



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/10172/2017

**THE IMMIGRATION ACTS**

Heard at Birmingham  
On 5 September 2019

Decision & Reasons Promulgated  
On 16 September 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

PHAKCHIRA LAKIN  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr. N. Ahmed, Counsel instructed by Peer & Co.

For the Respondent: Mr. D. Mills, Home Office Presenting Officer

**DECISION AND REASONS**

1. By way of a decision promulgated on 17 May 2019, I set aside the decision of the First-tier Tribunal. The appeal came before me to be remade.
2. The Appellant and Sponsor attended the hearing.
3. At the outset of the hearing I heard submissions from Mr. Mills in which he asked that the appeal be allowed. Mr. Mill's reasons for this are as follows.

4. With reference to the reasons for refusal letter, he submitted that the Appellant's application should have remained within part 8 of the immigration rules as the application had been made under paragraph 284. The Appellant had arrived in the United Kingdom in 2010. Twice since her arrival she had extended her leave under paragraph 284. In 2017 a further application was made under paragraph 284.
5. With reference to paragraph 284(4), Mr. Mills accepted that paragraph 39E of the immigration rules applied. The Appellant's application had been made eight days out of time. This was within the fourteen days provided for under paragraph 39E. Paragraph 39E also required that an explanation should be given as to why the application was not made in time. Mr. Mills referred to D1 of the Respondent's bundle where the Appellant had provided an explanation. This states:

"This application is late due to a couple of reasons. The main one being that 28 days ago we were unable to pay for both the application and the health surcharge. This was compounded when a new FLR(M) application form came out and we had to start again to fill it out with an increased application cost."
6. Mr. Mills accepted that this was a reasonable explanation. The fees had gone up and a new surcharge had been implemented. He referred to the reasons for refusal letter which considered the fact that the application had been made out of time on page 2. However, while the letter states that the application was "raised 8 days out of time", there is no consideration of the explanation given by the Appellant. Mr. Mills accepted that the Respondent should have considered the explanation given for the late submission of the application.
7. Mr. Mills referred to [22] and [23] of the decision of Judge Obi where it is clear that she was aware of this issue. However, he submitted that the Judge had not come to a decision as to whether or not this was a good explanation. At [23] she states:

"If that explanation was provided to the respondent at the time of the application, it is possible that it would have been a "good reason", when viewed objectively."
8. The Judge did not acknowledge that the explanation had been provided with the application. Neither did she make a decision as to whether it was a good reason, but instead proceeded to consider the appeal with reference to Appendix FM. Mr. Mills submitted that what the Judge should have done was consider whether or not the explanation was a good one. Having accepted the explanation for the delay, which Mr. Mills conceded was a good reason, he submitted that the Judge should have proceeded to consider the Appellant's application under paragraph 284.
9. Paragraph 284 requires that the Appellant show "adequate maintenance". Mr. Mills accepted that, at the time of the application, the evidence showed that there was adequate maintenance. He submitted that the Judge should have accepted the explanation, stated that paragraph 39E applied, and considered the application under paragraph 284. The evidence provided was sufficient to show that there was adequate maintenance. Therefore the Judge should have allowed the appeal.

10. Mr. Mills further accepted that, at the date of the hearing before me, there was evidence to show that the more onerous financial requirements of Appendix FM were met. However, as the application was made under paragraph 284, it should have been considered under paragraph 284 on the basis of "adequate maintenance".
11. Mr. Mills asked that I allow the appeal on the basis that the Appellant had shown that she met the requirements of paragraph 284 of the immigration rules.
12. I thanked Mr. Mills for his approach. I stated that I would allow the appeal for the reasons given by him.
13. The Respondent has accepted that the Appellant meets the requirements of paragraph 284 of the immigration rules. She has a family life with the Sponsor, her husband. This being the case, I find that the decision is a breach of the Appellant's right to a family life under Article 8 ECHR in accordance with the case of TZ (Pakistan) [2018] EWCA Civ 1109, and OA and Others (human rights; 'new matter'; s.120) Nigeria [2019] UKUT 00065 (IAC). The headnote to OA states:

“(1) In a human rights appeal under section 82(1)(b) of the Nationality, Immigration and Asylum Act 2002, a finding that a person (P) satisfies the requirements of a particular immigration rule, so as to be entitled to leave to remain, means that (provided Article 8 of the ECHR is engaged), the Secretary of State will not be able to point to the importance of maintaining immigration controls as a factor weighing in favour of the Secretary of State in the proportionality balance, so far as that factor relates to the particular immigration rule that the judge has found to be satisfied.”

**Notice of Decision**

14. The Appellant's appeal is allowed on human rights grounds, Article 8. As was accepted by the Respondent before me, the Appellant meets the requirements of paragraph 284 of the immigration rules.
15. No anonymity direction is made.

Signed

Date 12 September 2019



**Deputy Upper Tribunal Judge Chamberlain**

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

As I have allowed the appeal and because a fee has been paid or is payable, I have considered making a fee award. I have decided to make a whole fee award of £140 for the following reason. The Respondent failed to consider the explanation given by the Appellant for why her application was late. Had the Respondent given proper consideration to this, she should then have accepted the explanation, as was conceded by Mr. Mills, and proceeded to consider the Appellant's application under paragraph 284. The Appellant had provided evidence with her application to show that she satisfied the requirements of this paragraph.

Signed

Date 12 September 2019



**Deputy Upper Tribunal Judge Chamberlain**