



IAC-FH-CK-V1

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

Appeal Number: HU/16742/2018 (V)

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 7 October 2020**

**Decision & Reasons Promulgated  
On 16 October 2020**

**Before**

**UPPER TRIBUNAL JUDGE SHERIDAN**

**Between**

**MS TIFFANY ANNA-KAY SIMMS  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE ENTRY CLEARANCE OFFICER**

Respondent

**Representation:**

For the Appellant: Ms C Nicholas, Counsel instructed by A O & Associates Solicitors  
For the Respondent: Ms S Cunha, Senior Home Office Presenting Officer

This has been a remote hearing which has been consented to by the parties. The form of remote hearing was video by Skype (V). A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. Ms Nicholas was unable to access the video facility. She was, however, able to hear and be heard. In addition, there were difficulties with the quality of the sound from Ms Cunha, which meant that she had to leave and re-join the hearing several times. Despite these difficulties, I was able to hear all of the submissions and Ms Cunha and Ms Nicholas were able to hear, and respond as appropriate, to each other's submissions. I am satisfied that I was able to decide the appeal fairly and that this was not undermined by the absence of a face-to-face hearing or the difficulties described above.

## DECISION AND REASONS

1. The appellant, who is a citizen of Jamaica born on 27 December 1990, sought entry to the UK under Appendix FM of the Immigration Rules as the wife of a person with indefinite leave to remain. Following the refusal of her application, she appealed to the First-tier Tribunal where her appeal was heard by Judge of the First-tier Tribunal Thorne (“the judge”). In a decision promulgated on 21 November 2019, the judge dismissed the appeal. The appellant is now appealing against that decision.
2. Both before the First-tier Tribunal and in her application to the respondent the appellant submitted evidence about the income of her husband (“the sponsor”). The evidence, although insufficient to meet the documentation requirements under Appendix FM – SE, unambiguously showed that the sponsor earned substantially in excess of the financial eligibility threshold in Appendix FM. The judge concluded, on the basis of the failure by the appellant to provide all of the documentation required under Appendix FM-SE to the respondent, not only that the Immigration Rules were not satisfied, but also that the appellant could not “be maintained economically in the UK” by the sponsor.
3. In the context of arguing that refusal of entry would be disproportionate, the appellant maintained that she (and the sponsor, were he to join her to Jamaica) would be at risk because she had been subject to threats and robbery by an armed criminal.
4. The judge’s assessment of proportionality under article 8 ECHR is contained within paragraphs 57 and 58 of the decision, where the judge stated:
  - “57. I must conduct a proportionality balance and do so now. In considering proportionality in the context of the specific facts of this case I take into account the following matters:
    - (a) There is a legitimate interest in maintaining effective immigration control and the economic wellbeing of the UK.
    - (b) There is a general administrative desirability of applying known Rules if a system of immigration control is to be workable, predictable, consistent and fair as between one claimant and another.
    - (c) The evidence establishes that A can speak English.
    - (d) However, because A has not met the financial eligibility requirements of the Immigration Rules, I am not satisfied that A can be maintained economically in the UK. As at the time of the ECO’s decision I am not satisfied that S met the financial requirements of the Rules.
    - (e) There is inadequate evidence that A and S cannot continue their married lives in Jamaica together or maintain their existing family life via visits and long distance communication.
    - (f) It may be that A was the victim of a crime in 2018 but it is clear that the police are investigating and there is inadequate evidence to establish that she would not receive a sufficiency of state protection.

- (g) A is in good health, has relatives in Jamaica and is in work. I can identify no compassionate or exceptional circumstances in the case.
- (h) I also conclude that it would not be disproportionate to expect A to remain in Jamaica (alone or with S) to make the correct application under the Immigration Rules from there with all necessary specified evidence.

58. Bearing in mind all of the above factors (including inter alia that A did not meet the requirements of the Immigration Rules) I conclude that the human rights of the appellant and S are outweighed by the public interest. There is a strong public interest in maintaining effective and fair immigration control and protecting the economic wellbeing of the UK. In this case I am driven (in light of the matters outlined above) to conclude that the public interest does outweigh the human rights of the appellant and S."

