



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

Appeal number: OA/14765/2014

THE IMMIGRATION ACTS

**Heard at North Shields
On March 10, 2016**

**Promulgated
On March 29, 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

**MRS JACCILYN LEE BEARD
(NO ANONYMITY DIRECTION)**

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:

Appellant

**Mrs Cleghorn, Counsel, instructed by Halliday Reeves
Law Firm**

Respondent

Mr Dewison (Home Office Presenting Officer)

DECISION AND REASONS

1. The Appellant is a citizen of the United States of America. The appellant applied for entry clearance on August 5, 2013. On September 23, 2013 the respondent wrote to the appellant's solicitors requesting further information

- including details of the appellant's husband's employment and income to enable the respondent to consider whether the Rules were met.
2. On September 26, 2013 the representative responded enclosing documents but advising the employment evidence was awaited. The evidence was not received and on October 31, 2013 the representative was advised the application failed because the financial threshold was not met. However, the appellant was further advised a final decision would be placed on hold due to the legal challenge made by the respondent in MM. In April 2014 evidence of a salary in excess of £18,600 was submitted.
 3. Following the decision of MM the respondent refused her application on August 29, 2014.
 4. The appellant appealed that decision under section 82(1) of the Nationality, Immigration and Asylum Act 2002 on November 18, 2014.
 5. The appeal came before Judge of the First-tier Tribunal Doyle on June 22, 2015 and in a decision promulgated on July 2, 2015 he refused the appellant's appeal under the Immigration Rules and under article 8 ECHR.
 6. The appellant lodged grounds of appeal on July 17, 2015 submitting the First-tier Judge had erred in his approach to the assessment of the appellant's article 8 claim and the effect of the delay. Permission to appeal was granted by Judge of the First-tier Tribunal Ford on October 6, 2015.
 7. In a Rule 24 letter dated October 16, 2015 the respondent opposed the appeal.
 8. The matter came before me on the above date and I heard submissions from both representatives.
 9. The First-tier Tribunal did not make an anonymity direction and pursuant to Rule 14 of The Tribunal Procedure (Upper Tribunal) Rules 2008 I make no order.

SUBMISSIONS

10. Mrs Cleghorn submitted that there had been a material error and posed the question whether it was proportionate, given the delay brought about Court of Appeal decision, to expect the appellant to lodge a fresh application when the Court may have supported the stance taken by Mr Justice Blake in the Upper Tribunal in MM. Alternatively, whilst there was a legitimate in ensuring the Rules were met, the evidence before the Judge was that before the decision was taken the parties met the Rules. Requiring a fresh application was disproportionate. She referred me to paragraphs [100] to [107] of MM.

11. Mr Dewison relied on the Rule 24 response and submitted the chronology was important. When the application was submitted in August 2013 the appellant did not meet the financial requirements of the Rules. When her application was placed on hold pending the decision in MM the respondent made it clear the application had failed to satisfy the Rules. At the hearing counsel for the appellant had accepted the Rules and the Judge took into account everything being argued today and found it was not disproportionate for the appellant to re-apply.
12. I reserved my decision.

DISCUSSION AND FINDINGS

13. The appellant applied in August 2013 for admission as a spouse. At that date she was fully aware there was an income requirement of at least £18,600. The sponsor earned £14,000. The application was bound to fail.
14. Mrs Cleghorn, with permission from Judge of the First-tier Ford, seeks to argue the delay between placing the appellant's application on hold and the date of the eventual decision, coupled with the fact they now met the Rules, meant the appeal should have been allowed outside of the Rules.
15. The chronology is not disputed and the respondent accepts that by the time the decision was made the appellant met the Rules. However, as previously conceded by Mrs Cleghorn, the relevant date was August 5, 2013. The appellant knew she did not meet the Rules and rather than re-apply she chose to await the Court of Appeal's decision to save paying a further application fee.
16. Following MM being handed down the respondent refused the application but this decision was effectively a confirmation of the initial indication given as long ago as October 31, 2013.
17. Mrs Cleghorn argues the delay is a factor the Judge should have taken into account when considering proportionality but I disagree. The appellant knew full well in October 2013 the Rules were not met and accordingly the decision in August 2014 came as no surprise. If the Court of Appeal had ruled in her favour, then this appeal would not be before me and I therefore see no merit in her argument that the appellant should benefit from the fact the respondent's refusal in October 2013 was subsequently found to be correct in August 2014.
18. The Judge considered the application outside of the Rules and reminded himself that Section 117B(1) of the 2002 Act states "the maintenance of effective immigration is in the public interest".

19. In oral evidence the sponsor accepted there was nothing to stop a fresh application being submitted as he continued to meet the Rules but his explanation for not doing this was because of the time and money invested in the current application.
20. At paragraph 14(i) the Judge reminded himself that the issue in this appeal was "proportionality". He concluded that requiring the appellant to submit a fresh application was not a disproportionate interference.
21. It had been the appellant's refusal to submit an application that met the Rules that had led to family life, as they wanted, being interfered with.
22. Moreover, it seems almost two years have passed since she would have been able to meet the Rules and it is a shame that an alternative approach was not taken by the appellant and her husband bearing in mind a failure to meet the financial requirements was the only reason this application was refused.
23. The Judge's decision was well reasoned and his findings on proportionality were open to him. As he pointed out in July last year the appellant's option is to submit a fresh application.
24. There is no error in law.

DECISION

25. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law. I uphold the First-tier decision.

Signed:

Dated:



Deputy Upper Tribunal Judge Alis

FEE AWARD

I make no fee award as I have dismissed the appeal.

Signed:

Dated:



Deputy Upper Tribunal Judge Alis