



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/16058/2017

THE IMMIGRATION ACTS

Heard at Manchester
On 19th February 2019

Decision & Reasons Promulgated
On 25th February 2019

Before

DEPUTY JUDGE UPPER TRIBUNAL FARRELLY

Between

MRS MEHFUJABANU MUSTAKAHMED JAMSHA
(NO ANONYMITY DIRECTION MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Mr Ahmed, Counsel, instructed by MA Consultants (Blackburn).
For the respondent: Mr Tan, Senior Presenting Officer.

Introduction

1. Both representatives are in agreement that the decision of First-tier Tribunal Judge LSL Mensah errs in law and invite me to set that decision aside and remake it, allowing the appeal.
2. The appellant is a national of India who unsuccessfully appealed the respondent's refusal of entry clearance. She had applied on 9 February

2017 to join her husband and sponsor, Mr Patel further to the provisions in appendix FM. The respondent accepted that the marriage was genuine and subsisting. However, the respondent did not accept that the financial requirements were met. Reference was made to her sponsor having 2 jobs, one with Brookfield Retail Limited as a cashier and another one with Top West Ltd as a delivery driver. In the application it was stated his combined salary was £21,621.82 which exceeded the financial requirements.

3. It was accepted that all the specified evidence had been provided in relation to her sponsor's employment. However, the respondent decided to carry out checks and were unable to contact by telephone the manager of Top West Ltd or her sponsor on 3 occasions. Consequently, the respondent was not satisfied he was employed as claimed.
4. The decision was reviewed by the entry clearance manager but was not changed. Reference was made to a letter submitted with the appeal to the effect that the sponsor ceased working with Top West limited on 31 March 2017. The entry clearance manager pointed out that the decision was on 21 October 2017 and therefore at that stage the sponsor was no longer earning sufficient monies.
5. The appeal was heard by first-tier Tribunal Judge LS Mensah at Bradford on 11 October 2018. The decision dismissing the appeal was promulgated on 21 November 2018. The judge correctly points out at paragraph 3 that the decision is limited to consideration of article 8 rights albeit through the prism initially of the immigration rules.
6. In submissions the presenting officer in the First-tier contended that the sponsor's employment was disputed and in any event the financial threshold could not be met at the date of the appeal hearing. The appellant's representative referred to HMRC records. At paragraph 6 however it is recorded that Counsel conceded that the minimum income threshold was not met at the time. However it was argued that his current employment meant the minimum threshold was met at the time of the appeal.
7. At paragraph 8 the judge refers to the concession that the financial threshold was not met at the time. The judge therefore concluded the decision to refuse under appendix FM was correct. But for this the judge would have allowed the appeal on the basis the enquiries as to the sponsor's employment were inadequate and that all the specified evidence had been supplied.

8. The 1st point taken on appeal to the Upper Tribunal is that Counsel was mistaken in conceding that the financial requirements were not met at the time. The judge cannot be faulted for relying upon such a concession but both parties having considered the evidence agree this was an error. The evidence indicates the threshold was met.
9. The judge went on to consider matters as at the date of hearing and at paragraph 11 accepted the sponsor had demonstrated his earnings met the minimum financial threshold. However, the judge took the view a fresh application should be made.
10. Again, both parties before me were in agreement that as the financial requirements were met as at the date of hearing and there were no other reasons to the contrary then a refusal would be disproportionate.
11. Given the acceptance by both sides that Counsel erred in conceding the threshold was not met at the time and in light of the judge's finding that the threshold was met at the date of hearing I find the material error of law established. There being no outstanding dispute I remake the decision allowing the appeal on article 8 grounds.

Decision

The decision of First-tier Tribunal Judge LSL Mensah materially errs in law and is set aside. The decision is remade and the appeal is allowed under article 8.

Francis J Farrelly
Deputy Upper Tribunal Judge.

Date: 19 February 2019