



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/05311/2018

THE IMMIGRATION ACTS

Heard at Field House
On 26 July 2019

Decision & Reasons Promulgated
On 9 August 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE PEART

Between

MR FIL BUENAFLO
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

ENTRY CLEARANCE OFFICER - SHEFFIELD

Respondent

Representation:

For the Appellant: Mr Magsino of Queen's Park Solicitors

For the Respondent: Mr Tarlow, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of the Philippines. He appealed against the Entry Clearance Officer's decision refusing to grant leave to enter on the basis of family life dated 15 January 2018.
2. In a decision promulgated on 29 May 2019, Judge Scott-Baker (the judge) dismissed the appellant's appeal. She found that the appellant could not meet the requirements of the Immigration Rules and that as regards Article 8, the respondent's decision was proportionate. The grounds claim the judge:

- “(a) made perverse or irrational findings on matters material to the outcome;*
- (b) failed to give reasons or any adequate reasons for findings on material matters;*
- (c) failed to take into account and/or resolve conflicts of fact or opinion on material matters;*
- (d) made a mistake as to a material fact which could be established by objective and uncontentious evidence, where the appellant and/or his advisors were not responsible for the mistake and where unfairness resulted from the fact that a mistake was made”.*

3. Judge Chohan granted permission to appeal in a decision dated 21 June 2019. He said inter alia as follows:

- “2. In short, it is argued that the judge erred in the assessment of the sponsor’s financial circumstances and in the Article 8 assessment.*
- 3. In particular, the grounds state that the judge failed to take into account the sponsor’s self-employment income of £58,822 for 2016 and £22,313 for 2017. It does seem, when one looks at the judge’s decision, that there is no reference to such income. In all other respects, the judge has prepared a well-written decision but, it may be open to argument that the judge failed to take into account relevant evidence, which may have had a material bearing on the outcome of the appeal”.*

Submissions on Error of Law

4. Mr Magsino relied upon the grounds and his skeleton argument dated 21 July 2019. Mr Tarlow submitted that the judge had not erred.

Conclusion on Error of Law

5. The judge made a crucial finding at [34] of her decision inter alia:

“It was accepted that the appellant could not meet the financial requirements under Appendix FM-SE”.

6. The whole thrust of ground 1 and confirmed to me by Mr Magsino was that the judge had erred because the appellant met the financial requirements.

7. There was no challenge by Mr Magsino to [34] of the decision either in the grounds or before me. In such circumstances, ground 1 falls away.

8. The judge carried out a careful and comprehensive analysis of the financial circumstances. She had adjourned the appeal from 17 December to give the sponsor every opportunity of producing additional financial information and for the respondent to review the same. It is clear that in the course of the hearing as the judge recited at [34], it was accepted that the appellant could not meet the financial requirements of Appendix FM-SE.

9. Judge Chohan found no arguable error with regard to the judge's Article 8 assessment but I have considered it nevertheless. The judge accepted the relationship of father and son with the appellant and child. She found that family life had been enjoyed by the appellant but that such family life had been enjoyed in a fragmented fashion; the sponsor continued to reside in the United Kingdom whilst her partner lived in the Philippines where she visits him. The judge commented that there was no evidence that the child accompanied the appellant on return visits.
10. The judge took into account that the appellant could not meet the requirements of either the partner or parent route.
11. The child was a little over 2 years of age. He has always lived here with the sponsor. The judge found that the child's best interests were not negatively impacted by the respondent's decision.
12. No family or private life had been enjoyed by the appellant in the United Kingdom. The judge found the refusal merely maintained the status quo.
13. The judge considered the circumstances in light of the appropriate case law **Agyarko [2017] UKSC 11**. The grounds refer to various case law but fail to explain how it is that they are relevant in terms of the particular circumstances of the appeal before the judge.
14. The judge commented at [41] of her decision that it was open to the appellant to make a further application with clear evidential support. I said the same to Mr Magsino at the error of law hearing before me.
15. The judge did not err in dismissing the appeal. Her decision stands.

No anonymity direction is made.

Signed

Date 26 July 2019

Deputy Upper Tribunal Judge Peart