Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: VA/06569/2014

THE IMMIGRATION ACTS

Heard at City Centre Tower, Birmingham	**Decision & Reasons Promulgated**
On 13th November 2015	**On 7th December 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

MISS KARISIK EMINA
(ANONYMITY ORDER NOT MADE)

Appellant

and

ENTRY CLEARANCE OFFICER – WARSAW

Respondent

Representation:

For the Appellant: No legal representation
For the Respondent: Mr David Mills (HOPO)

DECISION AND REASONS

1. This is an appeal against a determination of First-tier Tribunal Judge Aujla, promulgated on 2nd June 2015, following a hearing at Hendon Magistrates' Court on 27th May 2015. In the determination, the judge allowed the appeal on human rights grounds under Article 8 of the ECHR. The Respondent subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a female citizen of Bosnia and Herzegovina who was born on 4th October 1976. She is the wife of Tarek Adel Abdelkader Mostafa, an Egyptian national born on 24th October 1977, and the Sponsor is living and working in the United Kingdom but, at the time of the hearing before Judge Aujla, the nature and duration of his leave was not clear from the documents before the Tribunal. The Appellant had applied for entry clearance to come to the United Kingdom as a family visitor for six months and she was sponsored by her husband. The Respondent rejected the application because the Entry Clearance Officer was not satisfied that the Appellant was genuinely seeking entry as a visitor for a limited period as stated by her.

The Appellant's Claim

3. The Appellant's claim was that she had previously been issued with a visa on 29th January 2014 to come to the United Kingdom as a visitor for her marriage. She arrived on 11th February 2014 and left the United Kingdom on 9th June 2014. The Appellant was working but was a student and was engaged in a doctoral study at the University of Ljubljana and her sponsoring husband was on temporary leave in the United Kingdom. The Appellant still had to finish her doctoral study in Slovenia before the couple could decide upon their future residence.

The Judge's Decision

4. The judge applied the decision in **Mostafa (Article 8 in entry clearance) [2015] UKUT 00112**, and referred to the headnote which states that,

> "In the case of appeals brought against refusal of entry clearance under Article 8 ECHR, the claimant's ability to satisfy the Immigration Rules is not the question to be determined by the Tribunal, but is capable of being a weighty, though not determinative, factor when deciding whether such refusal is proportionate to the legitimate aim of enforcing immigration control." (See paragraph 18 of the determination)

5. This clearly suggested that the same Article 8 principles were applicable in entry clearance cases as is the case in general immigration law. The judge held that the Respondent did not question the relationship between the Appellant and the Sponsor. He did not interview the Appellant. Any concerns that the Respondent there had were not raised.

6. The Sponsor was working in the United Kingdom as a neurosurgeon in a hospital and the Appellant was completing a research degree at a doctorate level. The judge reasoned that, "she had commitments to the course and that was the reason which kept the couple apart" even though

they were recently married (paragraph 20). The judge allowed the appeal on Article 8 grounds in these circumstances.

Grounds of Application

7. The grounds of application state that the judge erred in law because it had not been explained how the Immigration Rules were met and no consideration had been given to the public policy considerations required by Section 117A to D of the Immigration Act 2014.

Submissions

8. At the hearing before me on 13th November 2015, Mr Mills, appearing on behalf of the Respondent submitted that this appeal was now academic on the part of the Respondent authority. The reason was that subsequent to the visit visa appeal having been allowed, the Appellant had been granted entry as the partner of her husband who was employed in the UK as a neurosurgeon. Therefore, the Appellant had the right to remain in the UK legally in any event. In any event, however, as far as this particular visit visa appeal was concerned, Mr Mills said that he would simply argue that the judge had not done enough to allow the appeal on the basis of Article 8. It was true that in **Mostafa**, the Upper Tribunal had said that Article 8 should be considered in just the same way in visit visa appeals as it is in other cases. This, however, meant that there has to be proper consideration given to the public interest in such cases. This was despite the fact that the Appellant was in the UK lawfully now.

9. For her part, Miss Emina, not being legally represented or being versed in the law, simply stated that after the refusal of her visit visa, she had to apply as the dependant of her husband and was able to secure entry. She said that her project work in Slovenia had to be suspended whilst all of this was going on and this was disruptive to her life. She said that the prime considerations in her life were her study and the completion of her PhD doctoral dissertation and the marriage that she had entered with her Egyptian husband who was from a different culture, and where she had to make her own cultural adjustments given that they had only been married recently.

10. In reply, Mr Mills said that he would simply rely upon the grounds of application.

No Error of Law

11. I am satisfied that the making of the decision by the judge does not involve the making of an error on a point of law (see Section 12(1) of TCEA) such that I should set aside the decision and remake the decision. My reasons are as follows. First, the judge has had regard to the relevant

legal authorities, setting out in terms the application of **Mostafa [2015] UKUT 00112** and applying it in the correct manner before him on the facts. Second, that decision is in itself consistent with the latest decision of **Kaur (Visit appeals; Article 8) [2015] UKUT 00487**. This confirms that the starting point for deciding an Article 8 claim must be the state of the evidence about the Appellant's ability to meet the requirements of paragraph 41 of the Immigration Rules, and the judges are not relieved of their ordinary duties of fact-finding. In the instant case, however, it cannot remotely be argued that the judge did not make appropriate fact-finding decisions. These are set out at paragraphs 19 and 20 of the determination.

12. The judge makes it quite clear that, given that the sponsoring husband was working as a neurosurgeon in the UK, and that the Appellant was completing a doctorate dissertation, "in the meantime the Appellant was proposing to spend some time with the Sponsor and return to her studies, as she did last year" (paragraph 20). It is to be noted that the Appellant only entered the UK in order to marry the Sponsor, which she did after entering on 11th February 2014 and then left the United Kingdom on 19th June 2014 (see paragraph 14). There was plainly here a history of the Appellant fully complying with the Immigration Rules. She had in fact returned back to her own country after marrying the Sponsor.

13. The Respondent authority did not interview the Appellant and did not raise any concerns about the Appellant's intentions and could not point to any risk for her not complying with the Immigration Rules such that her intention was other than what she claimed it to be. Accordingly, given that the test is on a balance of probabilities, the judge was entirely correct in reaching the conclusion that he did. He allowed the appeal on Article 8 human rights grounds. He did not allow it under the Immigration Rules.

Notice of Decision

14. There is no material error of law in the original judge's decision. The determination shall stand.

15. No anonymity order is made.

Signed Date

Deputy Upper Tribunal Judge Juss 30th November 2015