



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/11892/2017

THE IMMIGRATION ACTS

Heard at Field House
On 25th July 2018

Decision & Reasons Promulgated
On 08th August 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE MAHMOOD

Between

FOUZIA [T]
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mrs Price

For the Respondent: Mr Melvin, Senior Home Office Presenting Officer

DECISION AND REASONS

Preliminary Ruling

1. In this matter the Appellant appeals with permission against the decision of the First-tier Tribunal when her protection and human rights claim was dismissed.
2. An issue had arisen as to whether or not the grant of permission by Upper Tribunal Judge Hanson dated 22nd May 2018 was contradictory or unclear. Now insofar as page 1 of the grant of permission is concerned in my judgment it is abundantly clear that

the judge was refusing permission to appeal in respect of the protection claim. That is because he said in the clearest terms possible as follows:

“The judge was clearly aware of the evidence made available in this case both in written and oral form from the Appellant and her partner which is referred to at length in the decision under challenge. The judge sets out findings of fact from 43 making clear findings which are adequately reasoned on the protection issue. The judge does not find the Appellant would face an ongoing risk on return to Pakistan including finding the Appellant failed to provide credible evidence in support of the claim”.

3. In my judgment UT Judge Hanson was not granting permission to appeal in respect of the protection claim. It really is as straightforward as that. I have listened with care to what Mrs Price says. Namely that this was a complicated protection claim and that the First-tier Tribunal Judge’s decision was inadequate, including being relatively short but the simple position is permission has not been granted and that is where it stands.
4. The next aspect deals with the human rights aspect of the written permission document. That had caused me to pause because the judge’s decision says as follows
“It is arguable that the judge in dismissing the appeal on human rights grounds which may be relevant and sustainable so far as Articles 2 and 3 are concerned dismisses the appeal on human rights grounds in total as well as under the Immigration Rules”.
5. This had caused me to pause because I did initially find the submission that there might be contradiction here because of the words “it is arguable” having been said at the start of that sentence. On reflection and having heard the respective parties’ submissions in my judgment one does need to read the whole of that paragraph. That includes then the following “there does not however appear on the face of the decision to be a proper examination of the ability of the Appellant to succeed under the Immigration Rules or outside the Rules pursuant to Article 8 ECHR based upon her private and family life”.
6. In my judgment the judge was separating out the human rights aspect from the protection claim compared with the Article 8 aspect and in my judgment, there was no grant of permission for anything other than the Article 8. Therefore, it was only the Article 8 aspect that falls to be considered at this hearing. That was made clear by Upper Tribunal Judge Hanson. Therefore, in respect of this ruling in relation to the preliminary application as to whether or not there is a contradictory grant of permission, in my judgment there is not. The only issue before the Upper Tribunal and thereby for me to consider today is that in respect of Article 8 only. I shall now adjourn the matter until later today for Mrs Price to take instructions, as asked by her.

The Substantive Hearing

7. Earlier today I had delivered a ruling in respect of a preliminary issue as to the scope of the grant of permission by Upper Tribunal Judge Hanson. I had ruled that the grant of permission was not contradictory as had been contended on behalf of the Appellant and I had concluded that the grant of permission was limited to Article 8 only.
8. I had then adjourned the case for two hours or so to enable Mrs Price to research the legal basis for her further contention which was as follows. She said that I was entitled to consider all of the grounds which had originally been submitted to the Upper-tier Tribunal on 20th February 2018, namely that I was also entitled to consider the protection grounds. Mrs Price did not know what the legal basis for her submission was and wanted time to consider.
9. When Mrs Price returned she said she had spoken to three barristers within the court building and that she did not think there was a legal basis upon which one could consider the grounds, but that it was in the interests of justice to enable her to do so because otherwise the appeal could only take place once I had made my decision.
10. Mr Melvin in his response was of the clear view that there was no legal basis upon which there could be a renewal of the grounds upon which permission was refused before me today.
11. In my judgment although I understand the submissions being made by Mrs Price they appear to be misconceived and miss the point. Mrs Price says that there is no legal basis which she has been able to put forward as to how I could possibly review the refusal of permission by Upper Tribunal Judge Hanson in respect of the protection claim. In the wider consideration of the interests of justice and reminding myself of the overriding objective, I have gone further to consider the analysis for myself and although not referred to me by either party I have considered the case of **Robinson**. Is there some obvious error which requires me to ensure that justice is done? In my judgment having looked carefully at the judge's decision this was a decision in which the Judge Miller did not accept the evidence of the Appellant (with clear and well-reasoned findings) and came to the very clear conclusion that the protection claim in reality had been fabricated. I see no reason to go behind those findings whatsoever. That is because there is no discernible material error of law.
12. I turn then to the submissions which were made to me.
13. Mrs Price submitted, after I had made that second ruling this afternoon, that this was a permission appeal and that she should be allowed to rely on all the grounds and not just the Article 8 basis upon which Upper Tribunal Judge Hanson had said. Mrs Price said that this is "what she had always done" and that indeed after hearing from her that I may find some of the grounds persuasive. Mrs Price said that in her determination FTT Judge Miller at paragraph 45 dealt with the claim in about five paragraphs. There was a massive error in law and in the decision and some of the

