Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/21575/2015

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 25 April 2017	**On 10 May 2017**

Before

UPPER TRIBUNAL JUDGE BLUM

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

HASSAN POURMAMI HAMAMLOU
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Mr N Bramble, Home Office Presenting Officer
For the Respondent: Mr D O'Callaghan Counsel instructed by J McCarthy Solicitors

DECISION AND REASONS

1. This is an appeal by the Secretary of State (appellant) against the decision of Judge of the First-tier Tribunal C Greasley who, in a decision promulgated on 17 October 2016, allowed the appeal of Mr Hassan Pourmami Hamamlou (respondent), an

Iranian national, against the appellant's refusal to grant him leave to remain in the United Kingdom based on his relationship with his wife.

Immigration background

2. The respondent entered the United Kingdom on 30 October 2009 with entry clearance as a Tier 4 (General) Student. On 30 April 2010 he made an asylum claim. This asylum claim was refused and an appeal to the First-tier Tribunal dismissed on 9 June 2010. An appeal to the Upper Tribunal was dismissed and the respondent became appeal rights exhausted on 8 August 2011. On 23 November 2011 the respondent made a human rights claim seeking leave to remain in the United Kingdom based on his family and private life. This was based on his relationship with [SM]. She is a British citizen. She was born in the United Kingdom and, at the date of the First-tier Tribunal's decision, was 35 years old. She was employed at that time with Sea Life earning an income in excess of £42,000. She and the respondent married on 22 September 2011. It is relevant to note at this stage that she is a practising Christian.

The respondent's decision

3. In her decision the appellant accepted that the respondent and [SM] were in a genuine and subsisting relationship. The respondent did not consider that there were 'insurmountable obstacles' (as required under EX.1 of Appendix FM to the Immigration Rules in respect of the '10 year route' to settlement as a spouse) to the couple continuing their family life outside of the United Kingdom. The appellant noted that the respondent arrived in the United Kingdom aged 31 years old, that he had spent the vast majority of his life in Iran and would be familiar with that country, language, its culture and customs. It was noted that his mother and sister also continued to live in Iran.

4. The appellant acknowledged that the respondent's partner suffered from obsessive compulsive disorder for which she received regular medication and psychological support. The appellant considered background evidence relating to the availability of medical treatment in Iran and commented that the country had a highly sophisticated and comprehensive system of medical treatment. The appellant then went on to consider the respondent's private life rights, primarily under paragraph 276ADE, and concluded that he did not meet any of the requirements of this paragraph. The appellant then considered whether there were any 'exceptional circumstances' sufficient to warrant a grant of leave to remain outside the immigration rules in accordance with article 8. In this regard the appellant noted that the relationship between the respondent and [SM] commenced when he did not have leave to remain in the United Kingdom and in the knowledge that his position was precarious. It was concluded that there were no exceptional circumstances. The respondent appealed the appellant's decision and the hearing occurred on 7 October 2016.

The decision of the First-tier Tribunal

5. In his decision the judge set out the immigration history and summarised the basis for the appellant's refusal of the application. At [18] of the determination the judge noted, as a preliminary matter, that the Presenting Officer was seeking an adjournment in order to consider an expert report, dated 30 August 2016, that had been provided on behalf of the respondent from Dr Kakhki, a recognised Iranian expert. The essential findings of this expert report, which had been provided to the appellant in accordance with directions, indicated that the respondent and his wife would be unable to live as husband and wife in Iran as this could only be achieved if [SM] converted to Islam. The Presenting Officer indicated that she only had an opportunity to read the expert report on the evening prior to the appeal hearing. She had attempted to take instructions in respect of the report but had been unable to get in contact with anyone. The judge gave her a further opportunity to seek instructions. On her return a formal application was made to adjourn the proceedings. It was claimed there had been insufficient time to consider and respond to the report and, in the interests of justice, the appellant should have a reasonable opportunity to challenge the expert evidence. This was opposed by the respondent's Counsel, Mr O'Callaghan who represents the respondent at the error of law hearing. Having considered the matter the judge concluded (at [21]) that it was not appropriate to adjourn. In support of his conclusion the judge referred to the overriding obligation, contained within the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014, to ensure a just and timely disposal of appeals. The judge additionally considered the Upper Tribunal decision in **Nwaigwe (adjournment: fairness) [2014] UKUT 00418 (IAC)**. The appellant had had over two weeks in which to consider the expert report. There has been sufficient opportunity to provide rebuttal evidence. The judge noted that the appeal had previously been adjourned on the basis of a failure by the appellant to provide the bundle. The adjournment was refused.

