IAC-AH-KRL-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/09400/2014

THE IMMIGRATION ACTS

Heard at Bradford	**Decision & Reasons Promulgated**
On 17 June 2015	**On 15 July 2015**

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

BAWAN MINAWI
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:
For the Appellant: Mrs Pettersen, a Senior Home Office Presenting Officer
For the Respondent: Miss Smith, instructed by Braitch RB, Solicitors

DECISION AND REASONS

1. The respondent, Bawan Minawi, was born on 11 March 1995 and is a male citizen of Iran. I shall hereafter refer to the respondent as the appellant and to the appellant as the respondent (as they appeared respectively before the First-tier Tribunal).

2. The appellant entered the United Kingdom in a lorry on 1 July 2010 and claimed asylum the next month. His application was refused on 20 October 2010 but he was granted discretionary leave to remain until 11 September 2012. The appellant

appealed against the respondent's refusal to grant him asylum and his appeal was dismissed by Immigration Judge Pirotta in a determination promulgated on 3 February 2010. A subsequent appeal by the appellant to the Upper Tribunal was dismissed by Designated Immigration Judge McCarthy (11 July 2011). On 7 September 2012, the appellant submitted a further application for leave to remain on asylum and human rights grounds. That application was refused by a decision dated 28 October 2014. The appellant appealed to the First-tier Tribunal (Judge Ransley) which, in a determination promulgated on 19 February 2015, dismissed the appeal on asylum and humanitarian protection grounds but allowed it on Article 8 ECHR grounds. The Secretary of State now appeals, with permission, to the Upper Tribunal.

3. The grounds of appeal are brief:

> "The appellant is in a relationship with a Lithuanian national exercising treaty rights in the United Kingdom since July 2013. The asylum application was dismissed and the appeal allowed on the Convention under Article 8 for family life (sic).
>
> It is submitted that the Immigration Judge erred by finding that the appellant having a girlfriend in the UK is of such exceptionality that this warrants visiting the Convention. The Immigration Judge did not consider the possibility of family life being in Lithuania nor the appellant returning to Iran to apply for a settlement visa. It is submitted that the Immigration Judge was not given adequate explanation as to why having a girlfriend in the UK is exceptional. The EEA Rules have not been mentioned in the determination."

4. In her decision at [19], Judge Ransley noted that,

> "… at the outset of the hearing I observed that IJ Pirotta's findings of fact and decision to dismiss the asylum and Article 3 appeal have been upheld by the Upper Tribunal … Miss Smith indicated that she would not seek to argue the asylum appeal; she confirmed that the appellant mainly relied on ECHR Article 8."

5. There is been no cross-appeal by the appellant regarding the dismissal of his asylum/humanitarian protection appeal.

6. I acknowledge that Judge Ransley had the opportunity of hearing evidence from the appellant and his girlfriend, Miss Kaolcova. She was told that the appellant and Miss Kaolcova do not live together. Both indicated to the judge that they were too young to be able to say that they wished to spend the rest of their lives together. The judge also heard from Mr Painter of Staffordshire County Council Children and Family Services. He told the judge that the appellant was regarded as part of "Miss Kaolcova's family". Miss Kaolcova's parents had come to the United Kingdom to seek work. Mr Painter said that the appellant was "very likeable" and had "learned the English language very quickly." He had "adopted the British culture."

7. The judge decided that it was necessary to consider Article 8 ECHR. She recorded at [31] that the appellant did not seek to argue that he satisfied the private or family life

provisions of HC 395 (as amended) (i.e. Appendix FM or paragraph 276ADE). The judge found [32] that the appellant had formed a family life with Miss Kaolcova accepting that they had met for the first time in July 2013. Miss Kaolcova is still in full-time education. The judge accepted that the appellant and Miss Kaolcova have a genuine and subsisting relationship which had lasted for some eighteen months. At [33], the judge found:

> "On the facts as established in this appeal, I find that there are exceptional circumstances in the appellant's case by reason of his Article 8 family life with Miss Kaolcova, an EU national exercising treaty rights in the UK as a student. They will not be able to continue their relationship in Iran because a sexual relationship between an unmarried couple is not sanctioned under Islamic law. Mr Harrison did not seek to argue that the appellant's removal is necessary or proportionate to the public interest of maintaining effective immigration control by reference to Section 117B of the 2002 Act. Taking all the above into account, I conclude that the respondent's decision to remove the appellant is disproportionate under Article 8(2) of the ECHR."

8. I was concerned by the passage quoted above ("*Mr Harrison [the Presenting Officer] did not seek to argue that the appellant's removal …*") as it was not corroborated by the record of proceedings. Mrs Pettersen submitted that it was likely that Mr Harrison had simply made no submissions in respect of Section 117B rather than that he had conceded before the First-tier Tribunal that the appellant should not be denied a grant of leave to remain by the operation of Section 117B. In any event, both representatives acknowledged before me that Section 117B contains provisions which are mandatory in all appeals. It is unclear, therefore, why Judge Ransley chose not to have regard to the Section. Even if I were to accept that Mr Harrison had agreed that the appellant's removal was not necessary or proportionate to the public interest of maintaining effective immigration control (Section 117B(i)), I cannot see why the judge did not consider the appellant's circumstances in the light of other relevant statutory provisions. It is not clear, for example, whether Miss Kaolcova or the appellant are at present or likely to be in the future a burden on the British taxpayer. Moreover, Section 117B(5) provides that "little weight should be given to a private life established by a person at a time when the person's immigration status is precarious." It is not clear to me why the fact the appellant may have a girlfriend in the United Kingdom with whom he does not cohabit and by whom he does not have children should be entitled to protection for such family life as he may enjoy with her. I accept that the relationship might form part of the appellant's private life but, in that case, Section 117B provides that little weight should be given to such an aspect of the appellant's private life which began in July 2013, many months after his immigration position had become precarious as a consequence of the dismissal of his appeal in the Upper Tribunal. It is also not clear why the appellant did not return to Iran when his rights of appeal had been exhausted. Instead, he chose to remain and enter the relationship with Miss Kaolcova.

9. Even assuming that the appellant has established a family life with Miss Kaolcova, it is not clear to me why the judge failed to consider whether the appellant might reasonably relocate to Lithuania with her. To that extent, her Article 8 assessment

remains incomplete. My primary finding, however, is that, on the evidence, the appellant does not currently have a family life in this country for the purposes of Article 8 ECHR.

10. I refer to my findings and observations as set out above and find that I agree with the respondent that there is nothing whatever in the relationship of Miss Kaolcova and the appellant which might be properly described as exceptional. Article 8 exists to safeguard a fundamental human right; it should not be used simply in order to enable individuals or, indeed, couples to determine the jurisdiction in which they may chose to reside. I find that Judge Ransley erred in law in her failure to apply the provisions of Section 117. I find that her decision to allow the Article 8 appeal on the basis of the facts before her was perverse. I therefore set aside her decision. I have remade the decision. In the light of what I have said above, the appellant's appeal against the respondent's decision of 24 October 2014 is dismissed on all grounds.

Notice of Decision

11. The decision of the First-tier Tribunal promulgated on 19 February 2015 is set aside. I have remade the decision. The appellant's appeal against the decision of 24 October 2014 is dismissed on all grounds.

12. No anonymity direction is made.

Signed Date 10 July 2015

Upper Tribunal Judge Clive Lane