errors of law were not even in the grounds of appeal. The whole decision was unsafe and that it was in the interests of justice to consider the whole of the case. The claim was based on the relationship and it all arose out of the relationships, that both were closely interlinked.

14. It was submitted that the appeal bundle before the First-tier Tribunal Judge showed there was evidence of the relationship. There were the witness statements. Both the Appellant and her partner were available to give evidence. There were eleven pages of photographs but the judge had said the relationship was vague and unclear. There was a tenancy agreement at page 187. Then at page 203 there was a letter from an estate agency and then the most important piece of evidence said Mrs Price was at page 230 and that was to do with the pregnancy appointment.
15. Now, as it happens I had the Appellant's bundle that was before the First-tier and it is very important that I set out what page 230 actually says. This is identical to the bundle which Mr Melvin has too. Page 230 is a document from "BPAS". It is dated 9th March 2017. It is headed "Private and Confidential" and then it says

'Dear Fouzia [T]

Re appointment for Fouzia [T]

Thank you for contacting us. This letter confirms your booking for consultation.

Your appointment is booked for 2:15 p.m. on Tuesday 14th March 2017 at BPAS Richmond'

and an address is provided.

Then there is a hyperlink for the map of the clinic and for self-completion of the medical history. It says that if there are any questions about the appointment a certain telephone number could be used and that late arrival may result in the appointment being cancelled.

Then it is signed by Sabby Hamill, the contact centre manager.

16. Mrs Price in her submissions said that there were several other pages relating to an abortion or abortions after that page. That submission is clearly wrong. The last page in the bundle provided to the Tribunal for the hearing was that page 230 which I have just read out. As I say Mr Melvin in the bundle that he has also has the final page of that document at page 230 and dated 9th March 2017. I do not accept that the abortion or other documents, also referred by Mrs Price as the "pregnancy documents" were presented to the judge at the hearing. They were not. I am certain they were not because after the hearing the Appellant appears to have written to the FtT at Taylor House herself without her solicitor and she has then sent documents dated for example 21st December 2017.
17. So, in my judgment it is abundantly clear that these documents now being relied upon were not provided to the judge at the hearing. As I say they could not have been

because they were sent directly by the Appellant. I note that the hearing took place on 14th December yet the pregnancy and other letters begin from 21st December, so obviously they could not have been sent before the hearing because they are dated after the hearing or at least the beginning parts are. Page 230 is impossible to read as being anything to do with pregnancy or abortion. I accept the later documents do show an abortion, but the point being that the later documents were not before the Judge. The Judge cannot make an error of law by not having considered documents not presented to her.

18. I then come on to further submissions which were made by Mrs Price. It was said that there was various evidence that was not put forward given the relationship in view of the police issues and the two women who were fighting each other and that this was evidence of the relationship as well.

