Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/09562/2017

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 25th March 2019	**On 1st May 2019**

Before

UPPER TRIBUNAL JUDGE KING TD
UPPER TRIBUNAL JUDGE LINDSLEY

Between

ABBAS [M]
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr E Fripp, Counsel, instructed by Sunrise Solicitors (SW19 1AU)
For the Respondent: Ms J Isherwood, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Lebanon born on 29th September 1977.

2. He arrived with entry clearance as a visitor on 3rd August 2016, and on 10th January 2017 sought leave to remain on the basis of private and family life. In a decision on 23rd August 2017, the respondent refused the application for leave to remain.

3. The context is of some importance in this case. The appellant married [SM], a British citizen, in Lebanon on 22nd July 2014. After the marriage, the sponsor returned to the United Kingdom with the aim of sponsoring her husband to enter the United Kingdom as her spouse. When the couple realised that they could not meet the financial requirement, not wanting to live apart, the sponsor moved to Lebanon in mid-2015, where she lived with the appellant in his home town of Hermal. She also had family in the same area, namely two aunts and an uncle.

4. In July 2016, the couple decided to visit the United Kingdom with the intention of the sponsor remaining in the United Kingdom, finding a job and then sponsoring an entry clearance application by the appellant. The appellant applied for and was granted entry clearance as a visitor with his father-in-law as his sponsor. The couple arrived in the United Kingdom on 3rd August 2016. It was then the intention of the appellant after the visit to return to Lebanon and await entry clearance.

5. Whilst in the United Kingdom, however, the appellant received news in September 2016 that his business partner, [EH], had been shot by a member of a criminal family because he had accumulated debt. The appellant started to receive threats because of his business ties with Mr [H] through his father, brother, friends and neighbours. That caused the sponsor and the appellant to fear to return to the Lebanon. Thus, it was that the appellant made an in country application for leave to remain.

6. The application was refused by the respondent because the appellant did not meet the strict requirements of the Immigration Rules because he had entered the United Kingdom as a visitor and because he did not meet the financial requirements under E-LTRP.2.1 and E-LTRP.3.1.

7. The respondent considered 276ADE of the Immigration Rules and was satisfied that neither the appellant nor the sponsor would face significant obstacles to integration on return to Lebanon. No exceptional or compassionate circumstances were found.

8. The appellant sought to appeal against that decision, which appeal came before First-tier Tribunal Judge Gibbs on 25th June 2018. In a determination promulgated on 25th July 2018, that appeal was refused. Leave to challenge that decision before the Upper Tribunal was granted on 6th September 2018.

9. The matter was listed for hearing on 1st November 2018 and it was the conclusion of the Upper Tribunal that the First-tier Tribunal had indeed erred in law in the approach taken to the issues in the case, particularly having regard to the threats that had been made and to the consideration as to whether internal relocation within the Lebanon was reasonable or not in all the circumstances.

10. It was determined that the matter would remain in the Upper Tribunal for a fresh decision to be made. The matter was listed for hearing on 20th February 2019. On that occasion evidence was presented at the hearing concerning threats that had been made in the home area. Mr Jarvis, the Senior Presenting Officer, sought an

adjournment in order to properly consider the nature of that evidence and its relevance to the issues.

11. Thus, the matter resumed for hearing on 25th March 2019. An updated bundle of evidential documents was presented, together with a skeleton argument prepared by Mr Fripp. It became apparent that Mr [M] required the assistance of an interpreter and there was a short delay until such interpreter could be found. Ms Isherwood said that no further conclusions had been reached as a result of Mr Jarvis's consideration of the evidence.

12. The appellant relied upon his four witness statements as identified and gave further evidence. Likewise, his wife, the sponsor, identified her four statements and gave evidence also orally before us.

13. In terms of the witness statements of the appellant, they are set out at pages 3 to 8, 215, 233 and 243 of the consolidated bundle. The history as set out in these statements is, in summary, as follows.

14. The marriage to the sponsor took place on 22nd July 2014 in Lebanon. After the marriage, the sponsor returned to the UK to meet her work commitments as a part-time college administrator. Both she and the appellant found it difficult to live apart and as it did not seem at that stage possible to meet the Immigration Rules, particularly as to finance, in mid-2015 the sponsor came to Lebanon to live with him. She tried looking for employment but it was very difficult to find any work and the sponsor ended up with a poorly paid job.

