Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: **HU/04471/2019 (V)**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 13 October 2020	**On 20 October 2020**

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

GHAZALA QAYYUM

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr R Solomon, instructed by MA Solicitors
For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This has been a remote hearing to which there has been no objection from the parties. The form of remote hearing was Skype for business. A face to face hearing was not held because it was not practicable, and all issues could be determined in a remote hearing. In addition to the above-mentioned parties, the sponsor was present, remotely.

2. The appellant is a citizen of Pakistan born on 6 September 1987. She has been given permission to appeal against the decision of the First-tier Tribunal dismissing her appeal against the respondent's decision to refuse her application for entry clearance.

3. The appellant applied on 17 August 2018 for entry clearance to settle in the UK under Appendix FM of the Immigration Rules on the basis of her family life with her spouse and children. The respondent refused the application on 30 January 2019 on the grounds that the appellant did not meet the eligibility financial requirement of paragraphs E-ECP.3.1 to 3.4 since her husband was unemployed and no evidence had been produced to show that he was exempt from the financial requirement. Although it was claimed that he was unable to work due to medical conditions, none of the benefits he received were ones which led to exemption from the financial requirement. The respondent did not consider there to be any exceptional circumstances rendering the decision a breach of Article 8. That decision was maintained on an entry clearance manager review.

4. The appellant appealed the refusal decision and her appeal was heard by First-tier Tribunal Judge NMK Lawrence on 12 November 2019. The sponsor, the appellant's husband, gave evidence before the judge. On the basis of evidence produced by the sponsor at the hearing confirming that he was now in receipt of a state benefit, Personal Independence Payment (PIP), it was accepted by the Home Office Presenting Officer, on behalf of the respondent, that the appellant was exempt from the financial requirement in E-ECP.3.1 of Appendix FM. However, the judge agreed with the Home Office Presenting Officer that the appellant had failed to produce any evidence showing that the family unit would be accommodated and maintained without recourse to public funds. He accorded no weight to a letter offering the appellant a job in the UK and found that there was otherwise no evidence of the family being able to maintain itself without public funds. The judge found no evidence of compelling circumstances outside the immigration rules and dismissed the appeal in a decision promulgated on 5 December 2019.

5. Permission to appeal to the Upper Tribunal was sought by the appellant on various grounds, namely that the judge had failed to consider evidence before him in regard to adequate accommodation and maintenance and had instead taken account of immaterial considerations, and that the judge had failed to give proper consideration to the best interests of the children.

6. Permission was refused in the First-tier Tribunal but was subsequently granted in the Upper Tribunal on 6 June 2020, on all grounds.

7. At the hearing Mr Clarke conceded that the grounds were made out in respect of the judge's assessment of the best interests of the children and he also conceded that the judge had erred by failing to take account of a property report relating to the sponsor's accommodation which was in the appeal bundle before him. He did not, however, concede that the grounds relating to the judge's findings on the adequacy of maintenance under the finance requirements of the immigration rules had been made out.

8. In light of Mr Clarke's concession, Mr Solomon only addressed the judge's findings on maintenance and submitted that he had failed properly to engage with the issue and had failed to consider relevant documents before him, such as bank statements. He submitted further that the judge had failed to give

proper consideration to the job offer letter and had given inadequate reasons for according it no weight, and that he had taken account of an irrelevant matter, namely GEN.1.11A of Appendix FM, which was not applicable. The judge ought to have found that the family would be adequately maintained through the benefits received by the sponsor and by the income from the job offered to the appellant and that, in any event the best interests of the children were such that the application could have succeeded on Article 8 grounds outside the rules.

9. Mr Clarke, in response, submitted that on the limited evidence before him and the limited arguments made on behalf of the appellant, the judge was entitled to find that the appellant had failed to demonstrate that the family would be adequately maintained and was entitled to accord limited weight to the job offer letter. However, he invited me to find that the judge had otherwise materially erred in law such that his decision ought to be set aside and the decision re-made. Mr Clarke accepted that, in re-making the decision, even if Judge Lawrence's findings on maintenance were to be preserved, the Tribunal would still need to revisit the question of maintenance on the facts available at the date of the hearing. Accordingly, he accepted that the appeal needed to be heard afresh and both parties agreed that a remittal to the First-tier Tribunal was the most appropriate course.

10. In light of the concessions made by Mr Clarke, I agree that Judge Lawrence made material errors of law in his decision to the extent that the decision has to be re-made *de novo*, with fresh findings of fact. I consider the errors to be such that none of the judge's findings can be preserved.

DECISION

11. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law and the decision is set aside. The appeal is remitted to the First-tier Tribunal pursuant to section 12(2)(b)(i) of the Tribunals, Courts and Enforcement Act 2007 and Practice Statement 7.2(b), to be heard afresh before any judge aside from Judge NMK Lawrence.

Signed: S Kebede
Upper Tribunal Judge Kebede Dated: 13 October 2020