Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: HU/13002/2019
& HU/13004/2019

THE IMMIGRATION ACTS

Decided under Rule 34 Without a Hearing	**Decision & Reasons Promulgated**
At Field House	**On 17 December 2020**
On 10 December 2020	

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

[A P]
[H P]
(NO ANONYMITY DIRECTION MADE)

Appellants

and

ENTRY CLEARANCE OFFICER, SHEFFIELD

Respondent

DECISION AND REASONS

1. The appellants appeal with permission against the decision of First-tier Tribunal Judge Rothwell, promulgated on 25 March 2020, dismissing their appeals against the refusal of Entry Clearance as the children of Ms Jezyl [P] (the "sponsor") who is married to Angrez [S], their step-father.

2. For the reasons set out in my decision promulgated on 17 November 2020, a copy of which is attached, I set that decision aside, stating:

> 18. Having set aside the decision, I now turn as to how it ought to be remade. Given the concession by the respondent set out in the response of 18 August 2020, there now appears to

be no longer any doubt as to the level of the sponsor's income. The tax return shows the additional income to be £27,026.00 from employment and a profit of £4,335 from self-employment, presumably the cash in hand cleaning job. That is consistent with her being paid £150 per week, as are the deposits into her bank account noted by the judge. That equates to £678.84 per week. Given that the level of the rent is £237.69 per week, that leaves £441.50 per week, comfortably more than £333, the applicable level of income support that would be payable and on which the respondent relies in the refusal notice.

19. Given also the unchallenged evidence as to the adequacy of the accommodation both as to size and the landlord's permission for the appellants to live there, my preliminary view is that the appeal should be remade in the Upper Tribunal, allowing it, on the basis that the requirements of the Immigration Rules are met, and that therefore the human rights appeals ought to be allowed, there being no public interest in refusal in such circumstances.

20. It is therefore my preliminary view that the appeal be remade in the Upper Tribunal on the basis of the material already provided, and in light of the respondent's concession and for the reasons set out above, it should be allowed without the need for a further hearing.

21. Accordingly, unless either party objects in writing supported by cogent argument within 10 working days of the issue of this decision, I will promulgate a decision, allowing the appeal without a hearing on the basis of the above. In the absence of a timely response by a party, it will be presumed that it has no objection to the course of action proposed.

3. I then directed as follows:

> 2. It is my preliminary view that the appeal be remade in the Upper Tribunal on the basis of the material already provided and that it should be allowed without the need for a further hearing.
>
> 3. Any objection to this proposed course of action must be made in writing within 10 working days of the issue of this decision.
>
> 4. In the absence of a timely response by a party, it will be presumed that it has no objection to the course of action proposed

4. There has been no response to these directions by either party. Accordingly, I am satisfied that neither party objects to the matter being determined without a hearing and has nothing further to say. I have therefore decided to determine the appeal without a hearing. In doing so, I have borne in mind Rule 34 and the judgment of Fordham J in JCWI v President of the Upper Tribunal [2020] EWHC 3103 as well as the order made in that case.

5. For the reasons set out in my decision promulgated on 17 November 2020 I am satisfied that that the determination of the First-tier Tribunal did involve the making of an error of law for the reasons set out above, and must therefore be set aside. In the circumstances, and in line with the directions set out I above, I am satisfied on the evidence provided that the appellants have satisfied all the requirements of the Immigration Rules. Thus,

6. For that reason, and following OA and Others (human rights; 'new matter'; s.120) Nigeria [2019] UKUT 65 (IAC), and in the absence of any indication from the respondent that there are any other factors militating against a grant of entry

clearance, I am satisfied that the refusal to grant Entry Clearance is in breach of their Article 8 rights. I therefore allow the appeal on human rights grounds.

7. Given the finding that the requirements of the Immigration Rules are met, it would be appropriate for the appellants to be granted leave on that basis.

Summary of conclusions

1. The determination of the First-tier Tribunal did involve the making of an error of law and I set it aside.

2. I remake the appeal by allowing it on human rights grounds.

Signed Date 10 December 2020

Jeremy K H Rintoul
Upper Tribunal Judge Rintoul

ANNEX – ERROR OF LAW DECISION

IAC-AH-SAR-V1

Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: HU/13002/2019
& HU/13004/2019

THE IMMIGRATION ACTS

Decided under Rule 34 Without a Hearing
At Field House
On 30 September 2020

Decision & Reasons Promulgated

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Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

[A P]
[H P]
(NO ANONYMITY DIRECTION MADE)

Appellants

and

ENTRY CLEARANCE OFFICER, SHEFFIELD

Respondent

DECISION AND REASONS

8. The appellants appeal with permission against the decision of First-tier Tribunal Judge Rothwell, promulgated on 25 March 2020, dismissing their appeals against the refusal of Entry Clearance as the children of Ms Jezyl [P] (the "sponsor") who is married to Angrez [S], their step-father.

