



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/04184/2018**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On 20th September 2018**

**Decision Promulgated
24th September 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE DOYLE

Between

**A B
(ANONYMITY DIRECTION MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Murphy (counsel) instructed by Morgan Pearse, solicitors

For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. To preserve the anonymity order deemed necessary by the First-tier Tribunal, I make an anonymity order under Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, precluding publication of any information regarding the proceedings which would be likely to lead members of the public to identify the appellant.

2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Asjad promulgated on 6 June 2018, which dismissed the Appellant's appeal on all grounds.

Background

3. The Appellant was born on 16 February 1993 and is a national of Albania. On 16 March 2018 the Secretary of State refused the Appellant's protection claim.

The Judge's Decision

4. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Asjad ("the Judge") dismissed the appeal against the Respondent's decision. Grounds of appeal were lodged and on 29 June 2018 Designated Judge of the First-tier Tribunal McClure gave permission to appeal stating

1. By decision promulgated on 6 June 2018 First-tier Tribunal Judge Asjad dismissed the appellant's appeal against the decision of the respondent to refuse her protection and human rights claims.

2. The grounds of the application:-

(a) Despite the birth certificate of their child, the local authority bills indicating that the appellant and her partner lived together, letters from hospitals, GPs, NHS and the Home Office all addressed to the appellant and her partner at the alleged address, the Judge concluded that this was not a genuine relationship and the couple were not living together.

(b) The Judge on examining photographs indicated that the majority had the partner in outdoor clothes such that she concluded that that indicated that this was not a genuine relationship. Many of the photographs of the partner with the child were of the partner in normal indoor/everyday clothing.

(c) It is submitted that the Judge acted inconsistently to the point of irrationality in failing to take account of the evidence that was presented.

(d) Issues were raised with regard to the appellant's claim for asylum including that adverse conclusions have been made which were not justified on proper examination of the evidence, for example Albanian prison guards were referred to as prison police and the adverse conclusions based thereon was therefore not justified.

3. Having considered the decision as a whole whilst the relationship between the appellant and her partner had not existed for two years prior to the date of hearing, the existence of the child and the fact that the parties have provided substantial documents to show that they were living together, which documents supported their oral evidence, the grounds may be argued. Whilst the conclusions by the Judge contain a more detailed examination of the evidence, I do not limit the grounds that may be argued in the circumstances.

The Hearing

5. (a) Mr Murphy, for the appellant, moved the grounds of appeal. He took me straight to [40] of the decision which he described as “muddled”. He told me that the Judge’s article 8 assessment is defective and that the Judge had failed to take account of documents which clearly demonstrate that the appellant lives with her partner. He told me that there is a wealth of evidence of cohabitation, and that the Judge failed to give adequate weight to that evidence.

(b) Mr Murphy told me that the Judge approached the article 8 assessment taking adverse credibility points from the appellant’s asylum claim as the starting point, and finding that the rejection of the appellant’s account in her asylum claim undermine the documentary evidence relied on. He relied on Ex parte Virjon B 2002 EWHC 1469, a case in which the Adjudicator had assessed a medical report on the basis of his credibility findings rather than reaching his findings on the basis of all the evidence including the medical report.

(c) Mr Murphy told me that the Judge’s findings at [40] are confusing. He said that it is not clear whether or not the Judge finds that family life exists. He argued that the Judge’s comments about the quality of the relationship between the appellant and her partner appeared to be a moral, rather than a legal, judgement. The Judge’s conclusion that article 8 family life does not exist is not sustainable.

(d) Mr Murphy told me that the Judge failed to consider all relevant article 8 issues including the rights of the appellant’s partner, and wholly elided consideration of section 55 of the Borders, Citizenship and Immigration Act 2009.

(e) In relation to the asylum appeal, Mr Murphy simply adopted paragraphs 17 to 20 of the grounds for permission to appeal & make no further submission. He asked me to find a material error of law, to set the decision aside and to remit this case to the First-tier for a new fact-finding exercise.

6.(a) For the respondent, Ms Everett that told me that the appeal against the decision on the asylum claim is without merit, that the Judge’s decision is properly reasoned. She told me that the Judge sets out cogent findings & clearly found that credibility was the determinative issue. She asked me to allow the decision to stand in relation to asylum and humanitarian protection.

(b) Ms Everett conceded that the Judge’s article 8 assessment is flawed. She told me that [40] contains a material error of law, saying that even if the article 8 claim is weak it should be considered properly. She asked me to preserve the findings in relation to the asylum claim but set aside the

Judge's article 8 ECHR decision. She asked me to remit the human rights appeal to the First-tier Tribunal.

