



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

Appeal Number: HU/08036/2016

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 9<sup>th</sup> November 2018**

**Decision & Reasons  
Promulgated  
On 19<sup>th</sup> December 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE JUSS**

**Between**

**HOUCINE [M]  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr J Charyas (Solicitor), Acharyas Solicitors  
For the Respondent: Mr D Mills (Senior HOPO)

**DECISION AND REASONS**

1. This is an appeal against the determination of First-tier Tribunal Judge Pooler, promulgated on 26<sup>th</sup> February 2018 following a hearing at Birmingham on 30<sup>th</sup> January 2018. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal and thus the matter comes before me.
2. The Appellant is a male, a citizen of Tunisia, and was born on 10<sup>th</sup> March 1989. He appealed against the decision of the Respondent dated 2<sup>nd</sup> March 2016, refusing his application to remain in the UK with his British

citizen partner, his wife, Mrs Teresa [M], whom he had met, when the latter was on holiday in Tunisia. The applicable Immigration Rules are paragraph 276ADE of HC 395.

### **The Appellant's Claim**

3. The Appellant's claim is that he is in a genuine and subsisting relationship with his wife and had a family life right to remain in this country with her. The Respondent accepted that it was the case that there was a genuine and subsisting relationship between the two of them. She accepted that the two of them had met in Tunisia when the Appellant's wife was on holiday with the mother there in 2012. Subsequently she had made two visits to Tunisia, both of them being in 2014. During the second visit, they were married on 13<sup>th</sup> July 2014. Mrs [M] and the Appellant were in Tunisia for a month before she then returned to the United Kingdom.
4. It is a feature of this appeal that when the Appellant came to the UK, he did not come directly to England. He arrived, in fact, in the Republic of Ireland, issued with visa on 28<sup>th</sup> October 2014, which was valid until 22<sup>nd</sup> January 2014, and the issue of the visa was on the basis of "join/ACC EU Cit (spouse)", such that the Appellant obtained the Irish visa to enable him to join or accompany his new citizen spouse. The reality is that the Appellant's spouse, Mrs Teresa [M], had never lived in the Republic of Ireland. She had only ever visited for a couple of days when she stayed in a hotel. She did not know what the Appellant told the Irish authorities in order to obtain his visa. In any case, this is how he arrived, before the two of them entered the United Kingdom.
5. The Appellant now states, that although he has entered in a manner that was less than lawful, he cannot go back to Tunisia to make another application because his wife, Mrs Teresa [M], is highly dependent upon her own mother, and that there is a subsisting Article 8 life between the two of them. At the hearing before Judge Pooler, there was evidence from Dr James Turner, a consultant psychiatrist, who confirmed that Mrs [M] was his patient and that it would be detriment to her mental health if she had to accompany the Appellant to Tunisia as it would isolate her from the support network in the UK. There was also a letter dated 12<sup>th</sup> September 2016 from Dr Tanner to the effect that the Appellant's wife needed psychiatric help which comprised access to Dr Tanner as well as the psychiatric clinic and the NHS Trust services, which included the crisis resolution, and in-patient psychiatric services. He stated that it would be detrimental for Mrs [M] to continue her family life in Tunisia because her entire family were present in the UK where she was established and a foreign climate would not agree with her. A further letter dated 31<sup>st</sup> October from Dr T Cheesman, the wife's GP, stated that the wife had a long-standing learning disability, which would impact on her mental health, with anxiety and depression. Finally, there was a letter dated 31<sup>st</sup> October 2017 from Dr Khokhar, a consultant psychiatrist, with the City Centre Community Mental Health Team in Leicester, the team from which Dr Tanner had previously written, and this mirrored what Dr Tanner had said himself.

## **The Judge's Findings**

6. The judge stated that he had taken into account,
 

“The statement of the Appellant’s wife and letters written by her, her mother, and her stepfather. Mrs [M] has said that she has a very close bond with her mother and that if she would live in Tunisia, she would kill herself because she would be unable to see or speak to her mother. She says that she has difficulty in meeting strangers or in going out of the home other than in a taxi” (paragraph 20).
7. The judge stated that “I accept the medical evidence by way of diagnosis”. However, the judge went on to say that “the medical evidence is insufficiently detailed to allow me to make findings as to the extent to which the Appellant has ever needed either the support of a crisis resolution team or an inpatient admission” (paragraph 22). The appeal was dismissed.