9. The application was refused by the respondent as he was not satisfied that the appellants could be accommodated or maintained adequately without recourse to public funds. This was on the basis that there was not sufficient evidence that the proposed accommodation was in fact available or was adequate; and, on the basis that there would not be sufficient income to support the appellants, given that the available income, less costs of accommodation, left a sum less than the equivalent of income support that would be payable.

10. The respondent was not represented at the appeal; the appellants were represented by counsel and the judge heard evidence from the sponsor and her husband. She also had before her a bundle of evidence.

11. The sponsor's evidence was that she earns £27,500 gross, working 40 hours a week and that she earns £7800 in addition from casual work. She and her partner had moved to new accommodation which has three bedrooms, the rent being £1030 per month inclusive of bills. Her husband's evidence, as set out in his witness statement, is that he earns £12,000 per annum.

12. The judge accepted that the sponsor earned £27,500 but did not accept (a) that she earned an additional £7800 or (b) that her husband had any earnings, given the lack of documentary evidence. The judge was not satisfied either that there was sufficient income after payment of the rent such that there was an amount left greater than the applicable amount of income support.

13. The judge was not satisfied either that the new accommodation was adequate as the tenancy agreement did not state the number of bedrooms, noting that the sponsor, her husband and her son aged 15 already lived there, but that the tenancy agreement said a total of four people yet with the appellants there would be five people there.

14. The judge therefore concluded that the requirements of the Immigration Rules could not be met and that the public interest outweighs the article 8 rights of the appellants and sponsor.

15. The appellant sought permission to appeal on the grounds that the judge had erred in law in that she:

    (i) Had erred in not taking into account documentary evidence handed up at the hearing confirming the sponsor's additional income and the sponsor's husband's income;

    (ii) Had not, as a result, properly assessed whether there was adequate maintenance which was achieved taking into account only the full-time income of the sponsor and her husband, or the total income of the sponsor alone/

    (iii) Had not taken into account the letter from the sponsor's landlord which confirmed that the property had 2 double and 1 single bedroom and that he was content for the appellants to live there with their mother.

(iv) Had failed to consider whether there were compelling circumstances pursuant to paragraph 297 (i)(f) such that the appellants should be granted entry clearance;

(v) Had erred in her assessment of proportionality;

16. The grounds do, however, take over 16 pages to make these straightforward points. Much of what is written is unnecessary and confuses submissions with grounds of appeal. The JOINT PRESIDENTIAL GUIDANCE 2019 No 1: Permission to appeal to UTIAC guidance issued provides at [29]:

> 29. It is reasonable to expect a professional representative to set out the basis of the application for PTA with an appropriate degree of particularity and legibility. The parties are under a duty to assist the Tribunals in their overriding objective and to co-operate with them. For those reasons, a judge is entitled to expect that the grounds of appeal should set out in simple language, clearly and concisely why the decision of the First-tier Tribunal was wrong; that they address the relevant part of the decision and the way in which it is said to be wrong in respect of each way in which the decision is said to be wrong. A judge is entitled to point out where this has not been done; ***the judge's role is to evaluate the claimed errors, not to read through overlong grounds padded out with unnecessary quotations from statute or case law to discern if they disclose an arguable error.***[emphasis added]

17. On 6 May 2020 first-tier Tribunal Judge Osborne granted permission on all grounds.

18. On 28 July 2020 Upper Tribunal Judge Kopieczek also made directions in this case stating:

1. I have reviewed the file in this case. In the light of the present need to take precautions against the spread of Covid-19, and the overriding objective expressed in the Procedure Rules[1], I have reached the provisional view, that it would in this case be appropriate to determine the following questions without a hearing:

   (a) whether the making of the First-tier Tribunal's decision involved the making of an error of law, and, if so

   (b) whether that decision should be set aside.

2. I therefore make the following DIRECTIONS:

   (i) The appellant may submit further submissions in support of the assertion of an error of law, and on the question whether the First-tier Tribunal's decision should be set aside if error of law is found, to be filed and served on all other parties no later than **14 days after this notice is sent out** (the date of sending is on the covering letter or covering email);

   (ii) Any other party may file and serve submissions in response, no later than **21 days after this notice is sent out**;

[1] The overriding objective is to enable the Upper Tribunal to deal with cases fairly and justly: rule 2(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008; see also rule 2(2) to (4).

(iii) If submissions are made in accordance with paragraph (ii) above the party who sought permission to appeal may file and serve a reply no later than **28 days after this notice is sent out**.

(iv) All submissions that rely on any document not previously provided to all other parties in electronic form must be accompanied by electronic copies of any such document.