5. The grounds of appeal are very brief and make only two arguments.
6. The first is that the judge failed to properly consider the appellant's Article 8 rights in relation to the threat to her life, which had been documented by a letter from the Jamaican police and showed that it would be impossible for family life to continue in Jamaica.
7. The second ground argues that the Article 8 rights of the sponsor were not considered as part of the decision.
8. Ms Nicholas focused her oral submissions on the fact that the evidence tended to show that, at least in substance, the financial eligibility requirements under Appendix FM were met and therefore there was, in her view, no public interest in refusing entry to the appellant. However, as noted by Ms Cunha, this argument was not made in the grounds of appeal and an application to amend the grounds was not made.
9. Ms Nicholas also argued that the judge erred by not taking into consideration that the police in Jamaica would not be able to offer protection to the appellant and sponsor. When pointed out that there was no objective evidence before the First-tier Tribunal to support this contention, Ms Nicholas argued that the corruption and inability to provide protection of the Jamaican police is so well known that the judge ought to have taken judicial notice of it.
10. Ms Cunha argued that although the assessment of proportionality in the decision was very brief, it was sufficient. She referred to the letter from the police adduced by the appellant and submitted that it does not say much more than the judge observed in paragraph 57(f). She submitted that it was for the appellant to establish her case, and the evidence before the First-tier Tribunal does not on any legitimate view support a conclusion that she faces a risk or has a genuine basis to fear for her life.
11. The two grounds of appeal do not have any merit.

12. The first ground concerns the appellant's claim to face a risk to her life. As observed by Ms Cunha, there was no objective evidence before the judge to support the contention that the police would be unable or unwilling to provide protection to the appellant and sponsor. In the absence of such evidence, the judge was entitled to conclude that there was inadequate evidence to establish that the appellant and sponsor would not receive sufficient state protection. Ms Nicholas contends that judicial notice should have been taken of police corruption and incompetence in Jamaica. I disagree. It was not for the judge, based on his own knowledge (if, which is unknown, he had such), to fill gaps in the appellant's evidence. If the appellant sought to rely on an absence of police protection from violent crime in Jamaica it was for her to adduce objective evidence to support the claim. Absent any such evidence, the judge's conclusion was clearly open to him.
13. The second ground of appeal argues that the judge failed to consider the Article 8 rights of the sponsor. This is plainly not correct, as the judge found at paragraph 58 that "the human rights of the appellant and S are outweighed by the public interest" and "the public interest does outweigh the human rights of the appellant and S".
14. The additional argument advanced by Ms Nicholas at the hearing, in contrast to the grounds, has merit. As Ms Nicholas argued, although not all documents required by Appendix FM-SE were submitted, there was a substantial amount of evidence before the First-tier Tribunal showing that the sponsor earns significantly more than the financial eligibility threshold in Appendix FM. The judge's finding at paragraph 57(d) of the decision that the appellant would not be financially independent is, on any legitimate view, inconsistent with this evidence.
15. That said, even if I were prepared to consider this argument despite it not being in the grounds of appeal (which I am not), I would not have found it material and would still have dismissed the appeal. This is because the judge's finding at paragraph 57(h) (that it would not be disproportionate for the appellant to make a further application with the correct evidence) is not undermined by the error identified by Ms Nicholas and is sufficient to dispose of the matter. As highlighted by Ms Cunha, the consequence of refusing entry to the appellant is not that she and the sponsor will be indefinitely separated or that, in order to continue their relationship, the sponsor will need to leave the UK. It is merely that the appellant will need to make another application, which would be bound to succeed given the sponsor's income and that no other reason for not meeting the requirements for entry clearance has been identified. No evidence was submitted showing that the interference with the family life of the appellant and sponsor ensuing from a further delay in entering the UK (whilst waiting for an application to be determined) would be significant and therefore the judge was entitled to find that the public interest in the maintenance of immigration control (to which it was proper to attach some weight, given that the requirements of Appendix FM – SE were not met) is not outweighed by this interference with their family life.

**Notice of Decision**

16. The appeal is dismissed.
17. The grounds of appeal do not identify a material error of law in the decision of the First-tier Tribunal. The decision therefore stands.
18. No anonymity direction is made.

Signed

*D. Sheridan*

9 October 2020

Upper Tribunal Judge Sheridan