



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/30927/2015

THE IMMIGRATION ACTS

Heard at Field House
On 12 May 2017

Decision & Reasons Promulgated
On 16 May 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE SHERIDAN

Between

MADONA ZALLINA
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr E, Fripp, Counsel instructed by M & K Solicitors
For the Respondent: Mr L. Tarlow, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Albania born on 24 January 1995. She is appealing, with permission, against the decision of First-tier Tribunal Judge Khan promulgated on 4 October 2016 to dismiss her appeal against a decision by the respondent to refuse her human rights claim.
2. The appellant's case, in summary, is that she fled Albania because of a violent ex-boyfriend and entered the UK clandestinely on 23 May 2014. She then entered into a relationship with a British citizen she had been friends with on Facebook and they married on 26 March 2015. The appellant maintains that her husband has two young children from a previous marriage with whom he is in regular contact and therefore

he could not realistically move to Albania with her. She also claims that her husband is in employment, earning in the region of £2,500.

3. The respondent rejected the appellant's human rights application on the basis that she was not in a genuine and subsisting marriage. The letter refusing the appellant's application, dated 2 September 2015, refers to a marriage interview where there was a total of eleven discrepancies. Regarding her husband's children, the respondent stated that there was little information regarding her husband's contact with them.
4. The appellant appealed and the appeal came before Judge Khan. The respondent was not represented at the hearing. The judge heard oral evidence from the appellant, her husband, and a friend of her husband Mr Fikaj.
5. The judge did not find the appellant credible. His findings on credibility are set out in paragraph 27- 30.
 - a) At paragraph 27 the judge stated that the appellant's evidence was that she had known her husband, over the internet, since November 2013 and had met with him as soon as she entered the UK in May 2014, but that she claimed he did not know about her travel to the UK. The judge found that it was not credible for her husband to not know about her travelling to the UK.
 - b) At paragraph 28 the judge stated that the appellant does not know how much contact her husband has with his children. He described her evidence on this point as "vague and evasive" and stated that he did "not find it credible that the appellant does not know when and how much contact her husband has with his two children."
 - c) At paragraph 29 the judge stated that the appellant said she has one real brother and two step brothers and her husband said she had two brothers. He then stated that if the appellant and her husband were in a genuine relationship they would know more about each other. He concluded: "I find that these evidential issues go to the heart of the appellant's credibility."
 - d) At paragraph 30 the judge stated:

"The evidence of Mr Fikaj does not assist me in this matter as the appellant and her husband's evidence is contradictory and inconsistent. The appellant's oral evidence is vague, evasive and lacking in truth".
6. The judge noted that the respondent had failed to produce the interview with the appellant to substantiate the alleged inconsistencies. At paragraph 34 the judge stated that he would not take into account the respondent's allegations because of the failure to provide evidence.
7. The judge then directed himself to consider the appeal under Article 8 ECHR and to have regard to Section 117A and B of the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act").

8. The evaluation of Section 117A and B is brief, and is set out at paragraphs 38 – 40.
 - a) At paragraph 38 the judge stated that little weight should be given to a private life when a person's immigration status is precarious and that "the appellant in this case had limited leave to remain in the UK as a visitor".
 - b) At paragraph 39 the judge set out an extract from AM (S117B) Malawi [2015] UKUT 0260 (IAC).
 - c) At paragraph 40 the judge stated: "*the whole of the appellant's time spent in the UK is in the knowledge that they [sic] have no right to settle here. I see no reason as to why her daughter could not return to Nigeria with her mother and resettle in the country of their origin.*"

