



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/04253/2018

THE IMMIGRATION ACTS

Heard at Field House
On 9 October 2020

Decision & Reasons Promulgated
On 20 October 2020

Before

UPPER TRIBUNAL JUDGE O'CALLAGHAN

Between

RIZWANA BEGUM MENAN
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

ENTRY CLEARANCE OFFICER, SHEFFIELD

Respondent

Representation:

For the Appellant: Mr. R Solomon, Counsel, instructed by Jein Solicitors

For the Respondent: Mr. S Walker, Senior Presenting Officer

DECISION AND REASONS

Introduction

1. The appellant is a national of India and is aged 29. She seeks entry clearance as a partner, under Appendix FM of the Immigration Rules. The respondent refused the application by means of a decision dated 29 January 2018.
2. Her appeal was initially heard by the First-tier Tribunal (JfT Housego) and was dismissed by a decision sent to the parties on 30 January 2019. The appellant was

granted permission to appeal and this Tribunal (UTJ Kopieczek) allowed the appeal on all grounds by a decision dated 19 September 2019. UTJ Kopieczek set aside the decision and saved no findings of fact made by JfT Housego. He directed that the Upper Tribunal remake the decision at a resumed hearing.

3. This matter was listed before UTJ Kopieczek on 11 December 2019 but was adjourned as the sponsor informed the Tribunal that he was unable to attend because of ill-health. A subsequent hearing listed to be heard on 14 April 2020 was adjourned by the Tribunal on 20 March 2020 consequent to circumstances arising from the Covid-19 pandemic. It was subsequently listed before me by means of a remote hearing held at Field House on 4 September 2020. The appellant relied upon five bundles, filed and served between 16 November 2018 and 24 February 2020, of which some appeared to be single documents with no covering letter. Mr. Solomon accepted on behalf of the appellant that he was required to produce up-to-date medical evidence if he wished to advance his argument relying upon the Court of Justice judgment in *Ruiz Zambrano v Office National de l'Emploi (ONEm) (C-34/09)* EU:C:2011:124, [2012] Q.B. 265. Consequently, with the agreement of both parties, the hearing was adjourned so as to give the appellant further time to secure relevant medical evidence concerning her husband.
4. I directed the appellant to file and serve any further evidence to be relied upon under rule 15(2A) of the Tribunal Procedure (Upper Tribunal) Rules 2008 by 11 September 2020. Unfortunately, an unpaginated bundle that did not possess an index was filed with the Tribunal on 14 September 2020, with no explanation for the delay in complying with directions. Further, no explanation was provided as to the service of new documents in accordance with rule 15(2A). A simple, and unhelpful, request was made for 'more time' in which to collect further documents without any timeframe being provided to the Tribunal.
5. The appellant's legal representatives served a 126-page supplementary bundle at 15:21 the day before the hearing. No explanation was given for the breach of directions by the late filing and service of the bundle. No effort was made to identify documents that were being filed for the first time or had previously been relied upon, and no explanation was provided as to the filing of new documents as required under rule 15(2A). The fact that some pages were upside down and others unintelligible appeared not to have been noticed by the legal representatives. I observe that during the course of these proceedings the appellant's legal representatives have previously failed to comply with directions, resulting in their being directed to explain their behaviour to UTJ Kopieczek.
6. At the hearing before me on 9 October 2020, Mr. Walker confirmed that he took no issue with the late service of documents. Upon considering the contents of the bundle I decided that it was in the interests of justice that it be admitted. I observed to the parties that the recent evidence as to the sponsor's mental health post-dated the hearing before the First-tier Tribunal.

7. Mr. Walker confirmed that with the aid of Mr. Solomon he had been able to identify and consider the relevant pages within the supplementary bundle and was able to proceed.

Anonymity

8. The First-tier Tribunal did not issue an anonymity direction and no request was made by either party for such direction before me.