## **Grounds of Application**

8. The grounds of application state that the judge erred in failing to take into account the import of the House of Lords decision in **Beoku-Betts [2009] AC 115**, where Lady Hale, had made it clear that it was artificial and impracticable to only consider family life from the viewpoint of the Appellant, without much attention being paid to the wider family (at paragraph 4). Lord Brown had also stated (at paragraph 20) that “together these members enjoy a single family life and whether or not the removal would interfere disproportionately with it has to be looked at by reference to the family unit as a whole ...”.
9. In this case the judge had accepted (at paragraph 25) that the symptoms identified by Dr Tanner in his letter related to the Appellant, and these would be capable of amounting to very significant difficulties if they were sufficiently severe or the risk of self-harm was sufficiently high. However, he had then wrongly concluded that there would not be unjustifiably harsh consequences for the Appellant’s spouse were the Appellant to be required to leave and return to Tunisia.
10. On 25<sup>th</sup> April 2018, permission to appeal was granted by the Tribunal on the basis that the judge had neglected to take into account the dependency elements disclosed, which arose from the Appellant’s wife’s combined diagnosis of mild learning disability and long-standing depression and anxiety, together with a history of self-harming and suicidal behaviour.

## **Submissions**

11. At the hearing before me on 9<sup>th</sup> November 2018, Mr Charyas, appearing on behalf of the Appellant, stated that Judge Pooler had erred in law by failing to come to the conclusion that there were insurmountable obstacles to the Appellant’s wife relocating to Tunisia, given her overall medical situation, and her dependency upon her mother. Second, he had failed to make a proper assessment of the compelling circumstances applicable to the Appellant’s wife. Finally, the “**Razgar** steps” had not been properly

followed. Mr Charyas made good his submission by stating that the judge had early on in his determination (at paragraph 6) recognised the fact that the Appellant was “a vulnerable adult” (paragraph 6). This being so, everything had to follow from this.

12. This meant two things. First, that Dr Tanner’s report (considered by the judge at paragraph 25) assumed a particular importance, especially given that the judge had stated that “Dr Tanner expected a deterioration in Mrs [M]’s mental state if she and the Appellant have to live in Tunisia in order to continue family life”. Second, if one looked at the evidence in the Appellant’s first bundle it is clear from her own testimony (at pages 10 to 19) that she is very vulnerable and feels that she has a low IQ such that she is unable to cope with going to live in Tunisia. There was also a written account from her mother, Gillian Lock (at page 23 of the first bundle) which explained how there was contact between the Appellant’s wife and her mother some two to three times per week, where the Appellant’s wife’s mother supported the Appellant’s wife.
13. This, submitted, Mr Charyas, was the background against which matters had to be assessed. The level of family support to the Appellant’s wife was considerable. Indeed, on 22<sup>nd</sup> February 2018, Home Office guidance was provided in relation to EX.1.(b) “insurmountable obstacles”. This makes it clear that:

“Being separated from extended family members – such as where the partner’s parents, their siblings or both live here – would not usually amount to an insurmountable obstacle, unless there were particular factors in the case to establish the unusual or exceptional dependency required for Article 8 to be engaged”.

Mr Charyas submitted that this was indeed the position here. In this case there was “an usual or exceptional dependency” between the Appellant’s wife and her mother, which the judge had overlooked.

14. For his part, Mr Mills submitted that the judge did not disagree that, conditions presented by the Appellant could amount to “insurmountable obstacles (see paragraphs 19 to 20)”, but the judge’s view was that the Appellant’s situation was not one such. Second, it is not the case that the judge had overlooked the letter from the mother (at page 23) and the Appellant’s own written account (at pages 10 to 19) of the first bundle. Indeed, the judge makes expressed reference to this as soon as he starts to look at the compelling circumstances of the Appellant. He observes that he has taken into account the statement of the Appellant’s wife and letters “written by her, her mother and her stepfather. Mrs [M] has said she has a very close bond with her mother and that if she were to live in Tunisia, she would kill herself ...” (paragraph 20). The judge had also said that “I accept the medical evidence by way of diagnosis”.
15. However, it was for the judge to then make a finding of fact, and what he had concluded was that “the medical evidence is insufficiently detailed to allow me to make findings as to the extent to which the Appellant has ever

needed either the support of a crisis resolution team or an in-patient admission” (paragraph 22).

