Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: OA/17671/2012

THE IMMIGRATION ACTS

Heard at Birmingham	**Determination Promulgated**
On 4 June 2013	**On 28 June 2013**

Before

UPPER TRIBUNAL JUDGE KING TD

Between

ANITA TRACY ANN MORRISON

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss G Vencatachellum, Counsel
For the Respondent: Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Jamaica, born on 5 January 1991. She seeks entry clearance as a spouse under paragraph 281 of HC 395.

2. The Entry Clearance Officer refused that application on 14 August 2012, essentially on the basis that there was not a genuine or subsisting

marriage. It was a refusal also on the basis that the proposed third party support from a Mr Madourie was insufficient to satisfy the Rules as to maintenance.

3. The appellant sought to appeal against that decision, which appeal came before First-tier Tribunal Judge Astle on 8 April 2013. The appeal was dismissed both in respect of the Immigration Rules and also in respect of Article 8 of the ECHR.

4. Leave to appeal was granted against that decision. Thus, the matter comes before me in pursuance of that grant.

5. There has been presented for my attention a detailed bundle of documents that were before the First-tier Tribunal Judge.

6. The Judge, having considered the evidence, found that the marriage was indeed genuine and subsisting. She concluded, however, that the proposed funds from Mr Madourie were inadequate to satisfy the Immigration Rules.

7. Complaint is made by Miss Vencatachellum, who represents the appellant, that the Judge was unduly narrow in her approach to the finances and had failed to take into account that there was a joint account between Mr Madourie and his partner which would have given sufficient funds to enable third party support to have continued for the foreseeable future, and certainly for the two years that was envisaged. It is also said that the Judge failed to take into account that Mr Madourie also had money available from his earnings and also that the sponsor would be able to find employment.

8. Contrary to such an argument, I find that the Judge has borne all relevant matters in mind.

9. She has noted that the appellant had two accounts of his own amounting to £825.37 and £284.35. It is also clear from paragraph 22 of the determination that the Judge recognised that the third account with the largest balance is that maintained by Santander in joint names.

10. Shirley Taylor, in her statement of 26 March 2013, indicated at paragraph 7 as follows:-

> "If my husband wants to support Anita he can do so with his savings as our work brings in the capital we need to run our household".

The Judge was therefore not satisfied, in the absence of any express consent by Shirley Taylor to the use of the joint account, that that account should be taken into consideration.

11. Miss Vencatachelum submitted that that was an unduly narrow approach to take in relation to joint accounts. Subsequent to the hearing Miss Taylor has agreed to the use of the joint account. It is submitted that the whole function of having a joint account is that either party could use it for their own purposes.

12. I do not agree with that interpretation. The whole purpose of a joint account is that the parties can use it for their own or joint purposes linked clearly with their personal situation and circumstances. There is no reason to suppose that support for a third party, particularly if such were to drain the account substantially, would necessarily be within the ambit of the implied consent. I do not find that the approach taken by the Judge is in error in that regard.

13. It is clear that the Judge has analysed matters with great care, noticing that the weekly shortfall is £15.10, meaning that £785.20 per annum is required to make up the shortfall.

14. It is clear from paragraph 21 that the Judge sought to reconcile the earnings of Mr Madourie and had some difficulty in doing so. Again, it is suggested that the Judge failed to bear in mind the earnings of Miss Taylor but it is apparent, as I so find from paragraph 21, that the Judge had borne such matters in mind.

15. It is clear from the statements that had been presented, that there was a degree of tension as to what indeed was left over from the day-to-day earnings of the third party sponsor as opposed to his savings. In his own statement Harry Madourie indicated that he was financially able to support the appellant using his own earnings and his savings whereas in the statement of Shirley Taylor she indicates that he could do so with his savings “as our work brings in the capital we need to run the household”.

16. In cases such as this it is always of assistance to have a detailed schedule of earnings and expenditure to enable the Judge to have a clear indication as to what surplus is available on a weekly or monthly basis. That has not been done. It is clear that the Judge has sought, with some care in paragraph 21, to obtain that result including essentially that Mr Madourie’s average income was £300 a month that he could cover his expenses and those of his partner from such sums together with hers. To what extent there is a surplus has not been outlined in the course of the appeal. The burden of course does fall upon the appellant and sponsor to establish that matter. It is unreasonable to criticise the Judge who has, as I so find, done her best to come to a fair conclusion.

17. There is a curiosity in the bundle of documents that was presented before the Judge in the form of a current bank statement at Santander in the name of Mr Madourie for the period 19 February 2013 to 18 March 2013. That shows a healthy balance whether that is postdecision evidence is not clear but in any event that account statement does not indicate what

funds in that particular account were available prior to the decision and indeed that account does not feature in the grounds of appeal at all. The only significant bank statement relied upon is that of the joint bank statement to which reference has been made.

18. It is to be recognised in fairness to the appellant that the shortfall could be made up from the undisputed accounts which Mr Madourie has. The difference is not substantial. Nevertheless, it is for the appellant, through her representatives in the preparation of the appeal, to adduce clear evidence as to what funds are available and this was not done.

19. The purpose of an appeal is to determine whether the Judge acted in error of law not to invite me to embark upon the exercise of merit or to consider whether, in the light of circumstances, the shortfall has been covered. As indicated, the Judge has been careful to do what she can to arrive at figures and I do not find that she has been unduly narrow or unreasonable in the approach which she has taken to the matter.

20. It is also contended that the Judge erred in the approach to Article 8 in that a full balancing exercise was not entered upon in relation to the sponsor and appellant. The sponsor is a British citizen who has ill-health and it is contended that it was unreasonable of the Judge to consider the aspect of proportionality otherwise than to be resolved in favour of the appellant coming to the United Kingdom. I do not agree. In the findings of the Judge the appellant did not satisfy the Immigration Rules, albeit by a small margin. There has been a consistent application of the law but near-miss, although a factor, is not a decisive factor in Article 8 cases. The sponsor has a home in Jamaica and a family. There is no evidence that seems to have been presented to indicate that he would not obtain any necessary treatment for his condition in Jamaica.

21. The Judge highlighted the fact that perhaps better evidence was needed in order to make a better and more holistic assessment of Article 8. With those comments I entirely agree. The statements of the appellant and the sponsor do not condescend upon the particulars as to private and family life. There are elements, particularly in the statement of the sponsor, which indicate that he has extended family in the United Kingdom and, accordingly, it may be unreasonable for him to relocate. It may be that the approach taken by the Judge was somewhat brief but it was in the circumstances that the Judge did not consider there was sufficient material to further the application.

22. I can detect no error of law in the approach taken by the Judge either to the Immigration Rules or to Article 8.

23. It is clear that the appellant has been successful as to a significant aspect of her claim, namely that it is the intention of the parties to live together.

24. Accordingly, I do not find there to be an error of law in the determination. The proper course it seems to me is for a further application to be made. However, in the current situation of finance, particularly the agreement to the use of the funds, that perhaps should not pose too much of a difficulty. Clearly what has to be made clear is that Mr Madourie is, from his earnings and savings, able to lend that degree of support over the two years as well as managing his own affairs. To that extent, a budget would be helpful and of assistance to the decision maker.

25. However for the present appeal I can detect no material error of law in the decision.
The findings shall stand. The Appeal in respect of the Immigration Decision is dismissed as is the appeal in respect of Article 8 .

Signed Date

Upper Tribunal Judge King TD