately prior to the application date. What was being asserted on his behalf, however, was that although he could not succeed under the Immigration Rules, his appeal should be allowed under the aegis of Article 8.

### **The Judge's Findings**

3. The judge held that the Appellant could properly seek relocation to Venezuela because his position would not be any different from many Venezuelans on a day-to-day basis (see paragraph 29), such that the decision against him would not be disproportionate. The judge also stated that the Sponsor had returned back to Venezuela to be with her husband for five or six weeks at a time (paragraph 29) and there was no reason why she could not do so, and live with her husband there.

### **The Grant of Permission**

4. Permission to appeal was granted in this matter on the basis that the judge had failed to consider all the relevant evidence, in particular the fact that the Sponsor, [DB], was a person who had caring responsibilities for her sister, such that she could not leave this country to go and live with her husband in Venezuela. The judge had failed to give this matter adequate consideration. Moreover, the judge had applied the wrong test in relation to whether it would be unduly harsh for the family life between the Appellant and his sponsoring wife to be continued in Venezuela.

### **Submissions**

5. At the hearing before me, there was a degree of consensus between Mr Wood, and Mr McVeety, the Senior Home Office Presenting Officer, that the judge had erred in law. This arose for the following reasons.
6. First, the judge had stated that if the sponsoring wife were to go and live in Venezuela with the Appellant, the fact that Venezuela was unstable, was not material because, "that is no different from what many Venezuelans maybe experience at present on a day-to-day basis" (paragraph 29). However, this was not the test. The test was not whether the Appellant would not be in any worse a position. The test was whether relocation for the Sponsor and the Appellant to Venezuela would be unduly harsh given their particular circumstances.
7. Second, the judge had stated that the sponsoring wife had visited the Appellant in Venezuela and stayed for five or six weeks at a time. However, plainly this was a

short period and it cannot be used for the purposes of assessment of proportionality on a long-term basis, which would require a consideration of relocation on a permanent basis.

8. Third, the Sponsor had given cogent reasons for why she could not go to Venezuela to live with her husband (see paragraph 20 of the Sponsor's witness statement) stating that she was caring for her sister, [CP], who had cancer, and the Sponsor actually provided both care for her and her children, as she had two sons, and this issue was specifically raised at paragraphs 15 and 18 of the Appellant's skeleton argument, but the judge failed to give it proper consideration.
9. It was agreed that I should make a finding of an error of law and allow the appeal.

**Error of Law**

10. I am satisfied that the making of the decision by the judge involved the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside and remake the decision. I set aside the decision for the reasons given above. Both parties are in agreement in this respect.

**Remaking the Decision**

11. I have remade the decision on the basis of the evidence before the judge above, the decision made by him, and the submissions that I have heard today. I am allowing this appeal for the reasons that have already been given under Article 8 ECHR.
12. No anonymity direction is made.
13. This appeal is allowed.

Signed  
Deputy Upper Tribunal Judge Juss

Date  
23<sup>rd</sup> November 2018

**TO THE RESPONDENT**  
**FEE AWARD**

As I have allowed the appeal and because a fee has been paid or is payable, I make a fee award of any fee which has been paid or may be payable.

Signed  
Deputy Upper Tribunal Judge Juss

Date  
23<sup>rd</sup> November 2018