IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-002329
First-tier Tribunal Nos:
HU/53252/2023
LH/01568/2024

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 30 September 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

Mary Chika Aguocha
(NO ANONYMITY ORDER MADE)

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:
For the appellant: Mr. W. Bhebhe, Legal Representative, Njomane Law
For the respondent: Ms. S. Rushforth, Senior Home Office Presenting Officer

Heard at Field House on 10 September 2024

DECISION AND REASONS

1. This is an appeal by the appellant against a decision of First-tier Tribunal Judge Austin (the "Judge"), dated 27 March 2024, in which he dismissed the appellant's appeal against the respondent's decision to refuse leave to remain on family life grounds. The appellant applied for leave to remain as the spouse of the sponsor.

2. Permission to appeal was granted by Deputy Upper Tribunal Judge Doyle in a decision dated 13 June 2024 as follows:

> "2. The grounds of appeal say that the FTTJ's has erred in law by reaching an incorrect conclusion contrary to the weight of evidence, and by failing to give adequate reasons.
>
> 3. [15] and [16] do not relate to the appellant. It is difficult to see why they are in the decision. At [12] the FTTJ finds that the appellant's husband relies on state benefits. It is arguably difficult to reconcile that finding with the

> conclusion at [25] *'it having been established in the evidence that her husband has available to him the option of meeting the financial requirement of a spouse and there is therefore a reasonable prospect that she would be able to meet the minimum income threshold'*
>
> 4. It is just arguable that the decision is tainted by errors of law. If errors of law are found, materiality will be a live issue."

3. In a Rule 24 response, the respondent opposed the appellant's appeal.

The hearing

4. The hearing was hybrid, with the parties attending remotely. Ms Aguocha and the sponsor were in attendance.

5. At the outset of the hearing, I stated that I did not have a bundle. Mr. Bhebhe said that a bundle had been uploaded to CE file, but there is no bundle there. He stated it had been uploaded on 27 August, but the only document uploaded on 27 August was a maternity certificate. I asked Ms. Rushforth whether she had a copy of the bundle. She said that she did not. I reminded Mr. Bhebhe that a bundle has to be sent to the respondent separately as she does not have access to CE file, and he confirmed that a copy had not been sent. However, Ms. Rushforth confirmed that she had before her all of the documents needed, and I did also.

6. In his submissions, Mr. Bhebhe started referring to there being a new matter of the appellant's pregnancy. I stated that there was no Rule 15(2A) application before me. In any event, I had not reached that stage because I had not yet decided the issue of whether the decision involved the making of a material error of law. Further, Ms Rushforth confirmed that no new matter had been raised with the respondent.

Error of law

7. The first ground relates to [15] and [16] of the decision. These state as follows:

> "I accept that the appellant's wife is employed in three different jobs in the UK. She has always lived in the ….. area and has all her friends and family around her. She has not ventured very far and has never been on a plane.
>
> The appellant's wife had sufficient income for the appellant to meet the financial requirements of the rules if he were otherwise eligible."

8. It is clear that these paragraphs bear no relevance to this appellant. Ms. Rushforth accepted that this was the case, but submitted that it did not affect the rest of the decision, and neither did the grounds explain how it did.

9. Ground 1 states that this error "further led to wrong finding that the appellant can go an apply for re-entry when the partner is on Universal Credit and is unfit to work". I find that this is not made out. It is clearly unsatisfactory that these two paragraphs have been included as they bear no relevance to the appellant. However, I have considered whether this error has impacted on the decision as asserted.

10. It is important that, as noted by the respondent in the Rule 24 response and by Ms Rushforth at the hearing, that there is no challenge to the Judge's findings at

[17] to [23]. Neither is there any challenge to the earlier findings at [11] and [12] in relation to the appellant and sponsor's health. The Judge found from [17] to [23] that the appellant did not meet the requirements of paragraph EX.1.(b) of the immigration rules. He found that there were no insurmountable obstacles to family life for the appellant and sponsor continuing in Nigeria. He took into account the sponsor's parents and their ill-health, and the effect of not having either the appellant or the sponsor being in the United Kingdom. The Judge found that this was not an insurmountable obstacle to family life for the appellant and the sponsor continuing in Nigeria. He considered the appellant's ability to work and provide for both herself and the sponsor. He found that there was "no evidence to suggest that there would be any hardship".

11. This is important, and goes to the materiality of any error of law in the decision. The grounds do not identify how any error in Ground 1 impacted on the Judge's findings under paragraph EX.1(b).

12. I have considered whether Ground 2 identifies any material error of law. It asserts that the Judge erred in failing to explain how the appellant would meet the financial requirements of the immigration rules and in failing to give adequate explanations on the impact of the appellant's removal on her partner and vulnerable parents, with there being no evidence of 24 hour support for the sponsor's parents in the United Kingdom.

13. At [12] the Judge finds that the sponsor "has not worked for some years due to those health problems, and in fact he is currently deemed unfit for work and for work related activity for Universal Credit purposes". However, at [25] he finds that it has "been established in the evidence that her husband has available to him the option of meeting the financial requirement of a spouse and there is therefore a reasonable prospect that she would be able to meet the minimum income threshold". I accept that there is a contradiction in these findings, and that the Judge has failed to explain, given the finding at [12], how he has concluded that there is a "reasonable prospect" that the financial requirements would be met. However, given that the Judge had found that the appellant and sponsor could both relocate to Nigeria in any event, which finding is unchallenged, I find that this error is not material.

14. In relation to the assertion that the Tribunal failed properly to consider the impact on the sponsor and his parents, as set out above, there is no challenge to the findings at [17] to [23] which deal in detail with the effect of the absence of the appellant and sponsor on the sponsor's parents. The Judge found that their circumstances did not amount to an insurmountable obstacle to family life continuing in Nigeria.

15. I find that the grounds identify no material error of law, given the unchallenged findings in relation to paragraph EX.1(b).

16. Mr. Bhebhe made several references before me to the appellant's pregnancy, submitting, for example, that the appellant could not fly in any event as she was due to give birth in two months. However, as I stated at the hearing, this was a new matter. The appellant was not pregnant at the time of the appeal in the First-tier Tribunal. It has no bearing on whether or not the decision before me involved the making of a material error of law.

Notice of Decision

17. I find the decision does not involve the making of a material error of law and I do not set the decision aside.

18. The decision of the First-tier Tribunal stands.

Kate Chamberlain

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber
29 September 2024