



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/01397/2018

THE IMMIGRATION ACTS

Heard at Field House
On 14th May 2018

Decision & Reasons Promulgated
On 23rd May 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE ROBERTS

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

[Y F]

~~(ANONYMITY DIRECTION NOT MADE)~~

Respondent

Representation:

For the Appellant: Ms Pal, Senior Home Office Presenting Officer
For the Respondent: Mr Gajjar, Counsel

DECISION AND REASONS

1. The Secretary of State appeals with permission against the decision of a First-tier Tribunal (Judge Beg) allowing the appeal of [YF] against the Secretary of State's decision of 8th January 2018 refusing his asylum/humanitarian protection and human rights claims.

2. For the sake of clarity throughout this decision I shall refer to the Secretary of State as “the Respondent” and to [YF] as “the Appellant”, reflecting their respective positions before the First-tier Tribunal.

Background

3. For the purposes of this hearing, the following background is relevant. The Appellant is a citizen of Iran born [] 1977. He entered the UK in December 2006 and claimed asylum shortly after entry. However on 16th September 2010 he withdrew his claim to asylum and absconded from immigration control.
4. On 26th March 2014 the Appellant made further Representations to the Respondent but these were refused, the most recent refusal being 11th July 2017. By the time of the appeal hearing before Judge Beg, it was conceded by Counsel on behalf of the Appellant that he no longer wished to pursue an asylum claim. Likewise it was accepted that there was no valid claim under the EEA Regulations 2006 because no valid application had been made under those Regulations.
5. Therefore the only issue before the FtTJ was an Article 8 ECHR appeal in respect of the Appellant’s family/private life based on his relationship with his partner [NP], a Romanian national exercising treaty rights in the UK (the Sponsor).
6. In considering the appeal, the FtTJ set out details of the Appellant’s claim. She heard oral evidence from both the Appellant and the Sponsor. She noted that it is accepted by the Respondent that the relationship between the Appellant and Sponsor is a genuine and subsisting one and that the Sponsor is exercising treaty rights in the UK.
7. The issue before the FtTJ therefore was whether the Appellant met the requirements of the Immigration Rules with reference to Appendix FM, paragraph 276ADE and EX.1.(b) of the Rules. In particular it was said by the Respondent that the Appellant had not provided evidence to show that there would be insurmountable obstacles to family life continuing outside the UK, whether in Iran or Romania.
8. In his evidence the Appellant relied upon several factors to demonstrate that he came within EX.1.(b) above. By the time of the FtT hearing, he was saying that he had converted to Christianity and had been baptised on 3rd December 2017. Additionally his partner would face difficulties in living in Iran as part of an unmarried mixed race couple. She would find difficulties in learning to speak Farsi and engaging in Iranian culture. He said the Sponsor had no plans to return to Romania, although her mother has a house there. She has a job in the UK.
9. After setting out the evidence the FtTJ concluded her decision by allowing the appeal under Article 8.

Onward Appeal

10. The Respondent sought and was granted permission to appeal. The grounds seeking permission relied upon several factors. It was said that the FtTJ’s conclusion that the

Appellant's conversion to Christianity would lead him to having problems in Iran was given without reasons. There was no proper finding made on whether the conversion was genuine or simply opportunistic. The FtTJ also concluded that the Appellant and Sponsor could not live as an unmarried couple in Iran and that the Sponsor would have difficulty there because she does not speak Farsi. No consideration was given to the Appellant's family helping her adapt to the culture in Iran. Finally the grounds asserted that no consideration was given to the possibility of the Appellant and his partner living in Romania.

11. Permission to appeal was granted in the following succinct terms:

"The grounds submit that the Tribunal erred in its consideration of the appellant's claim under Article 8 of the Human Rights Convention by failing to consider whether (a) the appellant had genuinely converted to Christianity, (b) the obstacles to family life continuing in Iran could be overcome by the appellant marrying his Romanian partner and/or his partner learning the Farsi language, or (c) family life could otherwise reasonably be expected to take place outside the United Kingdom given that the appellant's partner is a citizen of Romania. The grounds are arguable."

12. Thus the matter comes before me to determine whether the decision of the FtTJ discloses such error of law as to require it to be set aside and remade.

Error of Law Hearing

13. Ms Pal for the Respondent relied on the lines of the grounds seeking permission. Additionally she emphasised that the analysis of the FtTJ is fatally undermined by a failure to provide sufficient reasoning for the findings adopted.
14. Mr Gajjar defended the decision, saying that the judge's findings in [12] and [13] provided an adequate basis for her conclusion that the Appellant meets Appendix FM of the Rules with reference to EX.1.(b).
15. He said, in the alternative, the judge had considered Article 8 outside the Rules. She had found that unjustifiably harsh consequences would ensue as a result of disproportionate interference made by the Respondent with the Appellant's family and private life with the Sponsor. The grounds amounted to no more than a series of disagreements with the fact-findings made by the FtTJ.
16. At the end of submissions I announced my decision that I was satisfied that the FtT's decision contained error of law, and I now give my reasons for this.

Consideration

17. I find that one of the key issues in the Appellant's appeal centres on his claimed inability to be able to return to Iran to live with his partner there. In support of this claim, he says that he has now converted to Christianity and been baptised. I note that the Appellant made further submissions pursuant to his asylum claim, the last refusal being dated 11th July 2017. It is unclear to me whether those submissions

encompassed a claim of conversion to Christianity. Certainly however by the time of the FtT hearing on 28th February 2018, it was conceded that he was no longer pursuing a protection claim. In view of this concession, I find that the FtTJ has not explained satisfactorily the basis for her finding that, “in the light of his conversion from Islam to Christianity, he [the Appellant] is likely to face difficulties in Iran.” [12]

18. I agree with Ms Pal that the FtTJ’s decision contains no proper evaluation of supporting evidence to determine the genuineness or otherwise of the conversion. This makes it unclear as to how this factor should weigh in the evaluation of whether or not there are insurmountable difficulties to the Appellant and his partner living together in Iran.
19. This then leads on to other factors on which the judge made findings. I find there is no sustainable reasoning to show why the Appellant’s partner would not be able to find similar employment to that for which she is qualified in Iran, nor why as an educated person she would be unable to learn Farsi. There is nothing in the decision to explain why these difficulties would be insurmountable.
20. Finally a further error occurs in the lack of consideration given to whether family life could reasonably continue in Romania. I understand that the Appellant’s partner does not wish to return to Romania and that the Appellant does not speak Romanian, but there is no sustainable explanation as to why those factors amount to insurmountable obstacles to the relationship continuing in that country.
21. Accordingly taking all these matters together, I find that the cumulative effect of the lack of reasoning in relation to the above key factors is sufficient to undermine the conclusions reached by the FtTJ. I find that the judge made material errors in her consideration of the evidence. I hereby set aside the decision.
22. In the light of the presidential practice statement I take into account that the effect of the errors identified has been to deprive the parties of the opportunity for their cases to be properly considered by the First-tier Tribunal. The nature and extent of the judicial fact-finding which is necessary for the decision to be remade is such that it is appropriate to remit the case to the First-tier Tribunal for a fresh decision to be made.

Notice of Decision

The decision of the First-tier Tribunal Judge contains material errors of law. I set aside the decision of the First-tier Tribunal. The appeal is remitted to the First-tier Tribunal (not Judge Beg) for hearing afresh.

No anonymity direction is made.

Signed

C E Roberts

Date

17 May 2018

Deputy Upper Tribunal Judge Roberts