Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/03831/2021
UI-2022-000304

THE IMMIGRATION ACTS

Heard at Field House **Decision & Reasons Promulgated**
On 25 April 2022 **On 6 June 2022**

Before

UPPER TRIBUNAL JUDGE PITT

Between

MRS JACINTA OGECHUKWU UBA
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

ENTRY CLEARANCE OFFICER – SHEFFIELD

Respondent

Representation:
For the Appellant: Mr D Fadina of Fadina Associates
For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision issued on 21 December 2021 of First-tier Tribunal Judge Head which refused the appellant's appeal against refusal of entry clearance as a spouse of a British citizen.

2. The appellant is a citizen of Nigeria and was born on 23 August 1983.

3. On 12 April 2021 the appellant made an entry clearance application to join her British national spouse who lives in the UK. The application set out on

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pages 4 and 18 that the appellant was the primary carer of the couple's British national child and that she was seeking entry clearance in order for the daughter to live with both of her parents in the UK.

4. On 9 July 2021 the application was refused. The Entry Clearance Officer found that the appellant had not shown that the requirements of Appendix FM-SE were met where no documents concerning the sponsor's financial situation were provided. The refusal referred in paragraphs 2 and 3 to consideration having been given to Article 8 ECHR and section 55 of the Borders, Citizenship and Immigration Act 2009 (the 2009 Act) but no specific findings under those headings were provided, the final paragraph of the decision stating only that "You do not fall for a grant of entry clearance outside the Immigration Rules on the basis of compassionate factors".

5. The appeal against the refusal of entry clearance came before First-tier Tribunal Judge Head on 22 November 2021. By the time of the hearing before the First-tier Tribunal the appellant had provided documents setting out the employment circumstances of the sponsor in order to show that the requirements of Appendix FM-SE were met.

6. The First-tier Tribunal did not accept that the new materials showed that the requirements of Appendix FM-SE were met. First-tier Tribunal Judge Head found in in paragraphs 10 to 14 of the decision:

> "10. The question for the Tribunal is this; not if all the relevant documentation specified under Appendix FM-SE was submitted at the date of application, but if, the subsequently submitted documentation meets the requirements of Appendix FM SE.
>
> 11. I note that the payslips states (sic) that the sponsor was paid £1678.80 by BACS on 30 November 2020, however there is no corresponding credit in his account on the same day, instead, a payment of £16780.80 appears on the 1 December 2020.
>
> 12. I further note, that what the appellant refers to as her 'Husband's letter of employment', is in fact a contract of employment.
>
> 13. It appears that the contract of employment was submitted to the respondent with the appellant's notice of appeal.
>
> 14. I find that the contract of employment is not a letter from the employer as stipulated in Appendix FM-SE and does not contain all of the requisite specified information, as required with reference to [2.(b)] of Appendix FM-SE. Specifically, the contract of employment does not indicate whether the employment is permanent or on a fixed-term contract. Thus, I find as a fact, that the appellant has failed to meet all of the evidential requirements with reference to the 'employer's' correspondence".

7. In paragraphs 16 to 25 of the decision, the First-tier Tribunal concluded that the decision was proportionate under Article 8 ECHR. There was no

mention in that assessment of the appellant's British national daughter or s.55 of the 2009 Act.

8. The appellant's grounds of appeal challenged the judge's findings on whether Appendix FM-SE was met by the documents that had been provided for the appeal. The grounds also maintained that the decision was in error because it failed to consider the situation of the appellant's daughter in the Article 8 ECHR assessment.

9. At the hearing before me the respondent accepted most of the appellant's grounds were made out. The finding in paragraph 11 of the decision concerning the sponsor's pay being shown to have gone into his bank account on the day after the date on the payslip was not well-founded. It was accepted that the contract of employment stated that it was a "letter of agreement" and that it contained all of the information required by Appendix FM-SE. It indicated that the sponsor would be a permanent employee once he passed his probation period. The respondent accepted that the payslips and bank statements provided by the sponsor confirmed that he had become a permanent employee at the expiry of the probation period. The respondent also accepted that the decision disclosed an error on a point of law where there was no reference in the Article 8 ECHR assessment to the appellant's daughter or s.55 of the 2009 Act.

10. The respondent's only defence to the grounds of appeal, put somewhat hesitantly by Ms Everett, was that a contract of employment and a letter of employment as specified in paragraph 2 of Appendix FM-SE were not necessarily the same thing.

11. It was my conclusion that the First-tier Tribunal erred in the assessment of whether the evidence showed that the provisions of Appendix FM-SE for the reasons set out in the grounds and as accepted by the respondent before me. Further, as above, it was not disputed that the contract of employment here referred to itself as a "letter" and contained all the information required from a letter of employment set out in Appendix FM-SE. It appeared to me that the appellant had provided evidence that met the requirements of Appendix FM-SE, therefore, and that the decision of the First-tier Tribunal was in error in concluding otherwise.

12. This conclusion indicated, in turn, that the finding under Article 8 ECHR had to be in error where, if the Immigration Rules had been shown to have been met and would be met in the event of a further application, it was not in the public interest or proportionate to refuse entry clearance. That was additionally so given that the Article 8 ECHR assessment contained no reference to the appellant's daughter or s.55 of the 2009 Act.

13. For these reasons I set aside the decision of the First-tier Tribunal to be re-made.

14. The representatives were in agreement that in the event that an error of law was found I could proceed to re-make the appeal without needing to

take further evidence. As above, the appellant's documents show that the provisions of Appendix FM-SE were met and where that is so it is disproportionate to maintain the refusal of entry clearance. That is additionally so where there was also no dispute that the appellant is the primary carer of the British national child who cannot join her father in the UK without her mother being granted entry clearance. I concluded that the respondent's decision to refuse entry clearance was not proportionate.

15. For all of these reasons, I find that the appeal should be allowed under Article 8 ECHR.

Notice of Decision

16. The decision of the First-tier Tribunal discloses an error on a point of law and is set aside to be re-made.

17. I re-make the appeal as allowed under Article 8 ECHR.

Signed: S Pitt Date: 9 May 2022
Upper Tribunal Judge Pitt