15. The sponsor also was finding it difficult to conceive and had four fibroids removed in Lebanon. She underwent a number of tests in the Lebanon. Such treatment was at a cost. It was not a very comfortable time.

16. The sponsor's family live in the United Kingdom and it was decided that both would have a break from living in Lebanon and visit the United Kingdom once again. The intention was that the sponsor would actively look for work and build up six months of payslips, the appellant would return to Lebanon before the expiry of the visa and then make the appropriate application for a spouse visa for Lebanon. It was the killing of his business partner in Lebanon which caused the appellant to decide that it was not safe to return. The appellant indicated that he had a six month visitor's visa but no intention when he came to the United Kingdom to "queue-jump". In Lebanon, he worked with his partner and would deal with orders for small shops and the partner would travel to Syria to purchase fruits, vegetables, herbs and spices and cooking utensils, which were cheaper there, and bring them back. The function of the appellant was then to supply them to retailers. He and Mr [EH] had been in business together for eighteen months before the appellant came to the United Kingdom. His partner, however, had a dispute with Mr [HH] over a financial matter. He owed money to that man, and was shot by him in September 2016 and died. The police have not yet arrested the killer. After the killing, family members of

[HH] visited the appellant's house in Hermal and met his father. They asked him about the whereabouts of the appellant and indicated they needed to recover the money from him. The appellant's father was told that the money should be remitted to them, otherwise he would face the same fate as his partner. Family members of [HH] had been neighbours.

17. So far as other matters are concerned, the appellant has passed his English language test. The sponsor is in employment at the Royal Hotel in Llangollen in North Wales and she works as a receptionist. She is paid a gross salary of £22,100 and various payslips and a P60 have been adduced. They live in a house belonging to the sponsor's father.

18. The fertility treatment continues in the United Kingdom. It started on 18th June 2018. Sadly, the sponsor suffered a miscarriage some four months ago and a second round of IVF treatment will commence shortly once she has fully recovered.

19. In his oral evidence, the appellant indicated that the partnership was not formally documented. The partner would do the trading. The appellant would provide him with the money to buy the goods and then help sell them. They would share the profits. Such a business venture was in one sense a "side line" because the appellant at the material time was working as a sales manager for a nappy company. He had done that for about two years. All his family lived in the Hermal area of Lebanon save for one brother who lives with his family in Beirut. That brother works in a hotel and would be unable to provide accommodation or financial support to the appellant or sponsor were they to return.

20. The person who killed his business partner is of a family that has a reputation for being thugs. Although the police are investigating the matter no arrests have been made. Threats to the appellant have been made to his father and members of the family and that has been evidenced in the print out of the conversation on WhatsApp that has been produced. The record of the WhatsApp conversation between the appellant and his brother Jaffar is set out at pages 105 to 121 of the appellant's bundle. The translation came about by the appellant translating what had been written in Arabic and the sponsor writing what was said down in English. It is said that this conversation took place on 29th September 2016 or the following day with other notes in October 2016.

21. There is a letter from the mayor of Al-Hermal in the Al-Wakaf district speaking of the death of Mr [H] at the hands of the [HH] family and the threats and enquiries being made in relation to the appellant. The appellant indicated that the mayor in question was the maternal uncle of the sponsor but indicated that it was a true document and reflected truthfully what was going on.

22. His brother through the mayor had attempted to find out what stage the investigation had got to but had not been successful. Because it was an ongoing investigation the police were not prepared to release the documents. A letter to that

effect is also enclosed at page 247/248 of the bundle dated 12th March 2019. The mayor indicated that he had enquired of the police but was unable to obtain a copy of the investigations. It was not possible to obtain a death certificate. Seemingly, one of the relatives of the deceased needed to make that application.

23. The sponsor gave evidence. She adopted her statements. She indicated that the town where the appellant lived was also her hometown and indeed, she had known the appellant since she was a small girl. Most of her immediate family now live in the United Kingdom but she has two maternal aunts who live in the area, together with the mayor, who submitted the formal documents and who is her maternal uncle. She had tried to live in the area with her husband. She had found that very difficult. There was high unemployment in the area and finding a job was not easy. She found a job at a charity organisation which has had funding from the EU. Her job had been to go through the English documents and translations and correct mistakes. She earned very little at that employment.

