



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/09161/2017

THE IMMIGRATION ACTS

Heard at Bradford
On 25th June 2018

Decision & Reasons Promulgated
On 2nd July 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE ROBERTS

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR A.A.

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr M Diwnycz, Senior Home Office Presenting Officer
For the Respondent: Miss Pickering, Counsel

Anonymity

Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008

An anonymity direction was made by the First-tier Tribunal. It is appropriate to continue that direction.

DECISION AND REASONS

1. The Secretary of State appeals with permission against the decision of the First-tier Tribunal (Judge Howard) dismissing the appeal of A.A. for asylum/humanitarian protection, but allowing the appeal on Human Rights grounds.

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

Background

3. The Appellant is a citizen of Pakistan born 11th November 1984. He first entered the UK in June 2011 on a student visa valid until May 2013.
4. On 17th March 2013 he made an application for leave to remain outside the Rules on the basis of his relationship with Ms D.W., a British national, “the Sponsor”.
5. The Appellant and Sponsor celebrated an Islamic marriage on 15th March 2013. This was deemed by the Respondent to be a marriage of convenience. Further action ensued challenging this assessment, but suffice to say for the purposes of this hearing, the contention that the marriage was one of convenience was withdrawn by the Respondent. The Appellant, who had been detained pending removal, was released from detention.
6. By 17th February 2017 the Appellant made a claim to asylum based on threats emanating from his family because he had failed to honour his parents’ wishes that he return to Pakistan to marry his cousin. The Respondent refused the protection claim and having done so, gave consideration to whether the removal of the Appellant would breach his right to family/private life under Article 8 ECHR. The Respondent considered firstly the Immigration Rules and found there was nothing to show that a return to Pakistan would result in significant obstacles either for the Appellant’s private life or in respect of his relationship with the Sponsor.
7. Article 8 outside the Rules was then considered but the Secretary of State found there was nothing compelling in the Appellant’s circumstances to raise exceptionality. The Appellant appealed against both the refusal of the protection claim and the Article 8 assessment. The matter came before the First-tier Tribunal.

First-tier Tribunal Hearing

8. The FtTJ heard evidence from the Appellant and the Sponsor. He took into account various documents including in particular a medical report outlining the Sponsor’s history of mental health problems.
9. The judge made a finding dismissing the Appellant’s asylum and humanitarian protection claim. He deemed that claim to be incredible. There has been no challenge raised to that finding and accordingly it is to be regarded as final.
10. Having dismissed the protection claim, the judge considered the Appellant’s claim under Article 8. He acknowledged that the Appellant could not meet the requirements of the Immigration Rules, on account of the fact that the Appellant was in the United Kingdom unlawfully. The judge therefore looked at Article 8 outside the Rules. Having done so, he allowed the appeal.

Onward Appeal

11. The Respondent sought and was granted permission to appeal. Permission was granted on a narrow basis. The relevant part of the grant reads as follows:

“It is arguable that the way in which the judge approached the proportionality assessment was flawed in that it failed to properly assess the issue of proportionality and of compelling circumstances to justify permitting the appellant to remain in the UK on the basis of his partner’s circumstances.”

Thus the matter comes before me to decide whether the decision of the First-tier Tribunal contains a material error of law, requiring it to be set aside and re-made.

Error of Law Hearing

12. Before me Mr Diwnycz appeared for the Respondent and Miss Pickering for the Appellant. Mr Diwnycz acknowledged that the issue before me was a narrow one and centred on whether the judge’s proportionality assessment was sufficient in its reasoning, to be sustainable. He described the judge’s reasons as ones which “could have been fuller” but properly said that it was a matter for me to decide whether reasons which were sparse were nevertheless adequate.
13. Miss Pickering handed up the Supreme Court decision in **Agyarko and Others v SSHD [2017] UKSC 11**. Her submissions focused on saying that the judge’s decision showed that he had fully engaged with the evidence before him. The assessment of proportionality is fact-specific albeit, as she acknowledged, that it was for the Appellant to show significant interference with family life. She referred to the medical evidence submitted on the Appellant’s behalf describing the Sponsor’s mental health issues. That evidence had not been seriously challenged. The FtTJ had therefore placed that evidence into the balance in the proportionality assessment. In addition the judge had acknowledged that but for his precarious immigration status the Appellant would otherwise meet the requirements of the Rules. Drawing on the decision in **Agyarko**, she emphasised that although the Appellant resided in the UK unlawfully, nevertheless the FtTJ found that the Appellant could fulfil the other requirements of the Immigration Rules. Accordingly that was capable of counting in the Appellant’s favour when considering the public interest in his removal.
14. The medical evidence pointed to the Sponsor’s mental health issues and the matter of weight to be afforded to that evidence was one for the judge. It was clear that the judge had properly carried out the proportionality exercise. When balancing matters he had found that the Sponsor’s mental health issues were significantly compelling circumstances rendering the decision to refuse the Appellant’s application under Article 8 disproportionate. This was a finding open to the judge, accordingly there was no error in the judge’s decision.

Consideration

15. I am satisfied, after having heard from both representatives, that the decision of the FtTJ is sustainable. My starting point is that I accept Miss Pickering’s submissions

that the judge had had regard to all the evidence before him. Mr Diwnycz did not seek to persuade me otherwise.

16. That being so, the judge acknowledged that the Appellant could not meet the Immigration Rules and no doubt kept in mind that the Appellant has a poor immigration history. It would be hard to find that he did not, considering that he had just heard the Appellant make an incredible protection claim.
17. However the judge also took into account, as he was tasked to do, that the Appellant and the Sponsor are in a genuine relationship. It is a relationship which has endured since 2013. The genuineness of the relationship is no longer the subject of any challenge. The judge was clearly mindful that apart from the Appellant's poor immigration history, the Appellant could otherwise fulfil the Immigration Rules.
18. The judge then considered the medical evidence concerning the Sponsor's mental health as reported in the letter from Horton Park Medical Practice dated 29th September 2017. He made a finding based on that evidence that any potential removal of the Appellant would serve to have a deleterious effect on her.
19. Balancing all factors, the judge concluded that the potential injury to the Sponsor's mental health was compelling enough to counterbalance the Appellant's poor immigration history and accordingly he allowed the appeal under Article 8.
20. Whilst I accept Mr Diwnycz's observation that the judge's reasoning "could be fuller" I find nevertheless that it is adequate and sufficient to show why he made the decision he did.
21. For the foregoing reasons, I find that the decision of FtTJ Howard, promulgated on 22nd November 2017, discloses no error of law and accordingly the decision stands.

Notice of Decision

The appeal of the Secretary of State is hereby dismissed. The decision of the First-tier Tribunal promulgated on 22nd November 2017 allowing the appeal of A.A. on human rights grounds stands.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

C E Roberts

Date

28 June 2018

Deputy Upper Tribunal Judge Roberts

TO THE RESPONDENT
FEE AWARD

The FtTJ made no fee award. That decision stands.

Signed

C E Roberts

Date

28 June 2018

Deputy Upper Tribunal Judge Roberts