



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2024-002123

First-tier Tribunal No:
HU/56153/2023
LH/00271/2024

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 16 August 2024**

Before

DEPUTY UPPER TRIBUNAL JUDGE JARVIS

Between

MANJIT SANGHA
(NO ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R. Ahmed, Counsel instructed by Charles Simmons
Immigration Solicitors

For the Respondent: Mr S. Walker, Senior Home Office Presenting Officer

Heard at Field House on 26 July 2024

DECISION AND REASONS

Introduction

1. The Appellant has appealed against the decision of Judge Lloyd-Lawrie (hereafter “the Judge”) dismissing the Appellant’s Article 8 ECHR appeal by way of a decision dated 24 January 2024.

2. Permission was initially refused by First-tier Tribunal Judge Curtis on 7 March 2024 but was then granted on renewal to the Upper Tribunal by Deputy Upper Tribunal Judge Lewis on 7 June 2024.
3. For completeness, the Deputy Judge also made a decision to extend time because the application was made out of time due to failings on the part of the Appellant's representatives.

Relevant background

4. The Appellant applied for permission to enter the UK to join his partner and two British citizen minor children on 13 January 2023; this was refused by the Respondent on 30 March 2023.
5. In the refusal, the Respondent asserted that the Appellant did not meet all of the Eligibility requirements in section E-ECP of Appendix FM as the Appellant's Partner was residing in the United Kingdom with limited Leave to Remain and was therefore not a qualifying Partner under the Appendix.
6. The Respondent also went on to raise the English language requirement. The Respondent further concluded there were no exceptional circumstances requiring a grant of Leave to Enter outside of the Immigration Rules.

The First-tier Tribunal decision

7. At §5 the Judge set out the three issues materially in dispute between the parties: 1) whether the Appellant could meet the relationship requirement of Appendix FM; 2) whether the Appellant could meet the Eligibility English language requirement of Appendix FM and 3) whether there were any exceptional circumstances in the case.
8. During the Sponsor's oral evidence she referred to her own earlier Article 8 ECHR appeal. The Judge noted that this judgment had not been provided in the papers by either the Appellant or the Respondent.
9. At §9, the Judge recorded that the parties were in agreement that the Sponsor's human rights appeal determination would be sent to the Judge as it was potentially relevant to the assessment of the appeal.
10. It appears from the CCD portal that the Respondent uploaded a digital version of the judgment relating to the Sponsor (decided by First-tier Tribunal Judge Price on 8 November 2017) onto the 'case notes' tab of the portal on 18 January 2024.
11. In the 2017 determination the First-tier Tribunal concluded that the Sponsor and children had not had any contact with the Appellant since he departed the UK in 2015 [see §29 of that decision].
12. In the 2024 judgment, the Judge maintained the finding from the 2017 decision (at §10) and concluded that the Sponsor and her children had been

supported by another man (Mr Singh) from at least February 2014 and did not accept the Sponsor's explanation for why that evidence (about the disconnection from her husband) was given in 2017, see §12. The Judge went on to dismiss the appeal.

The error of law hearing

13. On behalf of the Appellant, Mr Ahmed spoke to the single ground of appeal, namely that the Respondent did not send the 2017 decision to the Appellant's solicitors as should have been done and that there was procedural unfairness in the Judge considering the 2017 decision without giving the Appellant a voice in response.
14. In reply, Mr Walker submitted that the Respondent now accepted that there had been procedural unfairness and that the Judge should have sought submissions or evidence from the Appellant/Sponsor.

Findings and reasons

15. I indicated to the parties that I was satisfied with the concessions made by Mr Walker and that the decision of the Judge should be set aside in its entirety for procedural unfairness.
16. I should however make clear that the Appellant's representatives are not correct to say that the 2017 judgment should have been sent to them by the Respondent. As I have already explained, the Respondent uploaded the 2017 decision onto the CCD portal on 18 January 2024. The difficulty which appears to have arisen here is that the decision was not uploaded onto the 'documents' tab - on the basis of the limited evidence before me I find that if this had been done an email notification would have been sent to the Appellant's representatives.
17. The document was in fact uploaded to the 'case notes' tab and it is not clear to me either way if an email notification is sent when a document is uploaded onto this tab.
18. However, I agree with Mr Walker that there is still nonetheless procedural unfairness even if the Appellant's representatives are wrong to say that they should have been emailed directly by the Respondent.
19. It is plain, as the Deputy Judge who granted permission commented upon, that the Judge considered the 2017 decision and gave it material weight. As I have summarised in this judgment, the issues between the parties at the beginning of the hearing did not include the contention that there was no genuine and subsisting relationship between the Sponsor and the Appellant.
20. There was nothing unfair in the Judge considering an additional issue which arose during the hearing but it was imperative that the Judge act fairly in doing so. I find that the Judge did not act fairly by failing to give the

Appellant the opportunity to provide submissions and/or for there to be a further hearing in order for the Appellant to have a voice in the proceedings.

21. Whilst I think it fair to say that Appellant's counsel at the First-tier hearing should have been more proactive in insisting upon an opportunity for a right to reply if and when the 2017 decision was provided, this does not detract from the fact that the Judge had a duty to ensure procedural fairness and did not do so on this occasion.

Notice of Decision

The Appellant's appeal is allowed. The decision of the Judge is set aside in its entirety for procedural unfairness.

DIRECTIONS

- (i) The appeal is to be remitted to the First-tier Tribunal to be heard by a judge other than First-tier Tribunal Judge Lloyd-Lawrie.

I P Jarvis

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

31 July 2024