Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/20361/2013

THE IMMIGRATION ACTS

Heard at Bradford	**Determination Promulgated**
On 13 December 2013	**On 22 January 2014**
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Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

TALAT SADIQA

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Shah, Maz Shah Legal
For the Respondent: Mrs R Pettersen, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, Talat Sadiqa, born on 12 January 1979 is a female citizen of Pakistan. The appellant first entered the United Kingdom in August 2008 as a spouse. She

obtained further leave to remain until 14 March 2013 but, by a decision dated 9 May 2013, her application for further leave to remain was rejected by the respondent. She appealed against that decision to the First-tier Tribunal (Judge Batiste) which, in a determination promulgated on 28 October 2013 dismissed the appeal. The appellant now appeals to the Upper Tribunal.

2. Both parties agreed that the appellant could not succeed under the Immigration Rules. Her appeal is on Article 8 ECHR grounds only.

3. Judge Batiste set out the appellant's case at [8] as follows:

> The appellant's case is relatively simple. When she came to the United Kingdom in 2008 there was no English language requirement before spouses could enter the country. It is the appellant's case that after she entered the United Kingdom, the sponsor became unwell such that he lost his job (for which he received a payment of £5,500 from the Employment Tribunal) and has needed constant caring. As a result it is claimed that the sponsor is unfit to work and is therefore dependent on benefits to support himself and the appellant. Furthermore, given that he is in need of constant care, the appellant has been entirely unable to study for any English certificates and has not undertaken any. As a result the appellant could not succeed with any application under the Immigration Rules and instead made an application outside the Rules.

4. The judge was not satisfied [9] with the evidence of the appellant's husband's (hereafter referred to as the sponsor) medical condition. He found that "the medical evidence provided [does not] even approach supporting the contention for which it is put forward, namely the sponsor is unable to work and requires almost constant care". The judge noted that the sponsor was not in receipt of any disability benefits including disability living allowance (DLA). The judge found that the appellant had been able to undertake the English language course had she wanted to do so. Her inability to comply with the Rules was, therefore, a problem of her own making.

5. The grounds complain that the judge had concentrated upon the English language requirement and financial matters thereby raising new issues regarding which the appellant was given no opportunity to comment. It is asserted that the appellant has been "unjustly prevented from providing relevant evidence in line with the case of **RM (Kwok On Tong: HC 395 para 320) India [2006] UKAIT 00039.**" [grounds, 3].

6. I reject that ground of appeal. The judge was carrying out an Article 8 ECHR assessment and was, therefore, required to have regard to all relevant evidence. That the appellant and the sponsor were in receipt of public funds and that the appellant had not attempted to obtain the English language requirement which may have allowed her to comply with the Immigration Rules were undisputed facts in this appeal. They were not new matters raised by the judge at the hearing. No indication has been given of what "relevant evidence" in addition to that which had been adduced the appellant intends to provide concerning those issues. The appellant had been made aware that, if she sought to obtain further leave to remain as a spouse, she needed to study for, and pass, the English language test. The fact that the appellant had done nothing whatever to satisfy that requirement is clearly a relevant fact in the

appeal. Indeed, it weighed heavily in favour of the public interest in the Article 8 assessment; removal of those who make no effort to comply with the Immigration Rules and seek, in effect, simply to rely on the fact that they happen to be residing in the United Kingdom in order to remain here is clearly a strong one.

7. Mr Shah also complained that the judge had attached too much weight to the fact that the appellant and sponsor are reliant upon the sponsor's employment allowance. He submitted that the appellant herself had never sought to rely upon public funds. Although it is not clear from the papers, it would seem that the appellant and sponsor have contrived to exist on an employment allowance which is paid solely to the sponsor an arrangement which may have the effect that both appellant and sponsor are living on funds below income support levels. This, in turn, gives a clear indication that, if the appellant were to be given Article 8 leave to remain, she would need to seek public funds. The judge rightly observed that that was also a factor weighing in favour of the public interest.

8. The dilemma with which the judge was faced was that of an appellant who was in a subsisting marriage with a British citizen and cannot reasonably be expected to relocate outside the European Union (see *Sanade and others* (British children - Zambrano - Dereci) [2012] UKUT 00048(IAC)). The fact of the sponsor's British citizenship, however, together with the subsistence of the marriage does not compel the Tribunal to allow the appeal on Article 8 ECHR grounds. It remained open to the judge to assess proportionality and either to allow or dismiss the appeal. Mr Shah, for the appellant, did not disagree with that proposition. I find that Judge Batiste has not erred in law. He has taken into account relevant and undisputed evidence (for example regarding the appellant's inability to undertake the English language test and her likely future reliance on public funds) in reaching an outcome which was plainly available to him notwithstanding the sponsor's nationality and the subsistence of the marriage. I see no reason to interfere with his decision for the reasons asserted in the grounds or otherwise.

Decision

This appeal is dismissed.

Signed Date 16 January 2014

Upper Tribunal Judge Clive Lane