19. Mrs Price said that there another complaint to the police, for example at page 163. If one actually looks at page 163 this is what it shows. It is a document which says the following

‘Data Protection Act dispose of as confidential waste’

It has some reference numbers at the top. It says details of investigation and then it says

‘30/09/2016 20:59

PS 28KD Mr Slater

Supervision

Outcome 14 victim unwilling

04/10/2016 10:49

PC 803KF M Padget

OIC update

I have spoken to [T] today and updated her with the closure of this report due to the lack of evidence. There is also the issue that this appears to be a tit for tat report. She informed me she had another report to police.

CIV M Howard’

20. In my judgment it is impossible to see how this is evidence of the relationship. It clearly is not. Where is the evidence of there being a relationship I ask myself? In my judgment no proper reading can suggest that there was a relationship when one looks to that letter.

21. Mrs Price said because the judge did not believe the persecution aspect she also disbelieved the relationship. Mrs Price said the judge “the baby had been thrown out with the bath water”. Mrs Price said that “the judge has not really listened to her case at all”. The Article 8 was not listened to, that there were other parts in the decision which have not been dealt with either, the judge speculated throughout. Indeed there

were aspects which the judge found which went against the refusal letter. It was in the interests of justice that these points are considered. It was the only chance of getting justice.

22. Mr Melvin in his submissions said he relied on his Rule 24 reply and the submissions he had already made in respect of the preliminary ruling. The judge had looked at the protection claim and she had dismissed it. If the findings are unsafe then the matter should go back to the First-tier Tribunal but that the adverse credibility findings ought to remain intact. His primary submission being that there was no material error of law.
23. In my judgment it is important to look at the decision of Judge Miller. The Appellant was represented by Counsel of some experience at that hearing. Every opportunity was provided for the Appellant to give evidence and indeed for any additional evidence to be provided. So when considering the interests of justice argument I have looked to see whether there is any procedural error of any kind and I have not been able to conclude that there is.
24. The Appellant was listened to as was [MH], the Appellant's claimed partner. When the judge made her findings at paragraph 44 they included the following

"The evidence of both the Appellant and [MH] regarding their relationship was extremely vague and contradictory. The judge said "while they both agreed that it started in 2012 they both at various times have said that they were in a continuous relationship and also that the relationship was not continuous".
25. I asked myself whether this inconsistency has actually been dealt by the Appellant with because this is an obvious point. If one of the witnesses said it was a "continuous relationship" and the other said that it was not then clearly there was a difference in the evidence and that difference needed to be explained. Similarly, if both witnesses had said at one stage that the relationship was "continuous" but then they both said it was not, then that needed to be explained too. In any event that goes to an issue by way of a factual dispute. The judge saw and heard from the witnesses and of course had the advantage over the Upper Tribunal in relation to that aspect. There is no proper basis put forward before me as to how or why I can go behind that finding of the Judge. The finding is properly reasoned and was open to the Judge. I discern no error of law in that finding.
26. The judge then noticed that the Appellant had been asked in her earlier application at paragraph 5.4, page 100, "Does anyone other than your partner live at the property", The Appellant said "yes" stating that the other person was [MH]. Now the judge listened to the excuse but the reason was not accepted. Why not say partner instead of relative? The explanation which had been provided that the Appellant was confused, but the tenor of the judge's finding was, why the Appellant did not say that [MH] was her partner. At that time the Appellant had solicitors to assist her and the question was short and it was straightforward and indeed this would be a relevant finding. When asked whether anybody else lives at the home with her, she had said yes. This needed to be dealt with in the grounds of appeal to enable me to understand why it

was that there was a material error of law. The fact that [MH] is a cousin and thereby a relative does not deal with it. The relationship was the important part. Why not say it? I have no persuasive reason from the Appellant to go behind the Judge' findings.