3. Any party **who considers that despite the foregoing directions a hearing is necessary** to consider the questions set out in paragraph 1 (or either of them) above must submit reasons for that view no later than **21 days after this notice is sent out** and they will be taken into account by the Tribunal. The directions in paragraph 2 above must be complied with in every case.

4. If this Tribunal decides to set aside the decision of the First-tier Tribunal for error of law, further directions will accompany the notice of that decision.

5. Documents and submissions filed in response to these directions may be sent by, or attached to, an email to [email] using the Tribunal's reference number (found at the top of these directions) as the subject line. Attachments must not exceed 15 MB. This address is not generally available for the filing of documents. Service on the Secretary of State may be to [email] and to the original appellant, in the absence of any contrary instruction, by use of any address apparent from the service of these directions.

19. The appellants object to there being no hearing on the specious grounds that the appellants would wish to see the hearing. As they are in the Philippines, that would not ordinarily be possible, and in any event the issues are straightforward, requiring little by way of advocacy; either the judge took documents into account or she did not.

20. The respondent does not object to there being no hearing, and indeed accepted that the sponsor's earnings for the tax year 2019/2020 were £31,361 as disclosed in her Tax Return for that year, albeit that this was not a document before the First-tier Tribunal. No issue is taken as to whether the judge did or did not fail to take into account relevant documentary evidence.

21. The Tribunal has the power to make the decision without a hearing under Rule 34 of the Procedure Rules. Rule 34(2) requires me to have regard to the views of the parties. bearing in mind the overriding objective in Rule 2 to enable the Tribunal to deal with cases fairly and justly, I am satisfied that in the particular circumstances of this case where no objection to a decision being made in the absence of a hearing that it would be right to do so.

22. It is evident from the grounds, drafted by counsel who represented the appellants at the hearing in the First-tier Tribunal, and the material on file, that this experienced judge did, for some reason, fail to take into account relevant material relating to the income of the sponsor and her husband, and as to the adequacy of the accommodation. Why that is so, I do not know. It may well be that the fact this was a float case, without the assistance of the respondent, and the imposition of lockdown after the hearing on 11 March 2020 contributed to this.

23. The judge failed to take into account relevant evidence as regards the husband's income, incorrectly stating that there was no evidence of it, and failed to take into account relevant evidence in assessing the sponsor's cash in hand earnings. She also failed to take into account the letter from the landlord confirming the size of the property and his consent to it being occupied by the appellants, the sponsor, her husband and the sponsor's son. That is material, as the evidence, taken at face value, demonstrates that the requirements of the Immigration Rules are met.

24. For these reasons I set aside the decision; it is unnecessary in the circumstances for me to consider whether the judge erred in her approach to paragraph 297 (i) (f) or proportionality.

25. Having set aside the decision, I now turn as to how it ought to be remade. Given the concession by the respondent set out in the response of 18 August 2020, there now appears to be no longer any doubt as to the level of the sponsor's income. The tax return shows the additional income to be £27,026.00 from employment and a profit of £4,335 from self-employment, presumably the cash in hand cleaning job. That is consistent with her being paid £150 per week, as are the deposits into her bank account noted by the judge. That equates to £678.84 per week. Given that the level of the rent is £237.69 per week, that leaves £441.50 per week, comfortably more than £333, the applicable level of income support that would be payable and which the respondent relies in the refusal notice.

26. Given also the unchallenged evidence as to the adequacy of the accommodation both as to size and the landlord's permission for the appellants to live there, my preliminary view is that the appeal should be remade in the Upper Tribunal, allowing it, on the basis that the requirements of the Immigration Rules are met, and that therefore the human rights appeals ought to be allowed, there being no public interest in refusal in such circumstances.

27. It is therefore my preliminary view that the appeal be remade in the Upper Tribunal on the basis of the material already provided, and in light of the respondent's concession and for the reasons set out above, it should be allowed without the need for a further hearing.

28. Accordingly, unless either party objects in writing supported by cogent argument within 10 working days of the issue of this decision, I will promulgate a decision, allowing the appeal without a hearing on the basis of the above. In the absence of a timely response by a party, it will be presumed that it has no objection to the course of action proposed.

Notice of Decision & Directions

1 The decision of the First-tier Tribunal did involve the making of an error of law and I set it aside.

2 It is my preliminary view that the appeal be remade in the Upper Tribunal on the basis of the material already provided and that it should be allowed without the need for a further hearing.

3 Any objection to this proposed course of action must be made in writing within 10 working days of the issue of this decision.

4 In the absence of a timely response by a party, it will be presumed that it has no objection to the course of action proposed

Signed Date 30 September 2020

Jeremy K H Rintoul
Upper Tribunal Judge Rintoul