



**Upper Tribunal
(Immigration and Asylum Chamber)**

HU/03223/2019 (V)

THE IMMIGRATION ACTS

Heard at George House, Edinburgh
by *Skype for Business*
On 5 August 2020

Decision & Reasons Promulgated
On 13 August 2020

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

TANZILA RANI

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

For the Appellant: Mr M Kashif, of Norman Lawson & Co, Solicitors
For the Respondent: Mrs H Aboni, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. This determination is to be read with:
 - (i) The respondent's decision dated 22 January 2019, maintained on review on 24 May 2019.
 - (ii) The appellant's grounds of appeal to the First-tier Tribunal.
 - (iii) The decision of FtT Judge J C Grant-Hutchison, promulgated on 9 December 2019.

- (iv) The appellant's grounds of appeal to the UT, stated in the application for permission to appeal dated 17 December 2019.
 - (v) The grant of permission by the FtT, dated 13 May 2020.
2. I conducted the hearing from George House. Representatives attended remotely. No member of the public attended, either in person or remotely. There were some initial technical difficulties, but clear communications were then established, and parties had a full and fair hearing of their respective cases. Having heard submissions, I reserved my decision.
 3. The application was refused by the ECO partly because the appellant had not produced required documents, namely bank statements to cover the prescribed period of the sponsor's employment.
 4. Another point of refusal was resolved, because the evidence had been provided *with the application* - [6] of the FtT's decision. The bank statements relate to the only remaining issue.
 5. The sponsor accepted that the documents were not produced with the application. The FtT admitted them into evidence at the hearing, without objection.
 6. The ground of appeal to the UT is that the financial requirements of the rules were met, so the FtT should have allowed the appeal.
 7. Mr Kashif said that the appellant did not rely on article 8, and that the decision of the FtT should be set aside, and a decision substituted, allowing the appeal under the immigration rules. When replying to the submission for the ECO, he said that this was a human rights appeal, so the facts were to be considered at the date of the hearing, at which stage the bank statements had been admitted.
 8. The submission for the appellant was rather confused about the grounds of appeal available. The FtT and the UT have jurisdiction to allow an appeal on human rights grounds, but no jurisdiction to allow an appeal "under the rules". However, as the rules in this area are designed so as to comply as far as possible with article 8, the distinction makes little difference in this case.
 9. The appeal is premised on production of documents at the hearing being sufficient to satisfy the rules. That is misconceived. The rules stipulate production of the documents *with the application* to the ECO. It would be relevant to prove that documents had been produced, in a case where the ECO went wrong on what was with the application; but it is beside the point to prove that satisfactory documents might have been produced, if they were not there.
 10. The FtT could not rationally have found that the terms of the rules were satisfied; they obviously were not. There was no route to article 8 via compliance with the rules.

11. The FtT had to decide whether the appellant had an article 8 right to enter the UK, notwithstanding non-compliance with the rules. It was necessary to consider the extent of interference with family life brought about by the negative decision. The key to that is the judge's second point at [19]. There is nothing to stop the appellant from making another application to the ECO, with strong prospects of success (although that will be decided on its own merits, if and when such an application is made). The FtT was entitled to find that there is nothing disproportionate in expecting the appellant to comply with the rules.
12. That may seem technical and harsh, but the rules are designed to be prescriptive, and not to accommodate enhancement of cases during the appeals process. The appellant complained of costs, but the FtT was right to give that no weight. It was up to her to get her application right in the first place. Having failed to do so, she might have saved further time and money by putting in a properly supported fresh application.
13. The decision of the First-tier Tribunal shall stand.
14. No anonymity direction has been requested or made.



7 August 2020
UT Judge Macleman

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.
3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.
4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.
5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.
6. The date when the decision is "sent" is that appearing on the covering letter or covering email.