27. At paragraph 3 the judge said that she found it incredible that [MH] would put his name on the statement dated 4th May 2015 in which he simply said that the Appellant was his cousin. Whereas in 2015 [MH] and the Appellant were in a relationship and the judge said she found the Appellant's answer when questioned about the statement at the hearing lacking in credibility. The Judge said that if the Appellant and [MH] were in a relationship and were living together even if this was not a strong relationship at the time, she would have expected it to have been mentioned. For my part, again, reading that as a whole, it is impossible to discern a material error of law in the Judge's findings.
28. In my judgment that finding does not show a material error of law. The judge then referred to page 157 the police report which refers to "Munawar being her ex-boyfriend". She was advised not to contact Munawar and the judge said, "I can see no reason why these details would have been provided in the police report if they did not represent the information that was given by the Appellant to the police". I have already referred to page 163 which was the other police report which really does not shed any light whatsoever in my judgment about the claimed relationship. There were therefore issues of an 'ex' boyfriend and police involvement. The Judge had to consider all of this from the Appellant's own documents, including the police reports that she had presented.
29. Now even if one thought that perhaps the police misunderstood what was being said it was still quite right for the judge to point out that there was reference to an "ex"-boyfriend. That was within the very paperwork which the Appellant herself had provided, this was not evidence that the Secretary of State had obtained. It was the Appellant who had put it in her bundle. If it was wrong then it was the Appellant's side who needed to explain that. The judge was entitled to look to the "wrong" evidence.
30. The judge then went on to deal with contact with the family in the next part of the paragraph.
31. Now, when I look to the grounds of appeal and as I say I am sympathetic that Mrs Price had not drafted the grounds and she explained to me that she does not usually attend the Tribunal on somebody else's grounds, but they are the grounds of appeal and it is relevant to pick from them those parts that relate to the actual appeal before me. Paragraphs 1 to 9 deal with the procedural background. Paragraphs 10 and 11 are fairly nonspecific. Paragraph 12 then says that "the judge disregarded the original central issue of the Appellant's fear of persecution in Pakistan and her genuine and subsisting relationship in the UK with British citizen (sic) to reach a just, logical and fair decision". As for Paragraph 13 the submission is that there was an error of law when assessing the Appellant's appeal and that appropriate consideration was not

given to the Appellant's private and family life established in the United Kingdom and further her health and fear of persecution in Pakistan. And then it said that there was an arguable error of law because:

1. (a) "that the Appellant's primary case was that the FtT erred in law in dismissing his appeal on the basis the family will not be affected by removing her to Pakistan. Such decision has completely overlooked the rights of the Appellant which is protected by Article 8, ECHR;
- (b) the Appellant contends that the FtT erred in law in dismissing his appeal under the Rules and is ultra vires irrational and incompatible with Article 8. See the decision of the learned judge has overlooked the five question parameters identified in **R on the application of Razgar v the Secretary of State for the Home Department [2004] UKHL 27** in order to determine whether a decision breaches Article 8
 - (i) that the Appellant has established a family life with [MH] and they are cohabiting together and accordingly come within the ambit of family life. Their relationship is a genuine and subsisting relationship.

That Learned Judge Miller has erred at paragraph 44(ii) by assuming that the Appellant was not confused while stating yes when asked does anyone other than your partner live at the property, that the Appellant had an abortion in late 2017 for which she was pregnant with [MH]'s child and was aborted. Evidence which was sent to the court after the hearing which found no mention in the decision, this can clear all doubts on the credibility of the Appellant and [MH] and the speculated doubts on their relationship. It is true that they are also related as well but in no way that undermines the credibility of not being in relationship [sic]."

32. And then I miss a few sentences and go to (vi)

- "(vi) further evidences were provided which authenticate the Appellant and [MH] of ... living together in a relationship as unmarried partnership for continues over six years so Appellant family life should have been taken into consideration. Therefore the proposed removal will be a clear interference by a public authority with the exercise of the Appellant's right to respect for his private or as the case may be family life. Therefore the very first question of the defined parameter of the decision has been ignored completely sic;
- (vii) that the [MH] who is a British citizen has permanent business in the UK and has complete integration and responsibilities in the UK and it is disproportionate to ask him to leave the flourishing busy business and clients and go back to Pakistan jobless. Therefore the decision has grave consequences to engage the operation of Article 8 and highly disproportionate to ask him to leave his job and go back to Pakistan with the Appellant. Thus the second question of the defined parameter of the decision has also been ignored by the learned judge;

(viii) that in accordance with the provisions of the Article 8 ECHR that the Appellant is a law-abiding person, have no criminal record, no ... stay in the United Kingdom and never posed a threat to national security given her previous record in his previous stay nor can it be deemed in the public good to remove her. We submit that there are no circumstances ..." [sic].

