



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/39042/2014

THE IMMIGRATION ACTS

Heard at Bradford
On 3rd September 2015

Decision and Reasons Promulgated
On 21st September 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE KELLY

Between

AH
(ANONYMITY ORDERED)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss B Dawes, Counsel instructed by Kabir Ahmed & Co
Solicitors

For the Respondent: Mrs R Pettersen, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The appellant is a citizen of Kosovo who was born on the 9th August 1999. She appeals with permission against the decision of First-tier Tribunal Caswell who, in a decision published on the 20th January 2015, dismissed her appeal against the

respondent's refusal of her application for leave to remain in the United Kingdom on private and family life grounds.

2. I order that the anonymity direction made in the First-tier Tribunal be continued.

Background

3. The background facts have been largely uncontroversial throughout these proceedings and may conveniently be summarised as follows.
4. The appellant takes her Kosovan nationality from her parents albeit that she was in fact born in Germany. Her mother died on the 29th February 2000 when she was only a few months old. Her father remarried soon afterwards and sent the appellant and her sister (AB) to live with his brothers in Kosovo, whilst he remained in Germany with the appellant's other sister and her brother. The appellant has seen little of her father since that time. AB married in 2013 and joined her new husband in the United Kingdom. The appellant entered the United Kingdom on the 1st February 2014, with leave to remain until the 14th July 2014 in order to visit AB. The original plan had been for the appellant to visit her sister for two weeks and thereafter return to Kosovo in order to complete her education. However, the appellant told AB that her uncles in Kosovo were unkind to her and had made it clear that she was not wanted. As a result, AB's husband spoke to one of the appellant's uncles by telephone. The uncle stated that he could no longer look after the appellant because he had four children of his own to look after. The appellant was therefore enrolled in a British school, on the 31st March 2014, where she is said to be happy and settled.

The decision of the First-tier Tribunal

5. The core of Judge Caswell's decision can be found at paragraphs 15 to 26 –
 15. The Appellant is still a child, and her background makes it credible that she has a close relationship with her sister AB, with whom she has lived all her life, until the sister came to the UK in July 2013. The fact that AB is eleven years older, and that she and the Appellant were both sent back to Kosovo together, and remained in the same household until AB's marriage, makes it entirely credible that they will have a particularly close bond. Further, the fact that neither of their parents has played an active part in their everyday lives must have made them closer. In the circumstances, I am satisfied that there is family life between the Appellant and AB, and that this extends now to [AB's husband].
 16. At the same time, however, the limits to the strength of the ties between AB and the Appellant must be measured by the fact that AB left her sister without any thought of keeping her with her, when she married. She also had no concerns about leaving the Appellant with the uncles and cousins, who also have been part of the Appellant's close family for as long as she will be able to remember. It is not the case, I find, that the Appellant or AB would find it severely damaging emotionally to be separated geographically, especially as they can, and according to the evidence have, kept in touch by phone and other modern forms of communication. In addition, there is no reason put forward to suggest that AB could not return to Kosovo to visit her sister.