Grounds of appeal and submissions

9. The grounds argue, firstly, that the decision of the First-tier Tribunal is characterised by a general absence of scrutiny, where, for example, the wrong country (Nigeria) is referred to.
10. The grounds also argue that the judge failed to take into account material evidence, in particular the detailed evidence of Mr Fikaj, who described, inter alia, the appellant and her husband's wedding, attending their home for dinner parties, being aware of them sleeping in the same room (and overhearing them having sex), and being the best man at the wedding.
11. The grounds challenge the credibility findings. A key point taken against the appellant was that she did not know how much contact her husband had with his children. The grounds argue that this is misconceived as the evidence of the appellant and her husband, as recorded in the decision, was not inconsistent.
12. A further argument is made that there was no rational basis to infer lack of credibility from a suspicion that the appellant's husband was aware of her intention to enter the UK in 2013.
13. Before me, Mr Fripp argued that the judge has failed to address several issues that were material to the appeal, including in particular the children of the appellant's husband and appellant's fear of her former partner in Albania. He also argued that the judge did not have a basis for his sweeping rejection of the appellant's case and that the decision did not include a sustainable body of reasons.
14. Mr Tarlow argued that the judge, at paragraphs 27 – 29 made findings that were open to him which were relevant to the appellant's credibility and was entitled to find her not credible. He maintained that it was not a material error to find Mr Fikaj's evidence of no assistance given the discrepancies.

Consideration

15. The judge has made three material errors of law.
16. The first error concerns the assessment of the appellant's credibility.
17. A reason given by the judge for not finding the appellant credible was that the appellant did not know how often her husband saw his children. However, the evidence, as recounted by the judge in the decision, does not in fact support this conclusion.
18. At paragraph 19 the judge summarised the oral evidence of the appellant, stating:

"in reply to the Immigration Judge, the appellant said that her husband's children live with there [sic] maternal grandparents and her husband has contact with his children, he can pick them up at any time (vague and evasive). She said that they spend most of their holidays with him and he sees them at weekends, she and he travel to the children, more than an hour away. She said that she and her husband see the children at the weekend as they are at school during the week, they spend more time with them during school holidays."

19. At paragraph 22 the judge summarised the oral evidence he heard from the appellant's husband. In respect of visits to the children, the judge stated:

"He said that he sees his children once a month, he picks them up for a weekend..."

20. There is no clear inconsistency or contradiction between the evidence of the appellant and her husband. Both are saying that the appellant's husband sees the children on weekends. Neither are saying that they see them every weekend. The difference in the use of language in describing the weekend visits to the husband's children is not a basis for the conclusion reached by the judge that the appellant "did not know when and how much contact her husband has with his two children".
21. I am satisfied that this error regarding visits to the children was material to the credibility assessment, and therefore to the outcome. In assessing her credibility, the judge found only three factors weighing against the appellant. These are set out in paragraphs 27 to 29 of the decision and are summarised above in paragraph 5. Once one of these is removed, it is not clear how the judge would have balanced the other two findings against the appellant with the other evidence before him (such as the statement of Mr Fikaj and documentary evidence) that was supportive of her.
22. A second material error arises from the approach taken to Mr Fikaj's evidence. In cases where credibility is in issue, the fact that someone's account is corroborated by that of another witness can add to its credibility. Mr Fikaj's evidence was therefore relevant and it was an error to treat it as not and to completely disregard it.
23. A third material error arises from the judge's application of Section 117B of the 2002 Act to the appellant. At paragraph 38 the judge referred to the appellant having limited to leave to remain in the UK as a visitor. However, she entered the UK

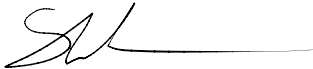
unlawfully and has never been in the UK as a visitor. At paragraph 40 the judge stated that there is no reason the appellant's daughter could not return to Nigeria. The appellant does not have a daughter and has no connection to Nigeria. Whilst I would not find a material error arose from a mere slip, it is not possible to discern from paragraphs 38 - 40 the judge's reasons for finding Article 8 would not be infringed by removing the appellant from the UK as the analysis appears to relate to a different person.

24. Both parties were of the view that the matter should be remitted to the First-tier Tribunal. I agree. As the error of law relates to the assessment of credibility, a full rehearing of all the evidence will be necessary.

Decision

25. The decision of the First-tier Tribunal contains a material error of law such that it should be set aside in its entirety and the appeal heard afresh.
26. The appeal is remitted to the First-tier Tribunal for hearing afresh before a judge other than First-tier Tribunal Judge Khan.

Signed



Deputy Upper Tribunal Judge Sheridan

Dated: 15 May 2017