IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-006514

First-tier Tribunal Nos:
HU/54965/2021
IA/12398/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 24 July 2023

Before

UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

FT
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms K Anifowoshe, Counsel, instructed by Ajasin Chambers
For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

Heard at Field House on 14 July 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Appellant is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the Appellant, likely to lead members of the public to identify the Appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

Introduction

1. The Appellant appeals against the decision of First-tier Tribunal Judge Cockburn ("the Judge"), promulgated on 10 October 2022 following a hearing on 11 July of that year. By that decision, the Judge dismissed the Appellant's appeal against the Respondent's refusal of her human rights claim. That claim was in essence based on the following: the Appellant's fairly lengthy time away from her country of origin (Togo); her past experiences in, and lack of ties to, that country; and her relationship with a person settled in the United Kingdom.

The Judge's decision

2. The Judge accurately set out the background to the appeal before her and then made reference to Appendix PL to the Immigration Rules, specifically paragraph PL.5.1., which in substance is a replication of what had been paragraph 276ADE(1)(vi) of the Rules before its deletion. A brief summary of the oral evidence was set out. The Judge then approached her consideration of Article 8 by first addressing the relevant Rules, specifically the very significant obstacles test contained in PL.5.1. The Judge correctly noted that an ability to satisfy relevant Rules would weigh very strongly in the Appellant's favour: TZ (Pakistan) [2018] EWCA Civ 1109. She recorded the Appellant's acceptance that the Rules under Appendix FM could not be satisfied because the Appellant's partner was not a "partner" for the purposes of those provisions. The Judge found a number of aspects of the evidence to be credible, concluding that:

   (i) the couple's relationship was genuine and subsisting;

   (ii) the couple intended to marry;

(iii) the Appellant had been sexually abused by her father and uncle when a child in Togo and that she suffered psychological effects for which she had been receiving counselling in the United Kingdom;

(iv) the Appellant's parents and grandmother (with whom she had lived for a while) had passed away.

3. The Judge then directed herself, correctly, to the well-known passage in Kamara [2016] EWCA Civ 813, at [14]:

> "14. In my view, the concept of a foreign criminal's "integration" into the country to which it is proposed that he be deported, as set out in section 117C(4)(c) and paragraph 399A, is a broad one. It is not confined to the mere ability to find a job or to sustain life while living in the other country. It is not appropriate to treat the statutory language as subject to some gloss and it will usually be sufficient for a court or tribunal simply to direct itself in the terms that Parliament has chosen to use. The idea of "integration" calls for a broad evaluative judgment to be made as to whether the individual will be enough of an insider in terms of understanding how life in the society in that other country is carried on and a capacity to participate in it, so as to have a reasonable opportunity to be accepted there, to be able to operate on a day-to-day basis in that society and to build up within a reasonable time a variety of human relationships to give substance to the individual's private or family life."

4. At [21]–[25], the Judge carried out her assessment of the very significant obstacles test, taking a number of matters into account. Ultimately, she concluded that whilst there would be challenges in the Appellant's way, these would not amount to very significant obstacles.

5. In respect of Article 8 in its wider context, the Judge turned to consider the Appellant's relationship with her partner and the question of whether it would be proportionate for her to go to Togo and apply for entry clearance in the normal way having taken account of, amongst other matters, the Appellant's mental health and her partner's particular circumstances. The Judge was left unimpressed by the evidence on this issue and she concluded that the option of applying for entry clearance was open to the Appellant and that it would not constitute a disproportionate interference with either her private or family life.

6. The appeal was accordingly dismissed.

The grounds of appeal

7. In brief summary, the grounds of appeal contended that the Judge had not "properly" considered the Appellant's case with reference to the very significant obstacles test and Article 8 more broadly. With respect, it is somewhat difficult to discern the clear identification of alleged errors of law. On one reading it might be said that a rationality challenge was being put forward.

8. Permission to appeal was granted by the First-tier Tribunal, accompanied by relatively detailed reasons, the essence of which were that the Judge may not have undertaken a sufficiently broad evaluation of the circumstances relating to very significant obstacles.