6. The judge went on to record the evidence given by the respondent and his wife. The judge noted that they had not registered their marriage with the Iranian Embassy. Her employment circumstances were summarised as was her relationship with her parents and her general circumstances in the United Kingdom. The couple had only been separated for a maximum period of seven days during the previous five years. The judge heard evidence from the respondent's wife that she was a committed Christian and completely westernised.

7. The judge then gave detailed consideration to the expert report. Dr Kakhki was an attorney within the Iranian jurisdiction having completed a Bachelor of Judicial Law at the University of Tehran in 1990 followed by a Masters in International Law at Shiraz University in 1997. He had additionally completed a PhD in International Politics and Law at Durham University in 2008, and had acted as an Iranian expert on a range of topics since 2003. The judge summarised the findings of the expert at [36] to [40] of his decision.

8. Between [54] and [60] the judge considered whether the respondent fulfilled the requirements of the relevant Immigration Rules. The judge accepted that the respondent and [SM] had a genuine and subsisting relationship. The judge found, as an unchallenged fact, that [SM] was a practising Christian. The judge attached weight to the conclusions of the expert report. The judge accepted that in order for [SM] to live with the respondent in Iran she would need to renounce her Christian faith. The judge accepted that this was something she was not prepared to do.

9. At [57] and [58] the judge gave reasons for his conclusion that 'insurmountable obstacles' existed preventing family life with [SM] continuing in Iran. His primarily reason was that [SM] would be unable to live with her husband in Iran as the marriage would not be considered lawful by the Iranian authorities. This conclusion was heavily based on the content of the expert report. The judge additionally supported his findings by reference to [SM]'s inability to speak Farsi and the extent of her personal circumstances in the UK. At [60] the judge concluded that there were insurmountable obstacles by reference to EX.2 of Appendix FM (which defines insurmountable obstacles which would be faced by the applicant or their partner in continuing their family life together outside the UK and which could not be overcome or would entail very serious hardship for the applicant or their partner).

10. The judge thereafter went on to consider, in the alternative, whether the appeal should be allowed outside of the Immigration Rules and in accordance with article 8 principles. The judge once again summarised his findings and made reference to Section 117B of the Nationality, Immigration and Asylum Act 2002. Drawing his findings and the relevant principles together the judge concluded that it would be disproportionate to expect the family to relocate to Iran. The judge allowed the appeal on the basis that the appellant's removal would constitute a disproportionate breach of article 8, as expressed both within the immigration rules and, exceptionally, outside the immigration rules.

The grounds of appeal

11. The appellant's grounds take issue with the judge's refusal to grant an adjournment. The grounds contend that the failure to grant an adjournment constituted a procedural impropriety that led to unfairness to the appellant. This was because the appellant did not have sufficient time to consider what were said to be complex issues raised at the hearing on the claimed inability of the couple to return to Iran. I pause to note that the evidence relied on by the judge to support his conclusions was not raised at the hearing; it was brought to the appellant's attention at least two weeks prior to the hearing. The grounds contend that the opinions or assertions made by Dr Kakhki were rejected by the Upper Tribunal in another case, **SSH and HR (illegal exit: failed asylum seeker) Iran CG [2016] UKUT 308**. The appellant asserts that the expert did not rely on objective evidence to support his conclusion that [SM] would have to renounce her Christian faith. There was said to be no evidence outside of the expert's assertion that the Iranian Embassy in the United Kingdom would not accept the marriage as being valid and that the judge was not

consequently entitled to find that there were insurmountable obstacles. I observe in passing that paragraph 10 of the grounds maintains that judge found insurmountable obstacles to exist based on [SM]'s medical condition her employment and her lack of proficiency in Farsi. The judge's finding that the relationship would not be recognised by the Iranian authorities was conspicuous by its absence.

12. The grounds additionally take issue with the judge's assessment outside of the Immigration Rules. It was contended that there was nothing preventing [SM] from accompanying her husband to Iran whilst he makes an application for leave to enter the United Kingdom.

