IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-002576

First-tier Tribunal Nos: HU/61432/2023
LH/00911/2024

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 12th of September 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR VAN MANH VU
(NO ANONYMITY ORDER MADE)

Respondent

Representation:
For the Appellant: Ms S Lecointe, Senior Home Office Presenting Officer
For the Respondent: Mr K Mawla instructed by Jubilee Solicitors

Heard at Field House on 2 August 2024

DECISION AND REASONS

1. This is an appeal on behalf of the Secretary of State. I shall refer to the Appellant as he was before the First-tier Tribunal as the Claimant.

2. The Claimant arrived in the UK on 1 January 2011 and entered unlawfully. He subsequently applied on 2 April 2014 for leave to remain as the partner of a British citizen, which was granted and he obtained further leave and extensions on the same basis. That relationship subsequently broke down and the Claimant began cohabiting with a new partner in November 2021. On 9 December 2022, an application was made for leave to remain on the basis of his new partnership and also his relationship with her British citizen child. This application was refused in a decision dated 7 September 2023. The Claimant appealed against that decision and his appeal came before the First-tier Tribunal for hearing on 15 April 2024. In a decision and reasons promulgated on 28 April 2024 the appeal was allowed.

3. On 10 May 2024, the Secretary of State sought permission to appeal on the basis of the following grounds:

> **"9. The FTTJ has confirmed at [13] the appellant cannot meet Appendix FM as his partner is not a British Citizen nor settled and, additionally, their relationship has not subsisted for more than two years. The FTTJ further confirms at [14] the appellant cannot benefit from EX.1. as the Relationship requirements under Appendix FM are not met and EX.1. is not a "stand alone provision". The FTTJ continues to find at [15] the appellant has not demonstrated there are any "very significant obstacles" to his return to Vietnam. These three key findings are not challenged.**
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> **10. While it is accepted the sponsor has now provided evidence her daughter is a British citizen, the FTTJ has nevertheless found at [29](iv) the appellant's relationship with her "falls short of a parental relationship" and his involvement in her upbringing is not enough "to establish a parental relationship".**
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> **11. In balancing the public interest in effective Immigration Control against the appellant's circumstances, the FTTJ has found the appellant continues to require the services of an interpreter as he is unable to speak English despite his long residence in the UK. It is therefore submitted that the FTTJ has failed to adequately apply the public interest in this appeal.**
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> **12. The Respondent maintains it would not be disproportionate for the appellant to return to Vietnam temporarily while the sponsor continues her journey to settlement.**
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> **13. The Respondent submits the FTTJ has failed to consider the appellant can continue his relationships with his adult daughter and faith community by remote means from Vietnam and has afforded undue weight to the appellant's Private Life.**
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> **14. At [29] (iii) the FTTJ has stated:**
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> **"This is not a case where the appellant can simply return to Vietnam and make an entry clearance application to re-join the sponsor. That application is bound to fail as the sponsor does not meet the eligibility requirement as she is not British or settled in the UK. I find that communication using modern means is not an adequate substitute for a physical relationship between partners."**
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> **15. However, it is submitted any separation would be temporary and necessary while the sponsor makes an appropriate application for settled status and the FTTJ is obliged to have regard to the public interest in effective immigration control at section 117A (2) (a) of the 2002 Act, read with section 117B(1).**
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> **16. Given it has been established there are no obstacles to the appellant's return to Vietnam, the Respondent submits the FTTJ has overall failed to provide adequate reasons for finding the appeal succeeds outside the rules.**

Conclusion:

17. For the reasons set out above, it is submitted that the FTTJ erred materially in law in allowing the appellant's appeal. The FTTJ's decision should be set aside and the appeal referred to a different FTTJ."

4. Permission to appeal was granted on 2 June 2024 by First-tier Tribunal Judge Lester on the basis that there is an arguable error of law disclosed.

Hearing

5. In her submissions, Ms Lecointe pointed out that the Secretary of State had been unrepresented at the appeal. The judge had confirmed at [13] that the Claimant could not meet the requirements of Appendix FM as a partner because his partner was not yet settled or British. At [14] the FtTJ found that, therefore, the Claimant could not benefit from EX.1(b) and that EX.1(a) is not stand-alone and cannot apply where the relationship requirement is not met. At [29](iv) the judge found that the requirements of section 117B(6) NIAA 2002 were not met because the relationship between the Claimant and his stepdaughter could not be characterised as a parental relationship and therefore it was clear that the Claimant did not meet the requirements of the Rules.

6. Ms Lecointe submitted that the judge had not given adequate reasons or weight to the needs of immigration control, that the Sponsor was in the last period of leave but would not be eligible to apply for ILR until September 2025. She submitted there was no reason why the Claimant could not return to Vietnam to make an entry clearance application and that this would only be temporary, see Alam [2023] EWCA Civ 30 and that immigration control needed to be maintained.

7. In his submissions, Mr Mawla submitted that Article 8 was determined at the date of appeal. By that time the partner requirement of the Rule would have been met. He submitted that the case law has to be considered, that the judge had dealt with the family and private life of the Claimant in a structured manner and found he had family life with his partner and his child, that he plays an active role in the Sponsor's daughter's life and the judge had considered all of this and weighed up those factors applying Rhuppiah [2018] UKSC 58 and had taken them into consideration. Given that the Sponsor still has a substantial period of time until she is eligible for settled status requiring the Claimant to leave the UK to apply for entry clearance would represent a disproportionate interference with the family life that he had established with his partner and her British child.

8. I reserved my decision which I now give with my reasons.

Decision and reasons

9. I find no material errors of law in the decision and reasons of the First tier Tribunal Judge. I find that the grounds of appeal amount to no more than a disagreement with the judge's findings of fact, which were open to her on the evidence before her.

10. I find that it was open to the judge at [23] to find that the Claimant had established family life with his partner and her child, engaging article 8.1. of ECHR and that the judge was entitled to take into consideration the fact that the

Claimant has been living lawfully in the UK since 2014; that he has also been lawfully employed and that he enjoys a relationship with his now adult daughter aged 23 and thus article 8.1. was also engaged with regard to his private life.

11. The judge provided clear reasons for her findings at [29] including the fact that the Claimant had lived lawfully in the UK since May 2014 and would be eligible for ILR on the basis of long residence in May 2024 [10](v). Contrary to the assertion at [11] of the grounds of appeal, the judge weighed against the Claimant the fact that he does not speak English and clearly took account of the fact that this was contrary to the public interest. However, the judge was entitled to take account of the fact that he has worked lawfully and was currently employed, albeit that is a neutral factor. She further took account of the fact that if he were to return to Vietnam in order to apply for entry clearance, that application would be refused on eligibility grounds due to the fact that the Sponsor will not be eligible for settlement until September 2025. In essence the judge took into account the factors for and against the Claimant and conducted a *Razgar* balancing exercise as she was required to do.

12. Further, as the judge noted at [20] whilst the SSHD in the refusal decision criticised the Claimant for failing to provide evidence of cohabitation, such evidence was provided in advance of the appeal hearing but despite a direction to review this evidence the SSHD failed to do so and also chose not to be represented at the appeal hearing. I find it was open to the judge in these circumstances, where the SSHD had had the opportunity to challenge evidence submitted on the Claimant's behalf but did not, to find that the Claimant and his Sponsor had been living together since November 2021 and that their evidence was credible.

Notice of Decision

13. I find no error of law in the decision and reasons of the First tier Tribunal Judge and consequently dismiss the appeal by the SSHD.

Rebecca Chapman

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

19 August 2024