IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-005548

First-Tier Tribunal No: HU/52856/2023
LH/05376/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 18th April 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE COTTON

Between

KRISHNA RAMESH MADHAVI
(NO ANONYMITY ORDER MADE)

Appellant

and

SECRRETARY OF STATE
FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr N Ahmed, Ishwar Solicitors
For the Respondent: Mrs S Simbi, Senior Home Office Presenting Officer

Heard at Field House on 15 March 2024

DECISION AND REASONS

Introduction

1. The appellant is a national of India and was born on the 8 October 2001. In January 2021 she entered the UK on a student Visa which was valid until 28 October 2024. The appellant states that she left the UK in August 2021. On 15 November 2021 the respondent was notified by the university that the appellant was no longer studying at the university. The appellant arrived in the UK on 14 October 2022 and was placed on immigration bail.

2. On 21 November 2022 the appellant made a human rights claim for leave to remain in the UK. The respondent refused her application on 20 February 2023 and the appellant appealed to the First-tier Tribunal (FtT)

on human rights grounds. In a determination dated 1 December 2023 Judge Groom (the Judge) refused the appeal.

3. The appellant was given permission to appeal on four grounds:

   a. The Judge treated the appellant's leave as having been curtailed because she was no longer a student. There was no evidence of a curtailment decision having been taken or served on the appellant prior to, or on, arrival in the UK. In fact, she was served with a notice of cancellation of leave and she made an application for administrative review within the 14-day limit. The appellant therefore satisfied the requirements of E-LRTP.2.1 to 2.2 because rule 39E took effect;

   b. The Judge misdirected themselves on the law in relation to the financial requirement of eligibility. The Judge failed to take into account the financial details of the (self-employed) appellant for the last full financial year, as required by paragraph 7 of Appendix FM-SE;

   c. The Judge erred in law by considering paragraph EX.1, which was not relevant as the appellant met the immigration status and financial requirements;

   d. Because the appellant had valid leave to be in the UK, the Judge attributed the wrong weight to her art 8 rights when considering Human Rights 'outside the rules'.

Submissions – Error of Law

4. The appellant agreed with the suggestion in the permission to appeal that the third and fourth grounds stood or fell with the first and second grounds.

5. Submissions for the appellant were broadly in line with the grounds, noting that the appellant should benefit from E-LTRP.2.2(b). Because of the art 8 element to the appeal, the Judge was entitled to look at the appellant's income as at the date of the hearing. Where the Judge concludes there is no evidence to satisfy the financial requirement in the year to the hearing, the Judge has failed to take into account the earnings of the previous financial year.

6. The respondent submitted that, on a plain reading of the law and facts, the appellant could not meet the requirements of the immigration rules. The description of the appellant's leave having been 'curtailed' is immaterial, what is material is the undisputed point that she was on immigration bail, in fact being on immigration bail for a month before her application for review. This removes her from paragraph E-LTRP.2.2.

7. The respondent submits that the judge considered the relevant financial evidence at [30] onwards and at [36] came to the conclusion that the appellant did not meet the financial requirement at the date of the hearing. Further, the Judge took the right approach to proportionality.

Analysis and conclusions – Error of law

8. The appellant's case in the FtT, and submissions before me, included an acceptance that she was handed a notification of cancellation of leave to enter when she attempted to (re-)enter the UK on 14 October 2022 (FtT ASA para 9). It was not disputed that the appellant then entered the UK on Immigration Bail. Although the appellant is keen to plead that the appellant's leave to enter the UK was cancelled, and not curtailed, I find that there is no material difference between these two terms in the context of this case, if indeed there is any difference at all. The definition of 'cancellation' in the Immigration Rules at 6.1 includes curtailment or revocation. The definition of 'curtailment' in the Immigration Rules includes 'cancelling or curtailing' leave.

9. Turning then to the first ground of appeal, and looking at the wording of E-LTRP.2.2, it is structured as follows. I add emphasis to assist in highlighting that if an appellant fails to meet the requirements of (a), satisfying the requirements of (b) does not help the appellant. The requirements are cumulative:

> **Immigration status requirements**
>
> …
>
> E-LTRP.2.2. The applicant must not be in the UK –
>
> (a) **on immigration bail**, unless:
>
> (i) the Secretary of State is satisfied that the applicant arrived in the UK more than 6 months prior to the date of application; and
>
> (ii) paragraph EX.1. applies; **or**
>
> (b) **in breach of immigration laws** (except that, where paragraph 39E of these Rules applies, any current period of overstaying will be disregarded), unless paragraph EX.1. applies.

