



Upper Tribunal

(Immigration and Asylum Chamber)

Appeal Number: HU/00443/2017

THE IMMIGRATION ACTS

Heard at Manchester IAC

On the 14<sup>th</sup> February 2018

Decision & Reasons Promulgated

On the 27<sup>th</sup> February 2018

Before:

DEPUTY UPPER TRIBUNAL JUDGE MCGINTY

Between:

H. K.

(Anonymity Direction made)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Karnic (Counsel)

For the Respondent: Mr McVeety (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. This is the Appellant's appeal against the decision of First-tier Tribunal Judge Wedderspoon promulgated on the 2<sup>nd</sup> June 2017 in which she refused the Appellant's

appeal against the Respondent's decision to refuse the Appellant Leave to Enter the UK, on Human Rights grounds.

2. Judge Wedderspoon made an Anonymity Order in the case, given the fact the Appellant is a minor, and I similarly make such an anonymity direction in respect of this decision.
3. The Appellant is a citizen of Morocco who was born on the [ ] 2015. Before the First-tier Tribunal, it was argued by the Appellant that the Entry Clearance Officer had miscalculated the Appellant's benefits and that there were adequate funds for the maintenance of the Appellant and that the decision was in breach of his Human Rights under Article 8.
4. In reaching her findings at [39], First-tier Tribunal Judge Wedderspoon found that although this was not an appeal against the refusal under the Immigration Rules, consideration still had to be given as to whether or not the Appellant met the requirements of the Immigration Rules, which was a relevant consideration in respect of his Article 8 claim.
5. She found that the Appellant's Sponsor was in receipt of modest benefits in terms of Personal Independence Payment and Employment Support Allowance. She stated that *"The Respondent needs to consider this amount and take account in this regard to the housing costs. These need to be deducted from the benefit income. The fact that the housing costs do not directly reach the Appellant's Sponsor's bank account is irrelevant. Housing costs are a part of daily living. Therefore I find in meeting the requirements of adequate maintenance his net weekly income after housing costs have been deducted is £185.35. The Appellant's Sponsor's income is less than the level of income support that a UK resident family of equivalent size would be entitled to"*. On that basis Judge Wedderspoon found that the provisions of the Immigration Rules were not met and that the Rules reflected Parliament's view as to how, as a matter of public policy, the balance should be struck between the right to respect for family and private life and the maintenance of an effective immigration control and that in such circumstances, the decision did not amount to a breach of the Appellant's Human Rights under Article 8.

6. The Appellant has now appealed against that decision for the reasons set out within the Grounds of Appeal. That document is a matter of record and as such will not be repeated in its entirety here, but in summary, it is argued that the Judge wrongly calculated that the Sponsor's income was only £185.35 and that the Judge had not included the Sponsor's Housing Benefit, which was paid directly to the landlord in calculating the Sponsor's income. It is argued that the accurate calculation of the Sponsor's income from Personal Independence Payment, Employment Support Allowance and Housing Benefit totals £352.20, and that when the housing costs of £83.85 were deducted, the Sponsor's income was in fact £268.35, being a sum greater than the £199.20 income support level for a couple over 18 plus 1 child.
7. Permission to appeal was granted by First-tier Tribunal Judge Saffer on the 31<sup>st</sup> October 2017.
8. Within the Rule 24 Reply, at that stage it was said that the Respondent had not had full sight of the Appellant's bundle and the evidence which the Appellant sought to rely upon and therefore at that time the Second tier State was therefore unable to comment upon the Grounds of Appeal in any great detail.
9. However, by the date of the appeal hearing before me, Mr McVeety had then received the Appellant's bundle and conceded that First-tier Tribunal Judge Wedderspoon had failed to take account of the amount that the Sponsor received in Housing Benefit, when taking account of the Sponsor's income and that even though such Housing Benefit was paid directly to the landlord by the Benefits Agency on behalf of the Sponsor, it was still part of his income for the purposes of the calculation. Mr McVeety conceded that there was no doubt that a material error had been made, and further conceded that as that was the only issue in the appeal before the First-tier Tribunal Judge, not only should the appeal be allowed, but the decision should be remade by me allowing the Appellant's appeal on Article 8 grounds, the Rules having in fact been met and there being no evidence of criminality on the part of the Appellant, who is a very young child, seeking to join his parents in the UK.

10. In light of that concession, I do find that the decision of First-tier Tribunal Judge Wedderspoon does contain a material error of law, in that she has failed to take account of the level of the Sponsor's Housing Benefit, in calculating the level of his income, and that as quite properly conceded by Mr McVeety in compliance with his duty to the court, even in circumstances where the Housing Benefit is paid directly to the landlord, that is still the Sponsor's benefit, that has to be taken into account in calculating his income. The Sponsor's income from Personal Independence Payment, Employment Support Allowance and Housing Benefit totals £352.20, and when the housing costs of £83.85 are deducted, the Sponsor's income was in fact £268.35, being a sum greater than the £199.20 income support level for a couple over 18 plus 1 child. In circumstances he did in fact have an income in excess of the income support level for a couple plus 1 child, and therefore I do find that the requirements of the Immigration Rules are met, which as conceded by Mr McVeety is a relevant consideration when considering the Article 8 case.
  
11. Bearing in mind the provisions of Section 117A-D of the Nationality, Immigration and Asylum Act and the fact that the maintenance of an effective immigration control is in the public interests, and that it is in the public interests that people who seek to enter the UK are able to speak English and are financially independent, and clearly, given his young age, presently just two years old, the Appellant is not financially independent or able to speak English. However, in circumstances where the requirements of the Rules are met and there is no evidence of criminality on his part or on the part of the Sponsor, and in circumstances where the Respondent concedes that the appeal should be allowed on Article 8 grounds, I do find that the decision made by the Respondent originally is in breach of the Appellant's human rights under Article 8 and the decision reached was disproportionate to the legitimate public end sought to be achieved in the circumstances of this case.
  
12. I therefore set aside the decision of First-tier Tribunal Judge Wedderspoon, and remake the decision, allow the Appellant's appeal on Human Rights grounds under Article 8.

Notice of Decision

The decision of First-tier Tribunal Judge Wedderspoon does contain a material error of law and is set aside in its entirety;

I remake the decision allowing the Appellant's appeal on Human Rights grounds under Article 8;

Given that the Appellant in this case is a young child just over 2 years of age, who is currently separated from both of his parents, both parties have asked me to include a request to the Respondent, when considering the Leave to be granted to the Appellant, undertake such consideration as soon as possible following my decision;

Given that the Appellant is a minor, I do make an anonymity order in this case. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, unless and until a Tribunal or Court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Handwritten signature in black ink, appearing to read 'RFM McGinty'.

Deputy Upper Tribunal Judge McGinty

Dated 15<sup>th</sup> February 2018

TO THE RESPONDENT

Fee Award

The Appellant having been successful in his appeal, any fee paid by him in respect of his original application should be refunded to him in full.

Signed

RFM<sup>c</sup>Ginty

Deputy Upper Tribunal Judge McGinty

Dated 15<sup>th</sup> February 2018