17. Having said all that, however, I am prepared to accept that the Appellant has shown both that there is family life between her and her sister and that this will be interfered with if she is made to return to Kosovo.
18. There is no dispute that the interference is lawful and serves the legitimate aim of the protection of the social and economic interests of the UK through the maintenance of fair and effective immigration control. On the issue of whether the interference is proportionate, I consider the Appellant's position first. I am asked to find that she is desperate to stay with her sister, that her uncles feel she is a burden and do not want her back, and that she wants to stay where she feels wanted, and with a sister who has always looked out for her and whom she looks up to as a parent.
19. The Appellant has been in school since March 2014 and I accept has settled well there. I am asked to accept that the household is managing without public funds, even though the income is less than half of the entry clearance requirement sum, and that this situation will continue. However, the bank statements do not show large balances and in my judgement that aspect has not been clearly made out. Of course, by attending school the Appellant is availing herself of UK resources already. She speaks English, I find, although she needed some help from the interpreter. She is obviously making a firm attempt to integrate into British life, and the evidence is that she has succeeded so far. However, her time in this country has still been very limited, less than a year. By contrast, she has lived in Kosovo nearly all her life, from the age of 2. She also has links to Germany, by reason of the fact she was born there, her father lives there and so do her other two siblings.
20. Although I am told that the uncle or uncles find her to be a burden, it seems strange that this was not the case before her sister left and has only become the case since. There is an absence of evidence concerning the family and environment in Kosovo. It has not said that the uncles have been cruel to the Appellant, or that they have abused her in any way. Clearly there are children of similar age to the Appellant in the household and A B's statement says that their father has visited at least once a year.
21. I am asked to find that it is understandable that there is no evidence from the uncles in Kosovo. However, there is no evidence here of any actions that would cause the breaking off of all communication between them. In fact, I am told A B has spoken to the uncle, and the Appellant has spoken to his daughters. It does not make sense, in my judgment, that the uncles would not be able to provide some evidence of the situation with them and their wishes as regards the Appellant.
22. Such evidence is all the more needed, in my judgment, because there is no real evidence of any problem in Kosovo apart from what the Appellant has told her sister, and that only once she arrived in the UK. The conversation with the uncle reported by Mr Baftiu, if accurate, is consistent with the uncle wanting some help to share the burden, financial or otherwise, of looking after the Appellant, but really does not go much further than that.
23. The fact that the Appellant's father has consented to her living with A B does not take matters much further, in my judgment, since he has evidently not wanted to offer her a home himself up until now, and wanted other family members to care for her. Having the Appellant cared for by A B and supported by her husband in

the UK, where she has a number of opportunities, would clearly be a good option from his point of view.

24. There is also a very limited amount of evidence generally in this appeal. There are letters from the school to show the Appellant is doing well, but no comment on the closeness of the relationship with A B, her involvement with the school, or indeed any awareness of the unusual background of the Appellant. It is not said that the Appellant will suffer in any way if returned to Kosovo. There are no letters from friends or other families to confirm the bond the Appellant has with her sister, or the effect it would have on her if she were returned to Kosovo. There is no independent evidence of any emotional or psychological difficulties or fragility on the part of the Appellant, or of any significant worry on her part at the thought of being returned to Kosovo. In fact, the evidence from school suggests she is healthy and doing well.
25. Overall, and while I accept that the Appellant and her sister are close and that they do both want the Appellant to stay in the UK, I am not satisfied that I have been given a full and accurate account of circumstances generally, and in Kosovo in particular. I am not satisfied that it has been shown that the best interests of the Appellant lie in her remaining in the UK, away from her country, the household and family she has grown up in, and the school and friends there, as well as her own language and culture.
26. Having considered all the evidence before me, I find the Respondent has shown that removal of the Appellant to Kosovo is proportionate. It follows that the appeal on Article 8 grounds fails."

Analysis of the grounds of appeal

6. The first and seemingly only ground upon which permission to appeal was granted by Judge Hollingworth, on the 11th March 2015, is centred upon what is said to be the judge's failure to make "credibility findings". I confess that I have some difficulty in understanding this ground of appeal and, indeed, the terms of the grant of permission. Both appear to be predicated upon an assumption that the appellant's credibility was substantially in issue whereas, as I observed at paragraph 2 above, the vast majority of the facts were not in issue. It was thus unnecessary for the judge to make extensive findings with regard to the appellant's 'credibility'. All that was required was for the judge to decide whether the appellant had discharged the burden of proving the primary facts upon which the success of her appeal depended. This meant considering the extent to which the appellant (a) had retained private and family life ties to Kosovo, and (b) had established such ties during the course of her relatively brief stay in the United Kingdom.
7. With regard to appellant's retained ties to Kosovo, the main factual issue was whether the appellant had proved that she was mistreated by her uncle when living in Kosovo. In that regard, the judge was right to observe that the appellant's case was simply that her uncle had made it clear that he regarded her continued membership of his household as a burden; there was no suggestion that he had been cruel to her. Within that context, the judge was at liberty to conclude that (a) it was strange that the appellant had only complained about her uncle's supposed resentment towards her after she had arrived in the United Kingdom, and (b) it was reasonable to expect

that there would be some form of statement or letter from the uncle expressing his contentment with, if not enthusiastic support for, a proposal that she henceforth reside with her sister. The judge was entitled to conclude that in those circumstances the appellant had failed to prove that there were any significant obstacles to her returning to Kosovo [paragraphs 20 to 23].