Background

9. The appellant married the sponsor, a British citizen hailing from Sri Lanka, in India on 17 August 2009. They have two children, presently aged 9 and 6, who are British citizens and who reside with their mother in India.
10. The sponsor has an established diagnosis of bipolar affective disorder, first diagnosed in June 2015.
11. On 28 March 2017 the appellant applied for entry clearance under the Immigration Rules ('the Rules') as the partner of a British citizen. She provided evidence that the sponsor was earning over £18,600 per annum consequent to employment with three employers including a firm of accountants, Agnon LLP, at their London office.
12. It is accepted by the parties that after the filing of the appellant's entry clearance application the sponsor ceased employment consequent to mental health concerns and on 13 December 2017, prior to the decision of the respondent, secured social benefit provision through the award of Personal Independence Payment ('PIP').
13. By a decision dated 29 January 2018 an respondent refused the appellant's application for entry clearance as a spouse detailing, *inter alia*:

'Under paragraph EC-P.1.1(c) your application falls for refusal on grounds of suitability under Section S-EC of Appendix FM.

You stated on your visa application form your sponsor was employed by Agnon Chartered Certified Accountants and provided the required specified documents including payslips and an employment letter.

On several occasions we attempted to contact Agnon Chartered Certified Accountants on the telephone number provided in their letter ... however each time the number was unavailable and disconnected. Furthermore, we attempted to contact the employer using the telephone number provided on their website ... however this dialled to an engineering firm. When questioned whether they had any relation to Agnon Chartered Certified Accountants they confirmed they did not.

When your sponsor was interviewed about this claimed employment with Agnon Chartered Certified Accountants he was very vague about his role and responsibilities; only able to state he helped with the files. He was unable, when questioned, to name any colleagues apart from Ramraj who wrote the employment letter, despite claiming to have worked there for over 6 months. Your sponsor was unclear how many hours he worked per week or the days of

the week he worked stating it varied. Considering his payslips always showed a basic salary of £624 I do not find it credible that his working hours varied each week. Your sponsor was unable, when asked, to describe the business premises or its surroundings.

Considering all of the above, I am not satisfied your sponsor was employed as claimed by Agnon Chartered Certified Accountants. Furthermore, I am satisfied, whether or not to your knowledge, false documents and information have been provided in support of your application. Your application is therefore refused under paragraph EC-P.1.1(c) of Appendix FM to the Immigration Rules (S-EC.2.2).'

14. As to eligibility the respondent concluded:

'You do not meet the eligibility financial requirement of paragraphs E-ECP.3.1. to 3.4.

As stated above I am not satisfied your sponsor's employment with Agnon Chartered Certified Accountants was genuine therefore I have only considered his employment with KFC and Tesco towards the income requirement.

You have provided all specified documents in relation to these employments. These indicate he had a combined income of £xx [sic] over the 6-month period prior to your application. In order to meet the financial requirement your sponsor must have an annual income of at least £18,600 (£9,300 over 6 months) therefore your sponsor's income was not sufficient to meet this requirement. Your application is therefore refused under paragraph EC.P.1.1(d) of Appendix FM of the Immigration Rules (E-ECP.3.1).'

15. At the date of decision, the respondent was unaware that the sponsor had been admitted to hospital under section 2 of the Mental Health Act 1983 ('the 1983 Act') on 19 August 2017 and under section 3 of the 1983 Act on 15 September 2017. He was given 'section 17 extended leave' on 20 September 2017 but self-presented to hospital on 22 September 2017 as he was not coping at home. He was transferred to PICU on 26 September 2017 and later transferred to a triage ward on 9 October 2017 before being transferred to another ward on 13 October 2017. He subsequently enjoyed a period of section 17 leave under the care of the home treatment team before being discharged back to the care of the local early intervention service.

Decision

16. I wish to observe from the outset my appreciation for the efforts of both Mr. Solomon and Mr. Walker in this matter, both of whom espoused the highest standard of representation. Between them Mr. Solomon was able to throw light upon the documents contained in the poorly prepared bundles filed in this matter and Mr. Walker was ultimately content to accept upon consideration of the relevant documents that the appellant's appeal should properly be allowed.

17. I set out below my reasons for approving the respondent's acceptance that the appellant should succeed in this appeal under the Rules.