The error of law hearing and discussion

13. The appellant has been ably represented by Mr Bramble today who relied on the grounds and made no further submissions. It was not necessary for me to hear from Mr O'Callaghan. I am satisfied that the appellant received the expert report some two weeks prior to the First-tier Tribunal hearing. It was the responsibility of the appellant on receipt of the expert report to have considered its contents and to have determined in a timely manner whether there was a need to counter the assertions made in the expert report, either by producing other evidence or instructing her own expert. Instead the expert was only considered on the evening prior to the hearing. The judge demonstrably took account of all relevant circumstances in determining whether it was appropriate to grant the adjournment. The judge made specific reference to the overriding principle in the 2014 Immigration Rules. The judge gave a coherent and rational explanation for refusing to grant the adjournment. In so doing the judge considered the reasons given by the appellant for seeking an adjournment and the explanation for the delay is making the application. The judge made proper reference to the decision in **Nwaigwe**. The judge was entitled to find that the respondent had possession of the expert report for a sufficient period to have enabled her to consider both the content of the report and her position in relation to the expert's conclusions. The respondent did identify, either in her grounds or at the error of law hearing, any apparent error or inconsistency within the report, nor was there any identification of the assertions or conclusions reached by the expert with which the respondent disagreed.

14. Contrary to the appellant's assertion the expert did in provide a coherent, detailed and properly referenced assessment of the requirements [SM] had to satisfy in order to enter Iran as a spouse and in order for their marriage to be recognised (see section 4 of the expert report). The expert quoted extracts from the 'Iranian Interests Section in the US' which describes the requirements for the registration of a marriage between an Iranian man and a woman of foreign nationality. The extract indicated that one of the required documents was a certificate stating that the Iranian national's wife had become Muslim. The expert additionally referred to an example of a Conversion Form that [SM] would need to complete requiring her to confirm that she had abandoned Christianity and converted to Islam. The expert then made reference to the Iranian Ministry of Foreign Affairs website which again indicated that a

conversion certificate relating to a wife's conversion to Islam was required. I am wholly satisfied that the expert supported his findings by reference to appropriate sources.

15. The fact that conclusions of the same expert given in the case of **SSH and HR** were not fully accepted by the Upper Tribunal does not, as a matter of logic, undermine the reliability of the evidence given in the report before the judge. The issues in **SSH and HR** were entirely different. The expert was giving evidence in relation to the risk that may be faced by somebody who left Iran illegally or who was a failed asylum seeker. This stands in marked contrast to the assessment of legal requirements contained within the Iranian legal framework. To suggest that Mr Kakhki's evidence was wholly rejected by the Upper Tribunal or, as is implied in the grounds, that he was not accepted as a legitimate or genuine expert is to wildly misrepresent the Tribunal's assessment in **SSH and HR**. Whilst it is true that some assertions he made were found to be without sufficient evidential support (consider for example paragraphs 31 and 32 and Appendix 1 of **SSH and HR**) there was no challenge to his expertise, to his qualifications or indeed to his honesty. I am satisfied that the judge was therefore entitled to rely on the referenced and sourced assertions contained in the report prepared for the First-tier Tribunal appeal.

16. Nor do I find there to be any legal error in the judge's assessment of the existence of insurmountable obstacles. The test of insurmountable obstacles is a stringent one (see for example the Supreme Court decision in **Agyarko [2017] UKSC 11**). The judge's principal reasons for concluding that there were insurmountable obstacles related to the expert's conclusion that the marriage would not be accepted by the Iranian authorities (see [58] of the judge's decision). The judge found that [SM], who was a devout Christian, was not willing to renounce her faith (see [56]). Her religion was clearly an important element of her life and the judge was fully entitled to regard the inability of the family to live in Iran as husband and wife as a highly significant matter.

17. The judge additionally took into account the language issues, [SM]'s nationality, her medical condition, her employment and her personal circumstances in the United Kingdom. It is however quite clear that the core reason for the judge's conclusion that insurmountable obstacles existed was that the Iranian state would simply not recognise the marriage. The judge correctly identified the right test in his assessment of insurmountable obstacles, he considered all relevant evidence and he reached a conclusion that was rationally open to him on the basis of the evidence before him. In these circumstances I find that the judge was fully entitled to conclude that there were insurmountable obstacles. There is therefore no need for me to consider whether the judge erred in law in his assessment of Article 8 outside of the Immigration Rules. I simply note that the judge manifestly had regard to the relevant factors identified in Section 117B. For these reasons I find there is no material error of law and I dismiss the appellant's appeal.

Notice of Decision

There is no material error of law. The appeal by the Secretary of State for the Home Department is dismissed

No anonymity direction is made.

09 May 2017

Signed Date

Upper Tribunal Judge Blum