8. With regard to the question of whether the appellant had proved her claimed links to the United Kingdom, the judge is criticised (in the fifth ground) for expecting the appellant's UK school to comment upon the closeness of the relationship between the appellant and her sister. However, it is clear from a reading of paragraph 24 as a whole that the judge was simply drawing attention to the limitations of the evidence provided in order to support the claim that the appellant had developed close personal ties beyond those of her immediate family circle in the relatively brief period of her residence in the United Kingdom. That was an entirely legitimate exercise. It did not mean (as the grounds appear to suggest) that the judge was thereby finding that the report lacked 'credibility'. Moreover, the charge that the judge 'ignored' the evidence of the appellant's sister and brother-in-law (evidence that is said to have "delved" into the closeness of their familial bond to the appellant) is entirely without foundation. On the contrary, the judge made an express finding that they had "a particularly close bond" [paragraph 15].
9. I am thus unable to find any merit in the first and fifth grounds of appeal, which are in reality nothing more than a quarrel with findings that were reasonably open to the judge on the evidence. As I previously observed, it is my no means clear that Judge Hollingsworth granted permission to argue the other grounds. I am in any event satisfied that they do not identify any material error(s) of law. This is for the following reasons.
10. The second ground takes exception to the judge's suggestion that the appellant and her sister would be able "to keep in touch by phone and other modern forms of communication". Reliance is placed upon remarks made by Blake J in Mansoor [2011] EWCH 832 (Admin) in which he expressed the view that such communication does not constitute family life. However, observations made in the course of handing down judgement in an application for judicial review should not be treated as though they are generally applicable principles of law. Rather, it is necessary to consider them within the context of the factual matrix of the case. Each case is fact-sensitive. In this case, it was entirely reasonable for the judge to observe that the appellant's sister had been content to maintain family ties by such means following her voluntary departure from Kosovo in order to settle with her husband in the United Kingdom, and that she would be able to resume doing so following the appellant's return to Kosovo.
11. The third ground complains that the judge measured the ability of the appellant's sister and brother-in-law to maintain the appellant adequately by reference to an annual gross income of £18,600, which is the threshold set by Appendix FM of the Immigration Rules. It is argued that the judge ought instead to have measured it against the much lower level of Income Support. That argument is entirely

misconceived. The judge was required to have regard to the fact that it is in the public interest that persons seeking settlement in the United Kingdom are financially independent (see Section 117B(2) of the Nationality, Immigration and Asylum Act 2002). The threshold in Appendix FM is that which the legislature has deemed necessary in order to support a married couple without any recourse to public funds. By contrast, the Income Support level is simply the amount that is required in order to survive at a subsistence level. If anything, therefore, the judge understated the income that the appellant's sister and brother-in-law would need in order to maintain her without recourse to public funds, because the £18,600 threshold is that which is deemed necessary for a married couple without children.

12. Perhaps the strongest ground (which, it will be recalled, is not a ground for which permission to appeal has been granted) is the fourth; namely, that the judge erred by having regard to the appellant's familial links to Germany. The relevance of those links to an assessment of the consequences of removing the appellant from the United Kingdom to Kosovo is by no means immediately apparent and was not explained by the judge. However, I am not satisfied that the reference to it in the final sentence of paragraph 19 was not one that played any part in the outcome of the appeal. On the contrary, it appears only to have been mentioned by way of an aside. Given that the remainder of the judge's reasoning is sound, I am satisfied that the apparently extraneous reference to the appellant's links to Germany do not warrant setting aside the First-tier Tribunal's decision.

Notice of Decision

13. The appeal is dismissed.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings

Signed

Date

Judge Kelly
Deputy Judge of the Upper Tribunal