



IAC-FH-NL-V1

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

Appeal Number: AA/06666/2015

THE IMMIGRATION ACTS

Heard at Field House

On 29 January 2016

**Decision &
Promulgated
On 15 March 2016**

Reasons

Before

DEPUTY UPPER TRIBUNAL JUDGE O'RYAN

Between

**MS KM
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Harding, Counsel instructed by Marsh & Partners
Solicitors

For the Respondent: Ms Isherwood, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal brought by the Appellant, Ms KM, against the decision of Judge of the First-tier Tribunal Clarke made on 11 November 2015. The judge heard the Appellant's appeal against refusal of asylum at Taylor House on 7 October 2015. The Appellant is a national of Albania and had claimed asylum on the grounds that she feared serious harm in Albania on

the basis of her membership of a particular social group, being women who have had or are perceived to have had a child out of wedlock. The Appellant was married and possibly still is to a Mr MD and had come to the United Kingdom in June 2012 to join him in London. He did not it seems wish to pursue that relationship.

2. The Appellant entered into a relationship with a man called Eddie with whom she became pregnant with twins. Those children were born on 11 March 2013, seven weeks prematurely. The Appellant's son, EM has health problems.
3. When Judge Clarke heard the Appellant's asylum appeal he gave a series of reasons for disbelieving her account and finding that she would not face serious harm in Albania. The judge also took account of health problems of the Appellant's son. The judge set out the issues relating to that child at paragraph 18 onwards in his decision:

"18. I move on to consider the impact of the Appellant returning as a single mother with young twins. The twins were born on 11 March 2013 and are called E and EM. I have read the NHS letters provided in support of the appeal and the most recent from Dr Ildiko Shuller reads how E has been passing blood recently. He may be suffering from inflammatory bowel disease and he is currently undergoing investigations. The child has been profoundly anaemic and has a probable immune deficiency disorder. The child is undergoing investigations and referrals to specialist treatment centres as clearly his health is being impacted and whilst he remains under investigation the writer believes that the child should remain in the UK so that they can establish the cause of his problems and initiate some treatment.

19. The Appellant and the twins do not enjoy the benefit of any of the Article 8 criteria under Appendix FM and Paragraph 276ADE.

20. However, in light of the medical evidence, I conclude that these are compelling circumstances such that immediate removal is not proportionate to the public interest of immigration control, having regard to the Section 55 duty towards children. Clearly, it is in the child's best interests to be able to have the investigations carried out so that there can be a smooth transfer of his medical care from the UK to the Albanian health authorities, and the child is young, was born prematurely, and has a weakened system such that could have irreversible damage to him should he be forced to leave with his mother now. Whilst no timescale was provided in the letter, and whilst I have no power to direct a particular time for leave to remain to be granted under Article 8 outside the Immigration Rules, I would have thought that six months would be a sensible length of time. Section 117B of the Immigration Act 2014 has been considered

whilst concluding that the Appellant and her children do not meet any of the public interest requirements as found within this Section. However, the compelling circumstances of not returning this young and vulnerable child whilst investigations are being carried out for a period of say six months can still be accommodated within the public interest for immigration control to be carried out, albeit at a somewhat delayed point in time.

Decision

21. The appeal is dismissed on asylum and human rights grounds.

22. An anonymity order is not made.”

4. In the light of that decision the Appellant applied for permission to appeal to the Upper Tribunal, such application being made to the First-tier Tribunal in the first instance on 11 November 2015. In her handwritten grounds prepared in person the Appellant argues that:

“The judge has made a mistake about the culture in Albania. I am in danger. I am, a member of a social group e.g. I face danger from my father and brothers. Women in my situation are in danger of death. I am targeted by reasons of my gender. Please read paragraphs 23-44 of my Statement. I will be a victim of an honour killing.”

5. That application for permission to appeal came before Designated Judge of the First-tier Tribunal McClure on 4 December 2015. He observed that the Appellant’s application for permission was prepared in person. He refused permission to appeal in relation to her protection claim for reasons that are set out in his notice of decision. At paragraph 4 of Judge McClure’s grant of permission he provides as follows:

“4. The one matter that does concern me is with regard to the best interests of the children and the matters set out in paragraphs 18 to 20 of the decision. The judge identifies that one of the two children appears to have an obstruction of the bowel and to be passing blood. It is suggested that the public interest can be accommodated with leave granted under Article 8. If it was disproportionate to remove the child by reason of the medical condition, then the judge should have arguably considered granting the appeal on article 8 grounds. In respect of article 8, the best interests of the children and the medical condition of the child, the judge arguably has made an error of law.