10. The Judge considered at [25] whether, despite being on Immigration Bail, the appellant fell into the exception in E-LTRP.2.2(a). The appellant did not arrive in the UK more than 6 months prior to the application, the Judge concluded. The natural consequence of that is that the appellant did not satisfy the requirement of E-LTRP.3.2(a)(i), and so is caught by the prohibition in E-LTRP. The Judge does not explicitly outline that this is the natural consequence, but the determination is sufficiently clear in showing this is consequential because the finding that the appellant had not arrived

in the UK more than 6 months prior to the application forms part of a logical sequence in the Judge's reasoning, which leads to the finding at [28] that the appellant does not meet the Immigration Status Requirement.

11. The analysis on this point holds no error in my judgment.

12. The Judge could, arguably, have stopped there. Once the appellant falls foul of E-LTRP.3.2(a)(i), recourse to (a)(ii) or to (b) does not help the appellant. The structure of that paragraph of the rules makes that clear. The Judge chose to go on at [26] and consider whether the appellant would have been assisted by E-LTRP.2.2(b). In an efficient analysis, the Judge comes to the conclusion that there are not insurmountable obstacles to family life continuing outside the UK (the test in EX.1) and the appellant did not satisfy the requirements of 39E(2)(a).

13. The appellant argues that the Judge erred as they failed to apply paragraph 39E(2)(b)(iv), from which the appellant benefits.

14. The wording of 39E(2)(b) is cumulative and requires (as far as is relevant to this case and with emphasis added) that:

Exceptions for Overstayers

…

(2) the application was made:

(a) following the refusal or rejection of a previous application for leave which was made in-time; **and**

(b) within 14 days of:

(i) …

(ii) …

(iii) …

(iv) any such administrative review or appeal being concluded, withdrawn, abandoned or lapsing;

15. The judge's finding at [27] that the appellant does not satisfy the requirement of 39E(2)(a) means that the appellant could not benefit from 39E(2)(b). The Judge did not err in this regard. Even if I am wrong in this respect, the error is not material because the Judge had already found the appellant did not benefit from E-LTRP.2.2

16. I find no error of law in relation to the first ground of appeal.

17. In relation to the second ground of appeal the appellant agreed in oral submissions that the appellant could not meet the financial requirement at the date of the application, and said it was inconsistent of the Judge to find at [30-31] that there was corroborative evidence to show the appellant

was above the threshold, but then at [35] to find that the appellant did not meet the financial requirement.

18. The written grounds plead that the Judge should have taken into account the financial details in relation to the last full financial year when assessing whether the appellant met the financial requirement at the date of the hearing.

19. The Judge's findings are in [35-36]. The Judge does explicitly take into consideration the evidence of the sponsor's income for the tax year to 5 April 2023. The Judge is of the view that self-employed income is likely to fluctuate. I judge that this was a view that the Judge was entitled to hold. Having outlined the evidence and factors that influence how much weight can be given to evidence of income, the Judge concludes that the appellant does not meet the income requirement. I find that there is no inconsistency in the Judge finding that there is evidence in relation to the previous tax year, but that this is insufficient in itself to prove the relevant income at the date of hearing. That is nothing more than giving scrutiny to the evidence available and not falling into the trap of making assumptions about current income based on evidence of previous income. The Judge has not made any error in law.

20. The final two grounds of appeal stand or fall with the first two. However, for completeness I note that the Judge was likely required to consider EX.1 (whether there are insurmountable obstacles to family life continuing outside the UK) because in assessing art 8 appeals, the Judge should consider first whether the appellant meets the relevant parts of the Immigration Rules which address art 8 matters.

21. The appellant pleads that the Judge approached Appendix FM in a legally flawed way "on basis of grounds pleaded above". Given my findings on the earlier grounds, I do not find in favour of the appellant in relation to the pleaded appendix FM errors.

22. The appellant pleads that the Judge approached the proportionality exercise under art 8 outside the rules in error. The only element of the written pleadings which does not appear to rely on assertions I have already found against the appellant on is the submission that the Judge failed to make findings on the circumstances of the appellant's partner and whether it would be unduly harsh/unreasonable to expect him to relocate to India. I note that the Judge approached the question of whether art 8 rights would be encroached on at [38] where the judge found that there would not be insurmountable obstacles to family life. In that paragraph, the Judge plainly considers insurmountable obstacles to the sponsor. Whether or not the Judge repeats this finding when considering art 8 outside the rules is immaterial as the Judge had already found against the appellant's case in this respect and repeating a factor that weighs against the appellant's case would make no difference to the outcome. The appellant' grounds of appeal misrepresent the Judge's finding at [49] which does not (contrary to the grounds of appeal) state that the appellant

would satisfy the requirements in an entry clearance application from abroad.

23. I find that the Judge took all relevant matters into consideration in assessing the proportionality of removing he appellant, was entitled to reach the conclusions that were reached, and materially erred neither in the ways pleaded by the appellant, nor in any other way.

Notice of Decision

1. The making of the decision of the First-tier Tribunal did not involve the making of a material error on a point of law.

2. I do not set aside the decision.

D Cotton

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

5 April 2024