16. Mr Mills submitted that it was open to the Appellant to furnish further new evidence in a new application, and to strengthen the medical evidence in relation to the Appellant’s wife. As things stood, however, the case was simply made not out and it was open to the judge to make a finding to exactly that effect.
17. Furthermore, it ought not to be forgotten that since marrying the Appellant, his wife Teresa [M], had left her mother’s house, and had begun to live with the Appellant in their own marital accommodation. This being so, the family support now came from the Appellant to his wife. He was her primary carer. It did not come from her mother. Therefore, there was no reason, if the Appellant were to be returned to Tunisia, that his wife could not go there with him and be supported by the Appellant.
18. In reply, Mr Charyas submitted that the impact on the Appellant’s spouse, given her vulnerable condition, and her dependency on the mother, together with the doctor’s prognosis of her mental state, was something that had not been properly taken into account. I should allow the appeal.

### **No Error of Law**

19. I am satisfied that the making of the decision by the judge did not involve the making of an error of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision and remake the decision. I come to this conclusion, notwithstanding Mr Charyas’ valiant and commendable efforts to persuade me otherwise, on behalf of his client. The plain fact is that this is a case where the judge has taken all the evidence into account. He has taken into account all of the medical evidence (see paragraph 19) in properly structured individual paragraphs, where every single expert medical report is specifically set out. He has taken into account the Appellant and her mother, together with her stepfather’s written statements before him (see paragraph 20). He has then “also accepted the medical evidence” by way of diagnosis.
20. However, the conclusion that he was entitled to come to was that the medical evidence, as it stood at the point, was “insufficiently detailed to allow me to make findings as to the extent to which the Appellant has ever needed” the kind of the support that is being referred to here. Indeed, the judge had then gone to say that Dr Tanner had worries about the Appellant not having access to psychiatric support in Tunisia.
21. Nevertheless, the judge was clear here that “the evidence is insufficient to persuade me that, on balance, the Appellant’s wife would be unable to access psychiatric care or medication” in Tunisia (paragraph 23). The judge also took into account the evidence from Dr Tanner that he expected a deterioration in Mrs [M]’s mental state if she had to go and live in Tunisia, and that suicidal behaviour was likely.
22. Of this, the judge stated,

“I am satisfied that these symptoms, particularly in combination, are capable of amounting to very significant difficulties if they are sufficiently severe or if the risk of self-harming behaviour is sufficiently high or involves a sufficiently severe level of risk taking behaviour”.

23. However, his view was again that, “the evidence does not satisfy me that any difficulties could not be overcome, for example, with psychiatric support” (paragraph 25).
24. Finally, the judge considered the position to be ultimately resolvable simply by reference to the Immigration Rules. He came to this view, because Counsel appearing before him on the day, when expressly asked, had submitted that there were no particular circumstances that were unique or exceptional to the Appellant. The judge recorded that,
- “In his submissions he referred me to the medical evidence which I have taken into account in the assessment under paragraph EX.1 of whether there are insurmountable obstacles to the continuation of family life in Tunisia. Those factors and that evidence can appropriately taken into account under the Immigration Rules and I do not point to compelling circumstances which require an assessment outside the Rules” (paragraph 27).
25. Yet, despite this, the judge did then go on to consider Article 8 outside the Rules as was clear from what is said at paragraph 29, where he applies a proportionality test. Here the judge’s approach is actually quite generous to the Appellant because, while commenting on the Appellant’s abilities in relation to the speaking of the English language or being financially independent, the judge does not refer to Section 117B(iv) which is to the effect that little weight is to be accorded to private life that is created in circumstances where the Appellant’s circumstances are precarious. In the circumstances there is no error of law.

### **Notice of Decision**

26. The decision of the First-tier Tribunal did not involve the making of an error on a point of law. The decision shall stand. I have come to this conclusion notwithstanding Mr Charyas’ submission before me that the guidance from the Home Office of 22 February 2018 is one that allows an Appellant to succeed if circumstances are such as to amount to unusual or exceptional dependency. The judge did not find this to be the case. In the circumstances this guidance does not assist the Appellant either.
27. No anonymity direction is made.
28. This appeal is dismissed.

Signed

Date

Deputy Upper Tribunal Judge Juss

17<sup>th</sup> December 2018

**TO THE RESPONDENT**  
**FEE AWARD**

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

Signed

Date

Deputy Upper Tribunal Judge Juss

17<sup>th</sup> December 2018