9. Following the grant of permission the Respondent provided a rule 24 response.

The hearing

10. Ms Anifowoshe relied on the grounds of appeal and the grant of permission. She reiterated the contention in the grounds of appeal that the Judge had failed to "properly consider" important aspects of the Appellant's case. When asked to clarify, she sought to argue that the Judge should have (in other words, was bound to have) allowed the appeal based on the accepted facts as they related to the very significant obstacles assessment. In respect of Article 8 more broadly, Ms Anifowoshe submitted that the applicant could not return to Togo to apply for entry clearance and that her partner would not be able to properly support her in that course of action.

11. For the Respondent, Mr Walker relied on the rule 24 response. He acknowledged the positive findings made by the Judge but contended that the overall conclusion reached had been open to her.

12. At the end of the hearing I reserved my decision.

Conclusions

13. At the outset, I make two observations. Firstly, the Upper Tribunal must show appropriate restraint before interfering with a decision of the First-tier Tribunal. The Judge had read and heard evidence, had made findings of fact, and had undertaken an evaluative judgment in respect of the existence of very significant obstacles and proportionality. Secondly, and related to the first point, it is not for me to substitute my own view for that of the Judge. On the same evidence, I might have reached a different decision at first instance, but that is not my task now. One can only have a good deal of sympathy for the Appellant, given her past experiences in Togo. However, my remit is only to determine whether the Judge made any material errors of law.

14. Having regard to the Judge's decision as a whole and the evidence which was, and was not, before her I conclude that there are no material errors of law in this case.

15. In respect of the very significant obstacles issue, the Judge correctly directed herself in law to the guidance set out in Kamara and was plainly aware of the high threshold established by the "very significant" element of the test for reintegration. It is clear from [21]–[25] that the Judge took all relevant matters into account. These included: the time spent away from Togo (with the Judge finding that the Appellant had not in fact left as a minor, but at the age of 20); the absence of close familial ties in that country; her linguistic abilities; her mental health; her visit to Togo in 2009; and the past abuse. The Judge

was entitled to find that there had been no sufficient evidence as to the unavailability of relevant mental health assistance in Togo (for example, counselling).

16. The Judge accepted that the Appellant would face challenges. It is sufficiently clear to me, however, that the Judge had undertaken a broad evaluative judgment and that she was rationally entitled to conclude that those challenges did not meet the high threshold of very significant obstacles. Therefore, the first element of the Appellant's challenge fails.

17. In respect of Article 8 more broadly, the Judge was entitled to conclude that the Appellant could not rely on the well-known principle set out in Chikwamba [2008] UKHL 40 because it was entirely unclear whether she would be able to meet the relevant Rules: in this regard, see now Alam [2023] EWCA Civ 30. The Judge properly addressed the question of whether it would be disproportionate to expect the Appellant to return to Togo to make a necessary entry clearance application. In so doing the Judge had regard to the Appellant's mental health and gave detailed consideration to this at [34]. At [35], the Judge gave adequate consideration to the position of the Appellant's partner. She was entitled to find that the evidence from the partner and the Appellant herself in respect of the entry clearance issue was "cursory and evasive". The grounds of appeal make no identifiable challenge to this aspect of the Judge's analysis. She was in my view entitled to conclude that the partner could return to Togo with the Appellant temporarily in order to support her whilst she made the entry clearance application, or could remain in the United Kingdom and provide meaningful support to her if she travelled back alone.

18. The Judge specifically referred to the oral evidence, which had been to the effect that the partner would not have been able to financially help the Appellant in Togo. She went on to find that there had been no reliable evidence of the partner's overall financial position to support that assertion. As far as I can see (and there has been no suggestion to the

contrary), there was no evidence before the Judge to indicate that the practicalities of making an entry clearance application were such that it would have a disproportionate impact on the Appellant in terms of, for example, travelling or the time taken to process applications.

19. Stepping back and looking at the Judge's decision holistically and in light of the evidence before her and the relevant legal framework, there are no errors in the decision, whether in respect of any purported rationality challenge or otherwise. The positive findings made by the Judge did not require her to go on and allow the appeal. The second aspect of the Appellant's challenge also fails.

Notice of Decision

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

That decision stands.

The appeal to the Upper Tribunal is accordingly dismissed.

H Norton-Taylor

Judge of the Upper Tribunal
Immigration and Asylum Chamber

Dated: 24 July 2023