



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: OA/10428/2014

THE IMMIGRATION ACTS

**Heard at Bennett House, Stoke-on-Trent
On 3rd February 2016**

**Decision and Reasons Promulgated
On 11th February 2016**

Before

UPPER TRIBUNAL JUDGE COKER

Between

IHSAN MOHAMMAD MAHMOUD ALDEEK

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr G Brown, counsel, instructed by Paragon Law

For the Respondent: Ms C Johnstone, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant was granted permission to appeal on the grounds that the First-tier Tribunal judge had failed to consider material matters; made a material misdirection in law and failed to properly apply the law. In granting permission, the First-tier Tribunal judge referred to a claimed failure on the part of the judge to have proper regard to the medical evidence relating to his British Citizen wife's physical condition or the best interests of the British Citizen children or the relevant statutory provisions or case law.

Background

2. Mr Aldeek (a Jordanian citizen) and his wife, [MW], had met on Facebook in 2010, they married in Jordan on 19th December 2013 and until the birth of their child on 13th June 2014 she had travelled to Jordan every three or four months to stay with him for about three weeks at a time. [MW] has an adult son by an earlier relationship who lives with his grandmother and with whom she remains in contact. She also has a daughter aged 7 by an earlier relationship who lives with her and has no contact with her birth father – his whereabouts being unknown.
3. Since the birth of the child in June 2014, [MW] has suffered from depression and pelvic pain such that she is unable to travel. She does not work and is reliant on Job Seekers allowance, Child Benefit and Child Tax Credit. There was no evidence before the First-tier Tribunal that she was unable to work for medical reasons.
4. The application for entry clearance as a spouse was refused under the Immigration Rules on the basis that Mr Aldeek did not meet the income threshold requirement and that there were no exceptional circumstances such as to merit the grant of entry clearance in accordance with Article 8 ECHR.
5. The First-tier Tribunal judge found that the Mr Aldeek did not meet the requirements of the Immigration Rules.

Error of law

6. The appellant did not seek permission and was not granted permission to appeal the finding of the First-tier Tribunal judge that he did not meet the requirements of the Immigration Rules. The grounds relied upon are essentially a disagreement with the findings of the First-tier Tribunal judge on Article 8 to an extent asserted to be an error of law. In particular, with regards to the medical evidence of [MW] health and the aggravation of her depression due to her husband's absence; that emotional support could not continue through 'modern means of communication'; that the 7-year-old could be expected to relocate with relative ease and that there would be no additional recourse to public funds on his arrival and that he would obtain gainful employment.
7. Reliance was placed upon *SS (Congo)* [2015] EWCA Civ 387.
8. Mr Brown in his submissions stressed the lack of consideration by the First-tier Tribunal judge of [MW]'s medical evidence. He referred in particular to two letters in the bundle before the First-tier Tribunal a letter from [MW]'s GP dated 26th May 2015 which refers to her back pain brought on by pregnancy and depression. It concludes that she is "not fit to fly at present due to her pains". An earlier letter dated 27th August 2013 from her GP refers to stress and states that she fears her mental health would deteriorate dramatically if she were to move to Jordan. Mr Brown also referred to [MW]'s witness statement which refers to 'unsafe' conditions in Jordan and lack of appropriate accommodation although he accepts there was little background evidence available to support that assertion. The reference to 'modern means of communication' does not in

the First-tier Tribunal decision refer to communication between the appellant and his wife but to communication between her and her older son. This was a reasonable conclusion to draw.

9. Although there is no direct reference to the letters to which Mr Brown drew my attention and although the judge does appear to be saying that it is reasonable for the two young British children to go to Jordan, when read as a whole it is plain that the judge weighed the evidence as a whole. The decision to embark on a relationship with a foreign national was a decision that both the appellant and his wife embarked upon. The decision to have a child was a decision taken when the appellant did not have entry clearance to come to the UK. [MW] does not have an income and there was sparse evidence of the ability of Mr Akeel's employment prospects. The medical evidence as to flying was not before the entry clearance officer at the date of decision – or the review.
10. Mr Brown relied upon *SS (Congo)* [2015] EWCA Civ 387 and in particular that where the Rules are not met there could be cases where on the particular facts of the case, Article 8 may require leave to enter to be granted. Although the relationship in this case has plainly been legitimately entered into the factors and circumstances outside the Rules are simply insufficient to require the grant of leave to enter. Although there would be disruption in the 7-year old's life if she moved to Jordan, there is clearly no legal obstruction that could not be overcome given the lack of contact with her birth father. Whether or not the appellant and his wife choose to arrange their family life in that manner is a matter of choice for them which springs directly from the fact that they have a relationship 'across borders and nationalities'. The medical evidence before the Entry Clearance Officer and before the First-tier Tribunal judge was simply inadequate to result in a finding that the outcome of the hearing was perverse.
11. It may well be that further and additional evidence submitted, if [MW] continues to be unable to work, could result in a different outcome but the decision reached by the First-tier Tribunal judge was a decision that was clearly and plainly reasonable and open to him. He considered the evidence before him and reached conclusions on that evidence that were neither perverse nor unlawful nor unreasonable.
12. There was no error of law in the finding of the First-tier Tribunal and the decision of the First-tier Tribunal dismissing the appeal stands.

Conclusions:

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law and I do not set aside the decision.

Date 3rd February 2016

Upper Tribunal Judge Coker