Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/09267/2019

THE IMMIGRATION ACTS

Heard at Manchester Civil Justice Centre	**Decision & Reasons Promulgated**
On 20 January 2020	**On 31 January 2020**

Before

UPPER TRIBUNAL JUDGE PICKUP

Between

ANNA CHEVREAU
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr A Rizvi, instructed by Salam & Co Solicitors
For the Respondent: Mr A Tan, Senior Home Office Presenting Officer

DECISION AND REASONS

This is the appellant's appeal against the decision of First-tier Tribunal Judge Thorne promulgated on 28 August 2019, dismissing her appeal against the decision of the Secretary of State dated 9 May 2019 to refuse her application made in May of 2018 for leave to remain on private and family life grounds as the partner of a British citizen.

First-tier Tribunal Judge Simpson granted permission to appeal on 3 December 2019.

Error of Law

For the reasons set out below, I find that there was no error of law in the making of the decision of the First-tier Tribunal such as to require it to be set aside.

In granting permission to appeal to the Upper Tribunal Judge Simpson considered it arguable that the decision disclosed a failure to provide an overall adequacy of reasoning when addressing issues of insurmountable obstacles to family life continuing in Kazakhstan and very significant obstacles to integration in relation to private life under paragraph 276ADE. It was also considered arguable that the decision failed to provide adequacy of reasoning whether there was any sensible reason the appellant should be required to return to Kazakhstan to make an entry clearance application to rejoin her husband in the UK.

The relevant background is that the appellant married her British citizen husband in 1999, living with him and their child in various countries of the Middle East until she came with them on his return to reside in the UK in 2008. She was granted leave as a spouse valid until January 2010. Having failed to provide the required Life in the UK test certificate, her in time application for indefinite leave to remain was refused and she was instead granted limited leave until May of 2012. She failed to renew that leave on its expiry and thus she became an overstayer in the UK. It follows that she has not had valid leave since 2012.

A further application, made from the UK in 2015, when her husband was working alone in the UAE, was also refused and her appeal against that decision was dismissed by the First-tier Tribunal in January 2015. Permission to appeal to the Upper Tribunal was twice refused and, therefore, she became appeal rights exhausted on 28 September 2016.

In May of 2018, after her husband had returned to the UK in 2017, she made the application which is the subject to this appeal. In August of 2018 the respondent rejected the application as a fresh claim under paragraph 353 of the Immigration Rules. Following judicial review proceedings, by consent the respondent agreed to reconsider the application and the appellant for her part agreed to withdraw her judicial review application. However, the reconsideration resulted in the further refusal, dated 9 May 2019, and it was in respect of that decision that Judge Thorne dismissed the appeal in August of 2019.

The application had been refused by the respondent on the basis that the appellant could not meet the immigration status requirements under paragraph E-LTRP.2.1 to 2.2 of Appendix FM, because she had been an overstayer since 2012. Consideration of the alternative route under EX.1 accepted that she had a genuine and subsisting relationship with her British partner but the respondent considered that there was insufficient evidence to demonstrate

that there would be insurmountable obstacles in continuing family life in Kazakhstan as defined by EX.2, namely very significant difficulties which could not be overcome or which would entail very serious hardship for the appellant or her partner. The respondent pointed out that during their marriage they had continued family life in various other countries and when asked in evidence why he could not return to Kazakhstan with the appellant, the spouse stated that he could do so but that it would interfere with his business and that he was too old and suffered from diabetes. The couple's child, I note, is now an adult so the appellant could not meet the requirements for family life with her son in the UK.

The only ground of appeal to the First-tier Tribunal was under Article 8 ECHR human rights outside the Rules and the crucial issue was the proportionality of the respondent's decision. The judge clearly applied the Razgar stepped approach and gave consideration to the mandatory statutory criteria under Section 117B of the 2002 Act. From paragraph 53 onwards, the judge considered whether there were insurmountable obstacles, applying the guidance in Agyarko, and whether there were, exceptionally, compelling circumstances to justify granting leave outside the Rules. The judge set out the factors taken into consideration and concluded for the reasons clearly set out in the decision that it had not been demonstrated that there were insurmountable obstacles and that the circumstances were not in any event compelling. Neither did the judge accept that there were very significant obstacles to the appellant's integration in the country of her nationality and upbringing. Ultimately the judge concluded that the respondent's decision was not disproportionate.

