Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/02888/2019

THE IMMIGRATION ACTS

Heard at Manchester Civil Justice Centre
Via Skype for Business
On 31 July 2020

Decision & Reasons Promulgated
On 12 August 2020

Before

UPPER TRIBUNAL JUDGE LANE

Between

DOUAA AL KASSEM
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Holmes, instructed by Kalsi, solicitors
For the Respondent: Ms Aboni, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant was born on 15 August 2000 and is a female citizen of Syria. The United Kingdom sponsor is Mr Alaa Al Waked (hereafter the sponsor). The appellant and sponsor claimed to be parties to a valid marriage contracted in Syria. The sponsor is also Syrian and a refugee in the United Kingdom. Their claim was rejected by the Secretary of State who refused the appellant's application for a family reunion visa by decision dated 18 January 2019. The appellant appealed to the First-tier Tribunal which, in a

decision promulgated on 29 July 2019, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. There are four grounds of appeal. At the initial hearing at Manchester on 31 July 2020, Mr Holmes, who appeared for the appellant and also drafted the grounds of appeal, summarised the appellant's case by reference to two 'material issues': an application under rule 15(2)(a) to admit new evidence in relation to the deceased child of the appellant and sponsor and Article 8 ECHR. He did not in his oral submissions touch upon grounds (i) and (ii). These grounds deal respectively with the assertion that the judge had erred in law by finding that the appellant and sponsor were not lawfully married in Syria and that the judge had failed to make findings on the oral evidence of witnesses who had appeared at the First-tier Tribunal hearing.

3. It is perhaps not surprising that Mr Holmes did not concentrate upon Grounds (i) and (ii) as they are without merit. It is clear from the decision that the judge was entitled to reach the view, on the evidence before her, that the appellant and sponsor had not contracted a legal marriage in Syria. At [26], judge found, on the balance of probabilities, the parties had validly married in May 2013 in a manner which complied with Syrian law; in particular, the appellant had not been granted an exception given her age at the time (16 years old). In addition, the judge found that 'given the time the sponsor left Syria [the parties had not been] living together in a relationship akin to marriage or civil partnership which had subsisted for two years or more before the sponsor [left Syria] to seek asylum.' At the initial hearing, Mr Holmes did not challenge those findings. Moreover, as regards ground (ii), the evidence of the witnesses has been summarised by the judge [16-21] and has effectively been analysed and rejected in the judge's findings regarding claimed marriage at [26]. The evidence of the witnesses was relevant only to the question of the disputed marriage.

4. I shall, therefore, concentrate on but the remaining grounds of appeal. These respectably concern the allegation that the judge failed to apply the correct test (insurmountable obstacles) to the analysis of the Article 8 appeal and failed to take into account the respondent's own evidence regarding the state of internal armed conflict in Syria when assessing Article 8. This latter ground is advanced in the grounds of appeal (prepared in August 2019) by reference to the appellant's pregnancy at that time and the difficulties she was facing as a pregnant young woman in Syria without her male partner. At the beginning of an initial hearing in the Upper Tribunal, Mr Holmes informed me that the child had been born but, very sadly, had died from sepsis. That event is the reason for the application to adduce fresh evidence. However, whilst I acknowledge, as did Mrs Aboni, who appeared for the Secretary of State, that while evidence concerning the death of a child might be relevant in any remaking of the decision the child's death is not relevant to the question now before the Upper Tribunal, namely whether the First-tier Tribunal erred in law such that its decision forced be set aside. The death of the

child has not, therefore, been considered in determining the question of error of law.

5. Mr Holmes submitted that, although the appellant could not meet the requirements of paragraph 352A of HC 395 (as amended), the judge should have allowed the appeal under Article 8 having found that the appellant and sponsor are in a relationship because the United Kingdom is the only place where family life may take place. Mrs Aboni submitted that the judge been right to dismiss the appeal on the basis that, having failed to satisfy the Immigration Rules, there were no exceptional circumstances in this instance and that the decision of the Secretary of State had not interfered with the family life of either the appellant or the sponsor since it had not disturbed the pre-application *status quo* of those individuals.

6. Paragraph 352 (ii), which sets out the requirements for settlement United Kingdom as the partner of a recognised refugee, provides as follows:

> (ii) the marriage or civil partnership did not take place after the person granted refugee status left the country of their former habitual residence in order to seek asylum or the parties have been living together in a relationship akin to marriage or a civil partnership which has subsisted for two years or more before the person granted refugee status left the country of their former habitual residence in order to seek asylum

The rule deals not only with married applicants but also those who claim to be in a relationship akin to marriage. The requirement that such a relationship should have subsisted for two years or more underlines the reasonable requirement that the relationship should be stable and subsisting. In the present appeal, the judge found that the relationship between the appellant and sponsor was neither a legal marriage nor did it comply with this two-year provision. Those were important findings in the context of the Article 8 appeal. As regards the public interest, the failure of the appellant to meet the requirements of the immigration rule was given appropriate weight by the judge. There is also, in my opinion, some merit in the *status quo* argument advanced by the respondent and which clearly had an influence upon the judge. Whilst public authorities arguably have a duty to promote as well as not to interfere with the family life of individuals, it is clearly correct that the decision in this instance did not leave the family life of the appellant and sponsor in a worse position than before the application for a visa was made. Moreover, this was not a case in which the appellant and sponsor were enjoying family life together in the United Kingdom and in which the threshold for the existence of exceptional circumstances which might arise if they were to be separated by decision of the state might be more readily crossed. Set against that background, it is my view that the decision to dismiss the human rights appeal took account of all relevant evidence and cannot be described as perverse. If the appellant's submissions to the Upper Tribunal are correct, then in every case where a relationship exists, no matter how short, and a United Kingdom sponsor is a refugee unable to return to the country in which the appellant is living, then entry clearance would have to be

granted. I do not consider that can be correct. Whilst I acknowledge that there may be cases where an appellant cannot meet the Family Reunion rule but circumstances exist attracting the protection provided by Article 8, every case turns upon its own facts. There is nothing in the present case to indicate that the judge has not considered the relevant evidence in reaching a decision which was available to her; she was not obliged, as the appellant submits, to allow the appeal. A different judge may have reached a different decision but that is not the point. There is no error in either the process by which the judge reached her decision or in the outcome.

7. In the light of what I say above, I find that this appeal should be dismissed.

Notice of Decision

This appeal is dismissed.

Signed Date 6 August 2020

Upper Tribunal Judge Lane