IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case Nos: UI-2023-005600,
UI-2023-005596, UI-2023-005597,
UI-2023-005598,UI-2023-005599

First-tier Tribunal Nos: HU/53455/2021,
HU/53441/2021, HU/53443/2021,
HU/53452/2021, HU/53453/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 21st of May 2024

Before

UPPER TRIBUNAL JUDGE LANE
DEPUTY UPPER TRIBUNAL JUDGE METZER

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MAMH
FAMA
FAMA
MAMA
FDMA
(ANONYMITY ORDER MADE)

Respondents

Representation:
For the Appellant: Mr K Ojo, Senior Home Office Presenting Officer
For the Respondents: Mr R Solomon, of Counsel instructed by Jein Solicitors

Heard at Field House on 1 May 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellants are granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellants, likely to lead members of the public to identify the appellants. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The appellant before us, the Secretary of State for the Home Department, appeals against the decision of First-tier Tribunal Judge Gaskell ("the Judge") which was heard on 12 December 2022 for which permission to appeal has been granted on 5 April 2023 by First-tier Tribunal Judge Hatton. The primary, effectively only ground of appeal on which permission was sought and granted was that the Judge failed to give adequate reasons for finding that the now respondent satisfied the applicable maintenance and accommodation requirements under the Immigration Rules.

2. In granting permission, we note that First-tier Tribunal Judge Hatton made reference primarily to what the Judge found in his decision in relation to questions about accommodation and maintenance, namely that it was not clear how all five appellants could be accommodated in the property with the sponsor and her husband and that the Judge's decision did not address that issue, and on the question of the eligibility financial requirements of the Immigration Rules, the Judge made no attempt to address the appellant's calculation being a net weekly income of minus £82.85 or otherwise explained how the respondents could satisfy the applicable maintenance threshold.

3. Mr Solomon, who appeared before us and also appeared in the First-tier Tribunal below, made it clear (and there is reference to this contained within the bundle), that in granting permission the Judge did not appreciate that there are in fact two properties in mind: one was a two- bedroomed property which was for the sponsor and the family, and a second property which was a three bedroom flat for the respondents. Whilst of course we accept that was the position we consider that, if anything, this really begs the question as to whether what the Judge determined was clear and understandable primarily for the losing party, in relation to the issues in issue. Mr Solomon relies primarily upon paragraphs 22 and 23 of the Decision in seeking to uphold it. Paragraph 22 makes clear that the Judge was provided with documentation in relation to the sponsor's husband being in full-time employment and the sponsor herself is self-employed with a business income of £36,000 per year and there was reference to employment being available in fact to the third (erroneously referred to as the second) respondent if she were permitted to settle in the United Kingdom, and at paragraph 23 on the question of accommodation, again the Judge made reference to being provided with documentation showing that the sponsor and her husband had accommodation available which they say was sufficient to house themselves and the respondents at least until they are established in the United Kingdom. We note that there is nothing contained within the Decision that makes clear this is a separate accommodation, although that must have been the position.

4. The Judge went on to find at paragraph 33: "Although things will not be easy, I am satisfied to the requisite standard of proof that the sponsor and her husband can adequately provide for the appellants in terms of finance and accommodation without recourse to public funds".

5. Mr Solomon very fairly and frankly accepted there was a considerable lack of detail in the Decision but submitted that there was just sufficient to satisfy a reasons argument in relation to the basis for which the Judge found for the appellants both in terms of finance and accommodation. Mr Ojo submitted that on the issue of reasons, what the Judge sets out in those relevant paragraphs 22, 23 and 33 was not sufficient.

6. Having considered the submissions, we consider that the Judge failed to give sufficient reasons both on the question of accommodation and in relation to maintenance to satisfy the requirements under the Immigration Rules. We pause to say that if one had been fully explained and the other was perhaps less full, the position might have been different, but we do not need to consider that position, because in our judgment looking at those relevant paragraphs 22 and 23 and the context of findings at paragraph 33, the Judge failed to give adequate reasons both in respect of accommodation and in respect of finance. Having stated in terms "Although things will not be easy", he then failed to carry out any analysis as to how the financial condition would be met particularly in light of the respondent's calculations, and on the question of accommodation there is no reference to there being a separate second property and how therefore it would be possible to house the five respondents. In our judgment, the inadequacy of the Judge's reasoning amounted to material errors of law in relation to the analysis that the Judge carried out.

7. For those reasons, we find these were material errors of law and the Decision cannot stand.

8. Having found that there were errors of law, we then go on to consider what if any findings of fact we should preserve for a future hearing. Mr Ojo, rightly in our view, accepted that the DNA evidence is no longer in issue and that therefore paragraph 30 of the Decision is expressly preserved, in other words, the second respondent and the sponsor are full biological sisters.

9. We are anxious not to bind any future Tribunal. In those circumstances, there is not much more that we feel we can preserve as findings of fact but we do accept that as of the date of decision the medical evidence, both mental and physical health reports which are set out at paragraphs 19 and 20 of the Decision, can be preserved but of course as the parties understand, it is the date of hearing that will be determinative but we do make those findings that the medical evidence is accepted as of the date of that decision.

10. In all the circumstances, having considered the matter carefully but conscious that there are likely to be disputed areas of fact between the parties which will require resolution, we consider that notwithstanding there has been substantial delay in this matter that the appropriate way to deal with this appeal from now on with those errors of law having been found is for the matter to be remitted back to the First-tier Tribunal for a full determination on the questions of accommodation and maintenance with the findings of fact that we have set out being expressly preserved.

Conclusion

11. The Judge made material errors of law in relation to the lack of reasoning on the questions of maintenance and accommodation and the decision is therefore set aside.

12. The matter is remitted to the First-tier Tribunal with the preserved findings of fact as set out above for full redetermination. We suggest this matter should be expedited for a rehearing.

Anthony Metzer KC

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

7 May 2024