24. Now she has settlement employment and earns a salary above the minimum requirement under the Immigration Rules.

25. Life was also difficult for her at that time because of her medical problems which make it difficult to conceive. Medical treatment was expensive. She was undergoing IVF treatment in the United Kingdom and had, sadly, a miscarriage four months ago. She is due to restart treatment having recovered. Clearly, stresses and strains do not assist in the process. She longs to feel settled and secure, which, she believes, will be of great assistance in treatment. It is also necessary for the appellant to be readily available as part of the IVF treatment.

26. At the conclusion of the evidence, the parties made their submissions. On behalf of the respondent Ms Isherwood submitted that the appellant did not meet the requirements of the Immigration Rules and that there were no insurmountable obstacles to a return to Lebanon. The fact that the sponsor was undergoing IVF treatment in the United Kingdom was not a determining factor and indeed, the evidence had been presented that she had received such treatment also in the Lebanon.

27. She sought to criticise the translation of the WhatsApp passages and challenged the credibility of the evidence of threats.

28. She submitted that the appellant and sponsor could safely return to the home area or alternatively could relocate. Accordingly, she invited us to dismiss the appeal.

29. Mr Fripp relied upon his skeleton argument and invited us to allow the appeal. He asked us to find that the evidence as to the threats was credible and that there was cogent material to find that there were insurmountable obstacles to relocation and sufficient evidence to find that to require the appellant to return to Lebanon would have dangerous consequences for him and for the sponsor. He invited us to have

regard to the factors that the sponsor's family all live in the United Kingdom; that her successful treatment of IVF may depend upon her remaining in the United Kingdom; the fact that the appellant meets the language test and she meets the financial requirements all are matters which are relevant to the consideration of proportionality.

30. We remind ourselves that this is not an application for asylum but an application for family and private life. Accordingly, therefore, the burden and standard of proof is that of the balance of probabilities.

31. Having heard the evidence from the appellant and the sponsor, we have little hesitation in finding that they gave a credible and honest account of their experiences. Neither sought to conceal their family links to the Lebanon. It is right to note that in the early statements, the sponsor seems to indicate that she could not find work rather than that she was engaged in relatively badly paid work. She has, as we have found, however, given a credible account of her experiences in the Lebanon and put matters into context.

32. Although Ms Isherwood sought to challenge the translation of the particular WhatsApp messages it was apparent to us that when the Arabic was translated through the help of the court interpreter it was in fact an accurate translation.

33. Ms Isherwood relied upon the document at page 249 of the consolidated bundle, which was a report from West London National Health Trust of 22nd February 2019 and focused upon the anxiety of the sponsor and her worries of getting pregnant again after the miscarriage in November 2018. It recorded that: "During your assessment you reported no concerns of risk to yourself or others". Ms Isherwood relies upon that as to indicate that the sponsor was not truthful in the account of the threats that she gave. Unfortunately, the sponsor was not questioned on that matter and it seems to us that in any event that the risk that is referred to is in relation to the treatment as it is followed immediately by a passage on outcome. We do not hold that to the disadvantage of the sponsor in any way.

34. We accept the contention that the family that carried out the killing were notorious in the area and that there was widespread corruption also in the Lebanon, particularly involving police. Although everyone seemed to know in the small town who had carried out the murder no one had arrested the person for it and the appellant relies upon a lack of practical protection or enforcement that would be available notwithstanding that it was his home area.

35. We find the evidence that has been presented to be credible. We accept that these circumstances in Lebanon are the true reason for the appellant applying to remain in the United Kingdom rather than return to his home area and applying for entry clearance. We have no reason to doubt the genuineness of the WhatsApp conversations.

36. We find therefore that the evidence relating to the killing of the appellant's business partner was credible and that those who carried it out have a residual interest in the appellant such that, in our view, it would not be safe for the appellant to return either by himself or indeed, with the sponsor to his home area due to a real risk of serious harm.

37. This is not an appeal under the family life Immigration Rules due to the appellant's leave to enter as a visitor. However, the test set out in the private life Immigration Rules under paragraph 276ADE (1)(vi) with respect to the return of someone who has not been in the UK for more than 20 years would be whether there would be very significant obstacles to integration; and under the family life Immigration Rules at Appendix FM the test for a person who has not got leave would be whether there are insurmountable obstacles to family life continuing outside in the UK, requiring in turn consideration as to whether leaving the UK would result in unjustifiably harsh consequences to the appellant or his wife. We find it is relevant to have regard to these tests as clearly this appellant may be unlikely to succeed in showing his return was a disproportionate interference with his Article 8 right to respect for family life if they were not at least met.