33. There is reference then to the House of Lords decision in **Chikwamba**. It said that it is highly arguable that the learned judge has failed to consider that the decision of the Respondent has failed to consider the length and high degree of family disruption involved in the case.
34. The other paragraphs deal with the protection aspect of the claim. It is also said that the Appellant suffers from depression and cannot bear the stress. There is reference also to private life which did not feature it appears extensively within the Judge's decision.
35. Now, even if one ignores that the grounds of appeal could not even get right whether their own client was a man or woman because there is references to "he" and "she" within the same paragraph on numerous occasions and despite trying my best to ensure I give the case the most anxious scrutiny, it is very difficult to work out where it is being said that there is an identifiable material error of law. Mr Melvin reminds me of the very recent decision of the Court of Appeal in **TZ Pakistan v the Secretary of State for the Home Department [2018] EWCA Civ 1109**. In giving the judgment on behalf of the Court of Appeal, Sir Earnest Ryder, the Senior President of Tribunals, with whom Lord Justice Moylan and Lord Justice Longmore agreed, said amongst other things the following:
- "25. The settled jurisprudence of the European Court of Human Rights is that it is likely to be only in an exception case that Article 8 will necessitate a grant of leave to remain where a non-settled migrant has commenced family life in the UK at the time when his or her immigration status is a precarious one, see for example **Jeunesse v the Netherlands [2016] 60 EHRR 17** at 100 and 114. The general principle applies to any consideration of the Rules which involves engaging with a requirement or requirements that possess an Article 8 element, often wrongly described as an Article 8 consideration within the Rules, and to the consideration of Article 8 outside the Rules. Where precariousness exists it affects the weight to be attached to family life in the balancing exercise. That is because Article 8 does not guarantee a right to choose one's country of residence. Both the unlawful overstayer and the temporary migrant have no right to remain in the UK simply because they enter into a relationship with a British citizen during their unlawful or temporary stay. The principle as accepted in **Agyarko** at 49 to 54 leading to a statement of general principle at 57, in general in cases concerned with precarious family life a very strong or compelling claim is required to outweigh the public interest in immigration control.
26. The effect upon the weight to be attached to family life will depend upon what the outcome of immigration control would otherwise be i.e. the weight of the public interest in removal. **Agyarko** overtly recognised that precariousness includes both those who are in the UK unlawfully and those

who are here temporarily, see 51 and 54. To that extent the decision of this court to the same effect in **Rhuppiah v the Secretary of State for the Home Department** [2016] EWCA Civ 803 is binding.

27. Section 117B of the Nationality, Immigration and Asylum Act 2002 is also relevant to the weight to be given to a private and family life that are established by a person at a time when the person's immigration status is precarious.
28. The consideration of Article 8 outside the Rules is a proportionality evaluation i.e. a balance of public interest factors. Some factors are heavily weighted. The most obvious example is the public policy in immigration control ... the examples given in **Agyarko** which include the distinction between being in the UK unlawfully and temporarily. Decisions such as those in **Chikwamba and EB Kosovo v the Secretary of State for the Home Department** describe examples of how the weight of cogency of the public interest is affected. It is accordingly appropriate for the court to give weight when considering the proportionality of interference with Article 8 outside of the Rules to factors that have been identified by the Strasbourg court, for example the effect of protracted delay, the rights of a British partner who has always lived here and whether it can be reasonably expected that he/she will follow the removed person to keep their relationship intact, that is by way the example of the circumstances identified in **EB Kosovo**
33. This means that a Tribunal undertaking an evaluation of exceptional circumstances outside the Rules must take into account as a factor the strength of the public policy in immigration control as reflected by the Secretary of State's test within the Rules. The critical issue will generally be whether the strength of the public policy in immigration control in the case before it is outweighed by the strength of the Article 8 claim so that there is a positive obligation on the state to permit the applicant to remain in the UK. The framework or approach in **Razgar** is not to be taken to avoid the need to undertake the critical balance".
36. Turning back to the case before me, in my judgment the judge clearly and fully dealt with the persecution aspect of the case. She simply did not believe the Appellant and thought the Appellant had fabricated that part of the case. The judge dealt with the Article 8 claimed family life aspects, particularly at paragraph 44(i) to (v). To enable me to find that there is a material error of law I have to apply the **R Iran** principles and with the greatest of respect to the grounds of appeal they do not indicate with sufficient particularity as to how there is a material error of law within those findings. True it is that it is said that the findings were wrong, but there is simply an insufficient basis to enable me to conclude that there was an error of law. It is trite law that a mere disagreement with the findings will not suffice. A material error of law has to be identified. I am not able to discern a material error of law in the judge's findings in respect of Article 8.
37. I have gone on to consider the evidence which was submitted after the hearing, i.e. the documents relating to the pregnancy, abortion and such like. I simply do not understand how it came to be that the submission of such documents took place. No representations appear to be made at the hearing that that this documentation was

