Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number
IA/32090/2013

THE IMMIGRATION ACTS

Heard at Sheldon Court
On 18th June 2014
Prepared 24th June 2014

Determination Promulgated
On 1st July 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE PARKES

Between

MRS ROZY
(ANONYMITY DIRECTION NOT MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr A Pipe (Counsel, instructed by HSBS Law Solicitors)
For the Respondent: Mr D Mills (Home Office Presenting Officer)

DETERMINATION AND REASONS

1. The Appellant is a national of India. She arrived in the UK with leave to remain as a visitor until the 7th of June 2013. On the 5th of June 2013 she applied to vary her leave to remain on the basis of her relationship with her partner and his children. The application was refused for the reasons given in the Refusal Letter of the 10th of July 2013.

2. The Appellant's appeal was heard by First-tier Tribunal Judge Hawden-Beale at Sheldon Court on the 14th of January 2014. In a determination promulgated on the 29th of January 2014 the appeal was dismissed, the reasons given are considered below. The Appellant sought permission to appeal in grounds of the 4th of February 2014, permission being refused on the 19th of February 2014 but granted by the Upper Tribunal on the 25th of March 2014.

3. The Appellant's application was made outside the Immigration Rules, it is common ground that as the Appellant only entered with leave as visitor she could not apply to change the basis of her leave and paragraph EX.1 of Appendix FM would not apply and the Sponsor does not leave on a basis that would permit him to sponsor an application.

4. The Appellant came to the UK on the 22nd of December 2012 and met her partner for the first time by the end of the month. In the determination at paragraph 20 it was found that the Appellant came to the UK to marry and the suggestion that the Appellant and Sponsor married for the benefit of the children was explicitly rejected. The Judge also found that the Appellant became pregnant after her application was refused knowing that her status in the UK was precarious and that the Sponsor could not support an application made by her from abroad and that the situation was of their own making. These findings have not been appealed.

5. In paragraph 19 having set out the Sponsor's legal position it was suggested that he will not be in a position to obtain indefinite leave to remain until 2019. At the hearing it was accepted that he will be in a position to make an application sometime in 2016.

6. For the Appellant it was argued that the Judge had set out the domestic circumstances as they stood at the hearing and the role played by the Appellant in the family life with the Sponsor and his 2 children. These are found in paragraphs 14 and 15, however, there was no finding made on the role that the Appellant played. It was submitted that there were no findings on the children and the effect on them of the removal of the Appellant. Visits would not deal with her role as a mother. The children's father has to be in the UK to look after them.

7. For the Home Office it was observed that there was little evidence of the best interests of the children, there was only the oral evidence of the Appellant and Sponsor and a brief letter from the school saying that the children would miss the Appellant. In terms of facts she was only recently involved and they liked her. In the light of that evidence it was submitted that there was no basis for the Judge to find that the children's best interests outweighed immigration control, especially in the light of the findings in paragraph 20. Paragraph 19 was adequate and fuller reasons would not have led to a different result.

8. The Judge could only approach the case on the evidence that was provided. The Appellant's representative would have been familiar with section 55 of the 2009 Act and that the best interests of the children were a primary but not determinative consideration and that those interests would have to be weighed in the balance against the Appellant's immigration history and the public interest in the maintenance of effective immigration control.

9. With those observations in mind and bearing in mind the time that the Appellant had had to prepare the case the only independent evidence provided to the Tribunal was the letter from the school with the observation that the children liked the Appellant and would miss her. The Appellant had entered the UK on the 22nd of December 2012 as a visitor with the intention of marrying the Sponsor, this finding was clearly open to the Judge and has not been challenged.

10. The application was made on the 30th of May 2013 and the Refusal Letter is dated the 10th of July 2013. There is no question of there having been any delay in the decision making process that could be prayed in support of the Appellant. The hearing of the appeal took place ion the 14th of January 2014, some 6 months later but the evidence before the Tribunal was limited as set out above.

11. It is not necessary that a Judge refers to section 55 of the 2009 Act explicitly so long as the best interests of children affected by a decision are treated appropriately. Paragraph 20 contains findings about the Appellant's approach to the children's position where the claim that they married quickly for the children's benefit was explicitly rejected, again a finding clearly open to the Judge and not challenged. The Judge also found that having entered to get married and circumvent the Immigration Rules when faced with the refusal of her application the Appellant fell pregnant and this situation is of their own making.

12. In the course of the hearing I raised with Mr Pipe the analogy of a person getting their partner pregnant when facing criminal charges in a criminal court. It is clear in such a situation that their position is precarious and despite the effect that imprisonment may have on family life, clearly interrupting it and possibly preventing it from taking place at all, that is not a reason for a Judge to avoid imposing a prison sentence.

13. It seems to me that the analogy is apt to this situation. It is not a question of punishing the children for a situation not of their making. The fact is that the Appellant has acted deliberately to evade controls that apply. Even if her husband had enjoyed ILR in the UK she could not have met the requirements of the Immigration Rules as they had not met and he did not meet the earnings threshold in Appendix FM and she had not passed the English language test, whatever the genuineness of their long-term intentions. The substantive requirements remain outstanding.

14. In summary it is not an error for the Judge to have not mentioned section 55 of the 2009 Act by name. It is clear that the Judge had the evidence relating to the children in mind but that evidence was from the Appellant and Sponsor whose behaviour was clearly questioned and the only other evidence was from the school which was very limited. Given their behaviour and the clear effort to breach the controls that applied in circumstances where the requirements could not be met against the limited evidence relating to the children the only conclusion available to the Judge was that the requirements of immigration control were not outweighed by the best interests of the step-children and the reasons given in paragraphs 19 and 20 were more than adequate.

CONCLUSIONS

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

I do not set aside the decision.

Anonymity

The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and I make no order.

Fee Award

In dismissing this appeal I make no fee award.

Signed:

Deputy Judge of the Upper Tribunal (IAC)

Dated: 30th June 2014