Whilst family life had been established before the husband returned to the UK and the first few years of family life in the UK was with leave, the appellant has had no valid leave since 2012. To that extent, the judge was right to observe that the continuation of family life in the UK has been whilst her immigration status was entirely precarious. No error of law arises in this regard.

The complaints about the factors relevant to insurmountable obstacles are, in my view, little more than disagreements with the judge's assessment. Mr Rizvi complained that the judge did not engage "thoroughly" with the issue and did not take into account that when working abroad the husband worked on worksites and had never really been required to live as an ordinary citizen and was isolated from the countries in which he lived and worked. None of the matters relied on in the grounds such as an inability to speak more than a few words of Russian or that his former working in other countries was as an employee in camps with other foreign labourers serves to identify any error of law. The considerations the judge took into account about family life having been able to be continued either with both of them abroad, while the sponsor was working, or whilst he was working there and she remained in the UK, were relevant to the issue of insurmountable obstacles. That they had lived abroad in this way before was significant. Similarly, suggestions that Kazakhstan was somehow now a vastly different country to that which it had been when the appellant last lived there, is somewhat overplayed in the grounds. It is not accurate to say that the appellant has no connection to the country of her

nationality, birth, and formative years through to adulthood, even though there may have been changes since its separation from the former Soviet Union. She speaks at least one of the languages spoken there and she must be assumed to be reasonably familiar with the country and its culture. Nothing in the grounds begins to demonstrate any difficulty that could not be overcome. It follows that the conclusions reached were open to the judge on the evidence and for the reasons given.

In regard to the claim that the judge failed to engage 'thoroughly' with the various issues, it was not necessary for the judge to do so. In the case of Budhathoki [2014] the Upper Tribunal stated that:

> "It is generally unnecessary and unhelpful for First-tier Tribunal judgments to rehearse every detail or issue raised in a case. This leads to judgments becoming overly long and confused and is not a proportionate approach to deciding cases. It is, however, necessary for judges to identify and resolve key conflicts in the evidence and explain in clear and brief terms their reasons, so that the parties can understand why they have won or lost."

In my view, that observation applies to this case. There is no merit in these grounds, which somewhat exaggerate the appellant's lack of ties to her home country, and I agree with Mr Tan's submission that largely the grounds are a disagreement with the decision.

The grounds also suggest that the judge erred in considering the Chikwamba principle in finding at paragraph 64 that it would not be unreasonable to expect the appellant to return to Kazakhstan for a period of a few months in order to make a new application to join her husband. The grounds as drafted assume there would be no public interest in requiring her to make an application which would be bound to succeed. However, it is by no means certain that the application would succeed. Mr Tan pointed out, and Mr Rizvi accepted, that the evidence submitted to the First-tier Tribunal did not demonstrate that the specific requirements for entry clearance had been met or would be met. The necessary evidence to meet the requirements has not been provided. However, Mr Rizvi asserts that, as the respondent had been aware of her previous applications, then the Secretary of State should be taken to have known that she would be able to satisfy the requirements. That is, in my view, woefully inadequate and the judge quite rightly at paragraph 65 pointed out the public interest in maintaining a workable, predictable, consistent immigration system which is fair as between one claimant and another as being important. Any application from outside the UK would have to demonstrably meet all the requirements of the Rules. The judge was also entitled to take into account that the appellant and her husband had experienced a significant period of separation whilst he worked abroad and she remained in the UK. In the circumstances, I am satisfied it was open to the First-tier Tribunal Judge to conclude that if the spouse did not wish to accompany his wife, a further period of temporary separation would be proportionate to the circumstances whilst she made application for entry clearance. I am not satisfied that there is any valid Chikwamba point.

In all the circumstances, I find no material error of law in the decision of the First-tier Tribunal and the appeal to the Upper Tribunal must fail.

Notice of Decision

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law such as to require the decision to be set aside.

I do not set aside the decision.

The decision of the First-tier Tribunal stands and the appeal remains dismissed on all grounds.

No anonymity direction is made.

Signed 

Upper Tribunal Judge Pickup

Dated 28 January 2020

To the Respondent
Fee Award

I have dismissed the appeal and therefore there can be no fee award.

Signed 

Upper Tribunal Judge Pickup

Dated 28 January 2020