Upper Tribunal
(Immigration and Asylum Chamber) Appeal No: UI-2024-000098
First tier number HU/53895/2023

THE IMMIGRATION ACTS

Decisions and Reasons issued

On 30th of April 2024

Before

Deputy Upper Tribunal Judge MANUELL

Between

MS ANALICE SANTOS DINIZ
(NO ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr M Aslam, Counsel
(instructed by R P Singh, Solicitors)
For the Respondent: Mrs S Nwachuku, Home Office Presenting Officer

Heard at FIELD HOUSE on 18 April 2024

DECISION AND REASONS

Introduction

1. The Appellant appealed with permission granted by Upper Tribunal Judge Perkins on 16 October 2023, against the decision of First-tier Tribunal Judge Chapman who had dismissed the appeal of the Appellant against the refusal of her Article 8 ECHR human rights claim based on her marriage to a British Citizen. The decision and reasons was promulgated on 29 November 2023.

2. The Appellant is a Brazilian national born on 22 June 1989. She entered the United Kingdom as a visitor on 21 December 2019. Her visa expired on 21 June 2020. On 9 April 2021 the Appellant was granted CV assurance leave to remain until 30 June 2021. This was under the Covid-19 provisions which extended the Appellant's leave to enter as a visitor on a temporary basis. The Appellant failed to depart when her leave to enter expired and she became an overstayer.

3. On 28 October 2021 the Appellant married Mr Joseph Duncan White ("Mr White"), a British Citizen born on 17 July 1992. The couple had met online in 2016. The Appellant visited Mr White several times and Mr White visited the Appellant in Brazil in 2018 as their relationship progressed. After the Appellant came to the United Kingdom in 2019 the couple lived together in a home shared with Mr White's father and Mr White's younger brother. The Appellant and Mr White both suffer from mental health problems. On 18 November 2022 the Appellant applied for leave to remain on Article 8 ECHR family life grounds, which the Respondent refused on 3 March 2023.

4. The Respondent refused the application because the Eligibility Immigration Status requirement of Appendix FM of the Immigration Rules was not met. The Respondent accepted that the Suitability, Relationship, Financial and English language requirements were all met. The Respondent was not satisfied that there were insurmountable obstacles to the continuation of family life outside of the United Kingdom, so paragraph EX.1 did not apply. Nor were there very significant obstacles to the Appellant's re-integration into Brazil, so paragraph 276ADE(1)(vi) of the Immigration Rules was not met. It was considered that there were no exceptional circumstances.

5. The essential facts in the appeal were not in dispute. The main item of medical evidence was a letter from the couple's GP dated 29 March 2023. This described their respective conditions and medication. The doctor considered that the couple's relationship had a beneficial effect for them, and that even a short-term separation would have a real risk of affecting their physical and mental health significantly.

6. Judge Chapman found that the opinion expressed in the letter attracted limited weight. The doctor was a GP, not a mental health specialist. The letter was not specific as to what "significant effects" were likely to result from a temporary separation. It was obvious that the doctor was likely to have been anxious to support the Appellant's case. There was no further evidence from the doctor about the recent events which Mr White mentioned in his oral evidence. Mr White had been able to continue to work, apart from taking a few days sick leave and working from home. There was no evidence that the couple would be unable to access medication or other treatment they might need in Brazil. The doctor's letter made no mention of the Appellant's autism, which had not affected her ability to travel to and from Brazil, to settle into life in the United Kingdom or to assist in the care of her brother in law.

7. As to the Appellant's brother in law, his primary carer was his father. While the couple contributed to his care, there was no evidence that the brother in law's care needs were not being adequately met prior to the Appellant's arrival in the United Kingdom, or while Mr White was working or travelling.

8. There was no objective evidence about transphobia in Brazil, affecting Mr White. Mr White had not reported any adverse experiences during his visit in 2018. While the Appellant mentioned issues with her father in Brazil, she had also mentioned siblings and a best friend who were potential avenues of support. The Appellant had lived in Brazil to the age of 30.

9. There was no dispute that the Appellant was an overstayer. There was no sufficient explanation of why the Appellant had not sought entry clearance as a fiancée, or as to why the Appellant had not returned to Brazil for that purpose when her leave to enter expired. Judge Chapman found

that the couple were well aware prior to their marriage that the Appellant had no leave to remain, and had shown blatant disregard for the law.