5. On the limited ground indicated leave to appeal is granted.”

6. In her Rule 24 response dated 18 December 2015 the Respondent Secretary of State takes the following position:

- “2. The Respondent opposes the Appellant’s appeal. In summary, the Respondent will submit *inter alia* that the judge of the First-tier Tribunal directed himself appropriately. In granting permission the Tribunal has limited the grounds to the issue of best interests and Article 8. It is submitted that the findings the judge makes under asylum and Articles 2 and 3 of the ECHR are properly considered with adequate reasons given.
 3. In relation to the judge’s findings on best interests under Article 8 (paras 18-20) the grounds of appeal are not challenged.
 4. The Respondent requests an oral hearing.”
7. Before me Mr Harding has appeared on behalf of the Appellant and Ms Isherwood on behalf of the Secretary of State. I raised with both parties the issue of what the scope of the grant of permission to appeal actually was arising from Judge McClure’s decision. Although clearly he thought little of the Appellant’s grounds prepared in person challenging the dismissal of her protection claim and stated at his paragraph 5 that “on the limited ground indicated leave to appeal is granted”, the head of the grant of permission simply says “application is granted”. It also seems to me that the appropriate form for a partial grant of permission to appeal has not been used. If permission to appeal is to be granted only on limited grounds there is an appropriate form to be used when issuing the grant of permission to appeal which gives an Appellant notice of their entitlement to renew their application for permission to appeal to the Upper Tribunal if they so wish. I find that at least in principle permission to appeal has been granted on all grounds, i.e. those raised by the Appellant herself and the issue at paragraph 4 of Judge McClure’s grant of permission. However, in discussion with Mr Harding, I pointed out to him that with respect to the Appellant she had not in any way been able to identify an arguable error of law in her own grounds of appeal. He indicated to me that he did not intend to pursue any challenge against the First-tier’s decision dismissing the Appellant’s protection claim. I thought that wise in the circumstances.
 8. However, I did not need to hear further from Mr Harding in relation to the issue identified by Judge McClure at his paragraph 4 but rather turned to Ms Isherwood for her view on the matter as it is my preliminary view that the findings made by the judge at paragraph 20 of his decision appeared to me to amount to a finding there were compelling circumstances such that the removal of the Appellant’s son E was not presently proportionate and that it may well have simply been a slip in the judge’s paragraph 21 where he appeared to dismiss the appeal brought on human rights grounds.
 9. Ms Isherwood sought for a short period to dissuade me that that was an appropriate analysis of the First-tier’s decision. She queried whether paragraph 20 of the First-tier’s decision contained a sufficiently clear finding that the removal of this child would be disproportionate. My

response was twofold. Firstly, that the Respondent's case seems relatively clear or rather completely clear as represented at paragraph 3 of the Rule 24 response wherein the Respondent indicates that the grounds of appeal are not challenged. In my view this refers to the issue identified by Judge McClure at paragraph 4, i.e. the issue about the proportionality of the removal of the child Elvis. The Secretary of State's position seems clear then to me that she was not resisting in her Rule 24 response the proposition that the First-tier Judge erred in law in dismissing the Article 8 appeal.

10. My second reason for finding that Ms Isherwood is incorrect about that is because of the clarity of the findings made within paragraph 20 itself. There is no question in my view but that the judge intended to allow the appeal on Article 8 grounds in all the circumstances of the case. I find that there is merely a slip at paragraph 21 of the decision wherein the judge appeared to dismiss the human rights element of the appeal.
11. My decision therefore is that the decision of the First-tier Tribunal does not contain any material error of law but that the record of how the First-tier's decision was decided needs to be corrected to indicate at paragraph 21 that the human rights appeal was allowed. As a Deputy Upper Tribunal Judge, I am also able to exercise powers of a First tier Judge (s.4(1)(c) Tribunal, Courts and Enforcement Act 2007), and Rule 31 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 provides that the (First-tier) Tribunal may at any time correct any clerical mistake or other accidental slip or omission in a decision.
12. If there is any procedural irregularity in my indicating that the record of the First-tier decision needs to be amended in that way, and if it is necessary for me to set aside and re-make the decision of the First-tier Judge, I do so, allowing the appeal on human rights grounds.

Notice of Decision

The notice of decision of the First tier Tribunal dated 11 November 2015 is to be corrected so as to indicate that the appeal is dismissed on asylum grounds, but allowed on human rights grounds.

Alternatively, I allow the Appellant's appeal to the Upper Tribunal on human rights grounds.

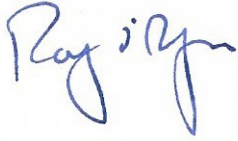
Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Although the First tier Judge did not make an anonymity order, I find that it is appropriate to do so, as the appeal relates to health issues of a minor child.

Signed

Date: 4.3.16

A handwritten signature in blue ink, appearing to read 'P. O'Ryan', written in a cursive style.

Deputy Upper Tribunal Judge O'Ryan