18. As to the purported earnings by the sponsor from his employment from Agnon LLP, Mr. Walker accepted that the sponsor's employment history identified by HM Revenue & Customs by its letter dated October 2018, in which the relevant employer is detailed to be three named persons, is consistent with the sums earned as identified in the Agron LLP payslips relied upon. One of the named persons, Nagen Ramraj, authored a letter as a partner of Agnon LLP dated 20 March 2017 that accompanied the entry clearance application. Further, Mr. Walker accepted that the P60 relating to the tax year ending April 2017 and the P45 dated 15 April 2018, both of which refer to Agnon LLP as being the sponsor's employer, are genuine documents. Mr. Walker further noted payment from Agnon LLP, detailed as 'salary', on a bank statement, being paid into the sponsor's bank account in a sum consistent with a relevant pay slip. Consequently, he accepted as genuine the email from Nageen Ramraj dated 29 October 2018, confirming that the sponsor had been employed by the firm as an unskilled office assistant and explaining that the telephone number unsuccessfully called by an entry clearance officer related to a previous office.
19. I observe as to the respondent's interview with the sponsor that no copy of the interview has been filed with the Tribunal and to date the Tribunal has not been provided with, at the very least, the date of the interview. Mr. Walker appropriately accepted that there was a likelihood that as such interview took place before the decision in January 2018, the sponsor was either being cared for under 'section 17' measures or had recently been discharged from such leave. Section 17(1) of the 1983 Act covers the entitlement of the responsible clinician ('RC'), the approved clinician with overall responsibility for a patient's care, to grant leave from hospital detention under the 1983 Act with any conditions that may be necessary 'in the interests of the patient or for the protection of other persons.' Such conditions are to be a proportionate restriction to the end they seek to achieve or the risk they seek to manage. Only the RC can grant section 17 leave and only to patients detained under sections 2, 3, 4, 37 or 47 of the 1983 Act. I observe that the RC has a right under s17(4) to recall patients from leave, revoking their leave of absence. The medical evidence relied upon by the appellant does not provide a date upon which the sponsor was discharged from section 17 measures, simply referring to his being subject to a 'period' of such leave, but I am satisfied that the sponsor was vulnerable at the time of his interview and the respondent has provided no evidence that such vulnerability was positively and appropriately addressed during the telephone interview. Consequently, I conclude that Mr Walker was correct to concede that no reliance can be placed upon the purported contents of the interview.
20. In such circumstances, the respondent cannot satisfy the burden placed upon her in seeking to establish that documents originating from Agnon LLP are false, and therefore could not lawfully refuse the application on suitability grounds under paragraph EC-P.1.1(c) of Appendix FM to the Rules (S-EC.2.2).
21. On behalf of the respondent Mr. Walker conceded that the sponsor was employed by Agnon LLP as stated in the appellant's application for entry clearance and consequently at the date of application the appellant met the relevant financial

requirements. Further, though unbeknown to the respondent, at the date of decision the appellant met the relevant financial requirements consequent to the sponsor being in receipt of PIP: paragraph E-ECP.3.3.(1)(vi).

22. Mr. Walker further confirmed that the appellant satisfied the accommodation requirements established by paragraph E-ECP.3.4.
23. Upon considering the evidence in the round, I am satisfied to the appropriate standard that the appellant meets the requirements of Section EC-P of Appendix FM to the Rules and therefore her appeal is allowed on human rights (article 8) grounds.
24. Upon the respondent now accepting that the appellant meets the relevant entry clearance requirements under the Rules, I am not required to consider the appellant's alternative submission, namely that her application should have been granted on 'Zambrano' grounds under EU law.

Notice of Decision

25. By means of a decision sent to the parties on 19 September 2019 this Tribunal set aside the decision of the First-tier Tribunal promulgated on 9 January 2019 pursuant to section 12(2)(a) of the Tribunal, Courts and Enforcement Act 2007.
26. The decision is re-made, and the appellant's appeal on human rights (article 8) grounds is allowed.

Signed: *D O'Callaghan*

Upper Tribunal Judge O'Callaghan

Date: 12 October 2020

TO THE RESPONDENT

FEE AWARD

The appellant was granted a fee exemption and so no fee award is payable. In any event, the respondent's decision was reasonable on the evidence initially presented. The Tribunal's decision is founded upon documentary evidence submitted consequent to the decision and so no fee award would have been made.

Signed: *D. O'Callaghan*

Upper Tribunal Judge O'Callaghan

Date: 12 October 2020