10. Judge Chapman found, following a review of the evidence and the submissions made on the Appellant's behalf, that there were no insurmountable obstacles to the continuation of family life outside the United Kingdom, in particular in Brazil. Paragraph EX.1 of the Appendix FM of the Immigration Rules was not met. Nor would there be very significant obstacles to the Appellants' reintegration into Brazil, where she had family and had lived for most of her life. Paragraph 276ADE(1)(vi) of the Immigration Rules was not met. Judge Chapman further found, applying a "balance sheet" approach, that the interference with family life resulting from the Appellant's removal would not be disproportionate under Article 8 ECHR. Most of the Appellant's family life with Mr White had been developed while she had no leave to remain in the United Kingdom. The public interest in immigration control outweighed the private interest.

11. Judge Chapman found that there was no evidence of any exceptional circumstances or other compelling factors such as unjustifiably harsh consequences for any person affected by the Respondent's decision. The likely outcome of the refusal decision was that there would be a temporary separation of a few months while the Appellant's entry clearance application was processed in accordance with the Immigration Rules. Family life could be sustained via modern forms of communication or visits. The doctor's letter carried insufficient weight to reach any other conclusion. Although the contact would be remote, mutually beneficial support could continue. Hence the appeal was dismissed.

12. Permission to appeal was refused in the First-tier Tribunal, but Upper Tribunal Judge Perkins considered that it was arguable that Judge Chapman had not adequately considered the evidence that any separation of the Appellant from her partner would be harmful to both of them and there was no good reason to expect the separation to be only for a short period.

13. No notice under rule 24 had been served by the Respondent but the Tribunal was informed that the appeal was opposed.

Submissions

14. In response to the Tribunal's query about what evidence of entry clearance processing times from Brazil had been before Judge Chapman, Mr Aslam said that there had been nothing specific. The best information he had been able to find was that it could be 24 weeks, or 6 months. That was from the United Kingdom government website.

15. Mr Aslam's submission on behalf of the Appellant in summary was that the Judge had erroneously failed to apply the expert evidence of the couple's GP when considering the impact of separation on them. No issue had been taken with the letter in the Respondent's reasons for refusal letter and it had not been open to the judge to differ. There was no reason why a GP should be unable to address mental health issues. The Judge's reasoning was insufficient. The decision should be set aside and remade in the Appellants' favour.

16. Mrs Nwachuku for the Respondent submitted that the weight to be given to the GP's letter was plainly a matter for the judge, who had set out a number of reasoned reservations. That letter had been the only medical evidence. The Appellant was merely expressing disagreement with a decision which had been open to the Judge. As the Judge had stated, modern means of communication would enable the continuation of contact while entry clearance was obtained. The judge's decision was correct. The appeal should be dismissed.

17. In reply Mr Aslam submitted that the Judge was not entitled to go behind the GP's expert opinion.

No material error of law finding

18. At the conclusion of submissions the Tribunal indicated that reserved its decision, which now follows. The Tribunal finds there was no material error in Judge Chapman's decision, which was comprehensive and meticulous. While it is true that the GP's letter was not the subject of critical comment in the Respondent's reasons for refusal letter, the Judge was required to address the Article 8 ECHR claim

as at the date of the hearing, and to evaluate the evidence for herself. Weight was plainly a matter for the Judge. The reservations the Judge expressed were properly reasoned, in short that (a) the GP was not a specialist; (b) understandably wished to support his patients' case; (c) the "significant effects" were not identified and (d) Mr White's recent evidence was not addressed. This was not a situation where no weight was given or the letter was dismissed out of hand.

19. The Judge gave sufficient reasons for finding that family life could be continued in Brazil without very serious obstacles. There was no objective evidence of transphobia in Brazil and Mr White had not reported any problem on his 2018 visit.

20. The Judge recognised that in reality the likely choice was that the Appellant would return to Brazil to seek entry clearance, not least so that Mr White could continue his employment in the United Kingdom. As to the probable length of time of potential separation while entry clearance was obtained, the Judge stated that this would be a few months. There was no evidence placed before the Judge to suggest otherwise. It may be longer, but it will still be measured in months. In fact there is a "fast track" priority procedure available for an additional fee which provides a speedy decision. As the Respondent has accepted that the Appellant meets the entry clearance requirements (apart from her immigration status), it is reasonable to expect that the decision-making process should not be drawn out whichever route the Appellant may choose. In any event, the Judge gave proper reasons for finding that the effects of temporary separation could be mitigated in various practical and effective ways, so that mutual support could continue.

21. There was nothing surprising about the Judge's decision. Plainly the Judge examined that evidence sympathetically but that evidence was inadequate to support the claims advanced. Accordingly. the Tribunal finds that there was no material error of law in the decision challenged. The onward appeal is dismissed.

Notice of decision

The appeal is dismissed_

The making of the previous decision did not involve the making of a material error on a point of law. The decision stands unchanged.

Signed R J Manuell **Dated** 23 April 2024
Deputy Upper Tribunal Judge Manuell