



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-004194
First-tier Tribunal Nos:
HU/51343/2021
IA/11047/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 02 April 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

RENEE BOULA NOAH LAURENCE
(NO ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A. I. Corban, Solicitor, Corban Solicitors
For the Respondent: Mr C. Bates, Senior Home Office Presenting Officer

Heard at Field House on 23 August 2023

DECISION AND REASONS

1. The Appellant is a national of Cameroon born on 6 June 1991. She made an application on 7 December 2020 for leave to remain on the basis of her private and family life with her then partner. This application was refused by the Secretary of State on 12 April 2021. The Appellant through her representatives lodged a notice of appeal on 19 April 2021, at which point she asserted that she was in a new relationship with Mr Blessing Maronga who had a British citizen child.
2. On 6 April 2022, the Respondent uploaded a review setting out her position on the appeal, which was that the Appellant did not meet the requirements of the Rules at the time of the application in relation to her previous partner. The Respondent also stated that she did not consent to consideration of the Appellant's new relationship with Mr Maronga on the basis that this was a new matter.

3. The appeal came before Judge of the First-tier Tribunal Birrell for hearing on 29 March 2022 at Manchester. In a decision and reasons promulgated on 30 March 2022, Judge Birrell dismissed the appeal, bearing in mind the fact that it was not open to her to consider the Appellant's new relationship on the basis that the Secretary of State had refused to consent to treatment of this new relationship as a new matter. She therefore determined the appeal on the basis of the Appellant's private life only.
4. Permission to appeal was sought on the Appellant's behalf, in time, on 22 August 2022 on the basis that the judge erred in law in failing to take account of the Appellant's current circumstances with her partner when considering the wider Article 8 claim under the provisions of the Human Rights Act, which required the judge to consider the Appellant's circumstances at the date of the hearing, whether or not the Respondent agreed to the new circumstances being considered. The second ground of appeal asserted that the judge did not undertake properly or at all the proportionality test under Article 8 when considering the Appellant's appeal because she wrongly refused to consider the Appellant's change of circumstances and the factual matrix since the decision of the Respondent was appealed. It was further asserted the judge failed to distinguish the case of Mahmud (S. 85 NIAA 2002 - 'new matters') [2017] UKUT 00488 (IAC) from the Appellant's appeal.
5. Permission to appeal was granted on 3 October 2022 by Upper Tribunal Judge Pickup on the basis, inter alia:
 - “2. *It is at least arguable that in a human rights claim the judge should have considered the circumstances as they were at the date of the hearing and not confined her consideration to private life only. The issue is whether this genuinely amounts to a new matter in respect of which the respondent did not give permission to be considered.*
 3. *However, the appellant will have to deal with the fact that the decision discloses that the appellant's representative at the hearing advanced submissions on the basis of private life only, did not call any oral evidence, and asked for the matter to be decided on the paper evidence. The judge was not asked to determine the matter on the basis of family life and the appellant will have to show that on that history she is open to criticism for not doing so”.*

Hearing

6. At the hearing before the Upper Tribunal, I indicated to Mr Corban at the outset of the hearing that the appeal, in my view, could not succeed because section 85(5) NIAA 2002 precluded the judge from considering the “*new matter*” and that Parliament had, in passing section 85(5) accepted that in such circumstances the Secretary of State's position prevented a judge from considering all the circumstances in a human rights appeal. Mr Corban initially sought to argue that section 85 related only to the application of the Immigration Rules, however upon being taken to section 85(1) which makes clear it relates to the right of appeal and section 85(2) which relates to the grounds of appeal, he ultimately accepted that if the judge had no jurisdiction then there was nothing further that she could have done.
7. Mr Bates in his response confirmed that the Appellant had last July made a further human rights application in relation to her current relationship and that

this was still outstanding. He submitted that the appeal was on all fours with the case in *Mahmud* (op cit) and the judge indeed had no jurisdiction to consider the new relationship because it was a new matter and was clearly a new factual matrix given that the Appellant proceeded to make the application after her relationship ended and then raised an entirely new relationship in her grounds of appeal.

Decision and Reasons

8. I find no material error of law in the decision and reasons of First-tier Tribunal Judge Birrell. In light of the fact that the Secretary of State had both in the review and at the hearing before her refused to consent to consideration of the Appellant's new relationship with Mr Blessing and his child because it was a new matter, section 85(5) of the NIAA 2002 precluded the judge from considering that relationship as part of her assessment of the Appellant's human rights appeal.
9. I agree with Mr Bates that the Appellant's case is on all fours with the country guidance decision of the Upper Tribunal in the case of Mahmud [2017] UKUT 00488 (IAC). The judge applied *Mahmud* correctly and there was nothing further that she could have done in relation to the determination of the appeal. Therefore, there is no error of law and the decision of First-tier Tribunal Judge Birrell is upheld.

Rebecca Chapman

Deputy Upper Tribunal Judge Chapman

Immigration & Asylum Chamber

13 September 2023