Upper Tribunal
(Immigration and Asylum Chamber) Appeal Numbers: OA/02048/2014

THE IMMIGRATION ACTS

Heard at Glasgow	**Decision & Reasons Promulgated**
23 July 2015	**3 September 2015**

Before

UPPER TRIBUNAL JUDGE DAWSON

Between

Mrs Azamalsadat Davar

Appellant

and

Entry Clearance Officer

Respondent

Representation:
For the Appellant: No Appearance
For the Respondent: Mr Matthews, Senior Presenting Officer

DETERMINATION AND REASONS

1. The appellant's partner did not appear at the hearing of his wife's appeal. I was satisfied that he had been served in accordance with the Tribunal Procedure (Upper Tribunal) Rules 2008 and I therefore proceeded in the absence of any explanation for his non attendance.

2. The appellant who is a national of Iran, born 25 March 1987 has been granted permission to appeal the decision of First-tier Tribunal Judge JC Grant-Hutchison. For reasons given in her determination dated 22 September 2014, the judge dismissed the appeal against the Entry Clearance Officer's decision refusing the appellant's application as the

unmarried partner of the sponsor which was considered in Istanbul. In his decision dated 13 January 2014, the respondent gave his reasons why he was not satisfied the appellant met the requirements of paragraph 352AA(i) and (ii) which are in these terms:

> (i) "The applicant is the unmarried or same-sex partner of a person who is currently a refugee granted status as such under the Immigration Rules in the United Kingdom and was granted that status in the UK on or after 9 October 2006;
>
> (ii) The parties have been living together in a relationship akin to either a marriage or a civil partnership which has subsisted for two years or more; …"

3. In granting permission to appeal First-tier Tribunal Judge P Hollingworth observed that an arguable error of law had arisen in the judge's decision in the context of the period of time during which the parties had lived together as opposed to the length of the relationship. He also considered that the judge had arguably erred in connection with the application of Section 117C of the Immigration Act 2014.

4. There were four grounds of challenge and I take each in turn:

Ground 1

5. Reliance is placed on *Fetle* (Partners: two year requirement) [2014] UKUT 00267 (IAC), as proposition for the principle that the period of two years referred to in paragraph 352AA referred to the length of a the relationship as opposed to the length of time the parties had lived together. It is argued the judge had focused on how long the parties had lived together and whether they had lived together for two years.

6. The Tribunal in *Fetle* observed that the proper construction of the rule did not require two years cohabitation but two years subsistence of the relationship. As observed by the Tribunal at [9]:

> "A relationship said to be a akin to marriage, but in which the cohabitation has been minimal, may not be able to be established as 'subsisting' so there is no danger of our interpretation leading to a view that (for example) one nights cohabitation will be enough to claim entitlement under the rules."

7. The judge did not refer to *Fetle* in her decision which was promulgated 23 September 2014. There is no indication that it was drawn to her attention although as a specialist Tribunal Judge she would be expected to be aware of it.

8. The case before the judge was that the parties had lived together for two years between February 2010 and February 2012 and that was relied on to demonstrate that the provisions in paragraph 352AA had been met. The sponsor claimed that he had last seen the appellant in July 2012 before

leaving Iran. They had met in Istanbul subsequently between 3 and 7 November 2013 during which the application for Entry Clearance was made.

9. The judge was required to making findings on the evidence advanced in support of the application. It is clear from a reading of her determination that she had doubts about the claim that the parties had lived together at all. This view is reinforced by her consideration under Article 8 from which I quote:

> "For the reasons already given the parties have not established that they were living together before the sponsor left Iran thus forming their own family unit. There is some evidence that they had been in contact between 2013 and 2014 from the emails which have now been lodged and that they met briefly for four days in November 2013. I am prepared to accept that they met for four days between 3 and 7 November 2013."

10. The judge did not approach the case on a misunderstanding of the rule. There is no indication that she considered the appellant and sponsor were required to demonstrate that they lived together but as this was the basis on which the case was advanced, the judge was required to make a finding whether this was true. After making observations on other aspects of the evidence including an answer given in a SEF by the sponsor dated 9 November 2012 that he was single, the judge concluded that the burden of proof had not been discharged.

11. On the findings of fact by the judge, it is unarguable that the appellant had demonstrated that the relationship relied on came within the criteria of 352AA (i) and (ii).

12. The Second, Third, and Fourth Grounds relate to the Article 8 findings. They may be taken together. I find no arguable error. The challenge to the Article 8 conclusions is on the basis of the relationship as found by the judge. Ground Four argues that the judge erroneously excluded evidence as post dating of the decision, although it related to the circumstances of attaining at the time the refusal.

13. As to the Fourth Ground, this does not identify any evidence the judge excluded on this basis. It was opened to the sponsor or the appellant's representatives to attend to indicate the material the judge should have taken into account but failed to do so.

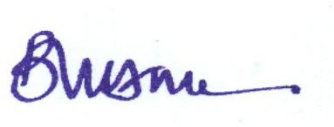
14. As to the overall Article 8 approach, I find no error by the judge bearing in mind the limited nature of nature and extent of the relationship she found existing. There was nothing before her of a compelling nature to require a grant of leave outside the rules.

15. It may be that the judge erred in applying Part 5A of the Nationality, Immigration and Asylum Act 2002 to this out of country case, but this does

not assist the appellant. On application of the principles clearly set out in respect of leave to enter cases in *SSHD v SS(Congo)& ORS [2015] EWCA Civ 387* and taking account of a limited scope of the relationship which the Judge had found subsisting. There were no compelling circumstances, not sufficiently recognised under the Rules to justify a grant of leave to enter.

16. Accordingly, I am not persuaded that the First-tier Tribunal erred; this appeal is dismissed.

Signed



Date: 26 August 2015

Upper Tribunal Judge Dawson