38. In terms of living elsewhere in the Lebanon, particularly perhaps in Beirut, it is to be noted that neither the appellant or sponsor have any contact or family members in that area. The only person seemingly is the brother of the appellant, who works as a chef in a hotel and who cannot give assistance to them. If the appellant and his wife were to go to Beirut they would be returning to an area which they are not familiar with and in which there is no family support. As the sponsor indicated in the course of her evidence, she would be moving from a supportive family in the United Kingdom to no support in the Lebanon outside of the home area, and where we accept that there would be difficulties in obtaining employment.

39. We also find credible the evidence of the sponsor that even in her own "home area" where she grew up and where the appellant has some family finding employment for herself was extremely difficult and resulted in employment at extremely marginal rates. She would face having to give up a well-paid job in the United Kingdom. We find that there is significant uncertainty that she would be able to find any job at all in Beirut or elsewhere outside of her home area if she returns and it would obviously be necessary for the appellant and his wife to have earnings in order to find and support accommodation.

40. In terms of her IVF treatment, we find that to be a significant factor in this case particularly as that treatment has already commenced in the UK. It is not simply the affordability of treatment in the Lebanon which arises for consideration but also whether effective treatment can be undertaken. If the appellant and his wife relocate to Beirut treatment is available at some expense but we find it unlikely that they would be in a position to afford this given the very probable difficulties obtaining employment and the lack of family support.

41. In the United Kingdom, the appellant's wife has the support of her family and indeed, as she indicated, it is vital for the next round of IVF that the appellant is available to give the sperm when required to do so. Such treatment cannot therefore effectively be carried out if they live apart, and given the stress of return to a country in which the appellant's wife has historically found difficult to live in and with the added recent worry of the violent attack on the appellant's business partner and threats to the appellant we find that the likelihood of the appellant's wife achieving and sustaining a viable pregnancy would be significantly diminished compared with treatment in the UK where she has family support and is treated by a known team of doctors and lives in a familiar and safe environment.

42. An overarching consideration of any internal relocation is not only whether it is reasonable under the test in **Januzi** but whether or not the risk would be avoided. We are in addition not satisfied that the appellant would be safe if he were to internally relocate from the thugs that have threatened him in his home area given Lebanon is a small country with a population of some 6 million people.

43. It is to be noted also that the First-tier Tribunal accepted prima facie that the sponsor could meet the financial requirements to sponsor her husband under the Immigration Rules; and also that the eligibility and suitability requirements set out in those Rules including those relating to the English language test were accepted as being met in the reasons for refusal letter. There were documents within the bundle speaking as to the sponsor's promotion and confirming the earnings which she had. In circumstances where we find that the appellant would be very likely to be qualify for entry clearance if he were to return as all requirements, bar his presence abroad and an application to an entry clearance officer, are met we are satisfied that there is also a strong Chikwamba v SSHD [2008] UKHL 40 argument in favour of the appellant succeeding in this appeal, particularly given that we have found that he did not come to the UK with any intention of disobeying the scheme of immigration control. We have found that he cannot safely relocate to his home area due to a real risk of serious harm from those who killed his business partner. We find that requiring the appellant and his wife to relocate to Beirut would be potentially unsafe, and definitely would have unjustifiably harsh consequences in the context of predictable difficulties to survive financially in an unknown town and the impact on their on-going IVF treatment. We note that the appellant speaks sufficient English to pass the relevant test to be present as a spouse and is financially independent, and that these are to be treated as neutral matters in the balancing exercise.

45. We bear in mind strongly the public interest in maintaining immigration control, and thus to removing those who cannot meet the requirements of the Immigration Rules, but find that in this case there are exceptional matters which mean it would be a disproportionate interference with the appellant's right to respect of family life to require him to leave the UK. In these circumstances, the appeal is allowed under Article 8 of the ECHR.

Notice of Decision

The appeal is allowed on Article 8 ECHR grounds.

No anonymity direction is made.

Signed *Fiona Lindsley* Date 29th April 2019
p. p. Upper Tribunal Judge King TD