



**Upper Tribunal
(Immigration and Asylum Chamber)**

HU/01466/2019

THE IMMIGRATION ACTS

Heard at Glasgow
On 9 January 2020

Decision & Reasons Promulgated
On 15 January 2020

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

HASSEN GANNOUNI

Respondent

For the Appellant: Mr M Clark, Senior Home Office Presenting Officer
For the Respondent: Mr U Aslam, of McGlashan MacKay, Solicitors

DETERMINATION AND REASONS

1. Parties are as above, but this rest of this decision refers to them as they were in the FtT.
2. The SSHD appeals against the decision of FtT Judge Farrelly, promulgated on 18 July 2019, on grounds set out in an application dated 25 July 2019.
3. The first ground is failure to give adequate reasons for finding at [34] that there are “insurmountable obstacles” to the relationship between the appellant and the sponsor continuing outside the UK.

4. The second ground is absence of an assessment outside the immigration rules, so that error in the assessment in terms of paragraph EX1 of appendix FM of the rules is material.
5. FtT Judge Bristow, when granting permission on 14 October 2019, observed that although ground 1 says that the decision of Judge Farrelly is contrary to *Agyarko* [2017] UKSC 11, that case is “fully considered” at [31 - 33].
6. It is clear from the history of the case and from the decision that the focus in the FtT was not on the extent of the obstacles facing the sponsor, but on whether there is a genuine and subsisting relationship between the appellant and the sponsor. The judge gave his reasons for concluding that there is. The respondent takes no issue.
7. I understood representatives to accept that this case turns on whether the FtT gave adequate reasons for finding the sponsor’s difficulties in living in Algeria to amount to insurmountable obstacles. It is inconceivable that a favourable result could be reached without that finding.
8. There is also no dispute that the FtT’s self-directions, based on *Agyarko*, are impeccable.
9. The reasons are at [34].
10. The first is the sponsor’s age, 82. Mr Clark was correct to point out that age alone cannot be decisive. He did not suggest that it was irrelevant. I think it must be generally the case that advancing age is likely to make relocation of the centre of a person’s life more difficult. The FtT said this factor was “significant”, which does not appear unreasonable.
11. The next point made by the FtT is that staying in Tunisia for several months at a time is different from living there on a permanent basis. It is not surprising that the respondent founded upon the sponsor’s visits to Tunisia; but the FtT’s distinction is valid.
12. The FtT says that the sponsor will not have the benefit of the NHS, on which she is likely to become more reliant. The observation on absence of the NHS is accurate, as far as it goes, but there is some force in the respondent’s point that no case was made based either on the need for or on the absence of health care in Tunisia.
13. The FtT says that the sponsor speaks very little Arabic. The grounds say there was no evidence she could not learn. On my enquiry, it turned out that neither side asked the sponsor about this when she gave oral evidence. Her uncontested evidence was that she communicates with the appellant’s family only by gestures. There is no age limit on ability to learn a language, but the evidence suggests that the sponsor, not having yet gained any command of Arabic, is unlikely to do so. The FtT was entitled to take this as a difficulty in the way of family life in Tunisia.

14. The FtT observes that there was no evidence that the sponsor follows Islam. That could not reasonably be given much weight. It was not suggested on the appellant's side that there was evidence that her non-observance was likely to lead to any hardship.
15. Finally, the FtT refers to the sponsor's life having been in Scotland where her family are. Her family here comprises adult children, plus grandchildren and great-grandchildren. The evidence was of close family ties. The FtT did not explore this in detail. The sponsor would be free to return to visit her relatives, and they could visit her. There is, however, no error in recognising a degree of difficulty and hardship.
16. The SSHD has not asserted that the outcome was beyond the range of reasonable outcomes. It was not literally impossible for the appellant and sponsor to live in Tunisia, but in my view, the cumulative facts were at least on the cusp of very serious difficulties which could not be overcome, or would entail very serious hardship. While not every tribunal might have come down on the same side, the SSHD's grounds and submissions disclose disagreement with an assessment of the facts which was within the tribunal's rational scope, rather than any error on a point of law.
17. The decision of the First-tier Tribunal shall stand.
18. No anonymity direction has been requested or made.



13 January 2020
UT Judge Macleman