going to be sent to the Judge after the hearing. I have checked in the Record of Proceedings and it is clear that no permission was sought or granted to the Appellant to submit any evidence after the hearing and there is no evidence that there was an opportunity for the Respondent to reply. The Appellant remained legally represented but she went behind her solicitors and seems to have sent the pregnancy documents directly without her solicitors covering letter or the like. Even if I put all of that to one side, in any event in my judgment it is difficult at best to make out how the new documents “prove the relationship with [MH]”. The Appellant’s own covering letter says that is what the documents show. The letter says, “that this proves my relationship with [MH]”. I accept that the document from well after the hearing from 21st July says that the “emergency contact is [MH]”. There are also pictures of scans, reference to prescriptions, a discharge plan and there is amongst those documents (albeit difficult to find) but if one looks very carefully a pro forma sheet where the Appellant fills out her ethnic background. She says she is Pakistani, she is heterosexual, she has no disability, she is a Muslim, but for marital status it says, “single with partner”.

38. Now how the judge was going to find out from amongst all of these documents that there was one single page in a tick box which said, “single with partner”, in my judgment begins to explain why the documents do not clearly prove a relationship with [MH]. It may be that it is a simple misunderstanding from the Appellant herself as to how the appeal procedure works and as I explained during the hearing it is not possible at the error of law hearing to present evidence which was not presented to the judge at the First-tier Tribunal. Similarly it is not generally possible to raise grounds of appeal which were not presented within the scheme for seeking permission to appeal and as I explained during the hearing if the shoe was on the other foot and the Appellant had succeeded in her appeal and the Secretary of State had then sought an appeal against that decision, whereby the Secretary of State said that he had forgotten to rely on some evidence which he now wanted to rely on or if new evidence was being presented at the day of the hearing the Appellant would feel aggrieved. In the same way in my judgment the same applies to the Appellant seeking permission to appeal.
39. Having considered the matter carefully and with some care, I am clear that there is simply no basis upon which it is possible to enable me to conclude that there is a material error of law in the Judge’s decision. I have considered the factual matrix carefully and although Mrs Price was not able to bring any law to my attention having considered the case of **TZ Pakistan** and the Supreme Court’s decision in **Agyarko** there is no material error of law. Be that procedurally or otherwise. In the alternative I have considered whether there is some obvious point in respect of the protection claim which was missed by UT Judge Hanson and in my judgment, there is not. I have also considered whether the pregnancy/abortion documents submitted to the hearing centre well after the hearing (and without permission) could arguably have made a difference. Having looked carefully at those documents, although it is clear from them that there was an abortion, it is not possible to work out from them that there was a genuine relationship with [MH] from those documents.

40. In the circumstances the decision my decision is as follows.

Notice of Decision

There is no material error of law in the decision of First-tier Tribunal Judge Miller.

That decision will stand. Namely the Appellant's appeal on all grounds remains dismissed.

No anonymity direction is made.

Signed: A Mahmood

Date: 25 July 2018

Deputy Upper Tribunal Judge Mahmood