Analysis

7. The grounds of appeal relating to the asylum claim focus on the Judge's credibility findings. Between [18] and [25] the Judge summarises the evidence. The Judge's findings of fact lie between [26] and [38] of the decision. At [27] the Judge finds that the appellant's evidence was contradictory and vague and that the appellant struggles to identify an agent of persecution. The Judge examines documentary evidence and finds that the documentary evidence produced creates a conflict in the evidence.

8. Between [26] and [38] the Judge sets out adequate reasons for finding that the appellant is neither a credible nor a reliable witness. The Judge explains why she finds the evidence to be contradictory and inconsistent. The Judge commences [32] by saying that the appellant could not give any tangible testimony of threats she had received. At [33] the Judge quotes from the appellant's answers in cross-examination.

9. In Shizad (sufficiency of reasons: set aside) [2013] UKUT 85 (IAC) the Tribunal held that (i) Although there is a legal duty to give a brief explanation of the conclusions on the central issue on which an appeal is determined, those reasons need not be extensive if the decision as a whole makes sense, having regard to the material accepted by the judge; (ii) Although a decision may contain an error of law where the requirements to give adequate reasons are not met, the Upper Tribunal would not normally set aside a decision of the First-tier Tribunal where there has been no misdirection of law, the fact-finding process cannot be criticised and the relevant Country Guidance has been taken into account, unless the conclusions the judge draws from the primary data were not reasonably open to him or her.

10. MD (Turkey) v SSHD [2017] EWCA Civ 1958 tells me that adequacy meant no more nor less than that. It was not a counsel of perfection. Still less should it provide an opportunity to undertake a qualitative assessment of the reasons to see if they are wanting, perhaps even surprising, on their merits. The purpose of the duty to give reasons, is in part, to enable the losing party to know why she has lost and it is also to enable an appellate court or tribunal to see what the reasons for the decision are so that they can be examined in case there has been an error of approach.

11. A fair reading of the decision in the asylum and humanitarian protection claim demonstrates that the Judge took account of each strand of evidence. The Judge considered the background materials as part of a

holistic assessment of all of the evidence. There is nothing wrong with the Judge's fact-finding exercise. In reality the appellant's appeal amounts to little more than a disagreement with the way the Judge has applied the facts as she found them to be. The appellant might not like the conclusion that the Judge arrived at, but that conclusion is the result of the correctly applied legal equation. The correct test in law has been applied. The decision in the asylum, humanitarian protection and articles 2 & 3 ECHR appeal does not contain a material error of law.

12. Although a thorough and well-reasoned decision is given in relation to asylum, humanitarian protection and articles 2 & 3 ECHR, the Judge's article 8 assessment is lacking.

13. The Judge has crammed the article 8 assessment into one paragraph. It is difficult to find clear reasons for the Judge's decision at [40]. The Judge is dismissive of documentary evidence which appears to be supportive of the appellant's claim to live with her partner, and does not give adequate reasons for dismissing the documentary evidence. The Judge's findings in relation to the photographic evidence are difficult to understand. There are (almost) as many photographs of Mr Lleshi with no coat as there are of Mr Lleshi wearing a coat.

14. There is reliable evidence that Mr Lleshi is the father of the appellant's child. I am told that the appellant is now pregnant with their second child. There is no consideration of the best interests of the child. It is difficult to see how the Judge concluded that article 8 family life does not exist

15. It is accepted that the errors at [40] amount to a material error of law. I preserve the Judge's findings on asylum, humanitarian protection and articles 2 and 3 ECHR, but set aside the article 8 ECHR decision.

16. Almost Four months have now passed since the decision was promulgated. The appellant's circumstances have changed once again. The article 8 fact finding assessment is flawed. A new fact-finding exercise is necessary. As a result, I cannot substitute my own decision.

Remittal to First-Tier Tribunal

17. Under Part 3 paragraph 7.2(b) of the Upper Tribunal Practice Statement of the 25th of September 2012 the case may be remitted to the First-tier Tribunal if the Upper Tribunal is satisfied that:

(a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or

(b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal.

18. In this case I have determined that the case should be remitted because a new fact-finding exercise is required on article 8 ECHR only. The Judge's findings in relation to asylum, humanitarian protection and articles 2 & 3 ECHR stand.

19. I remit the matter to the First-tier Tribunal sitting at Birmingham to be heard before any First-tier Judge other than Judge Asjad.

Decision

20. The decision of the First-tier Tribunal promulgated on 6 June 2018 does not contain errors of law in the relation to the Asylum, Humanitarian Protection and article 2 & 3 Grounds of appeal. Insofar as this appeal relates to those parts of the Judge's decision the appeal is dismissed. The Judge's findings in the Asylum, Humanitarian Protection and article 2 & 3 appeal are preserved.

21. The decision on the article 8 ECHR grounds of appeal of the First-tier

A handwritten signature in grey ink, appearing to read 'Paul Doyle', is written over the text of paragraph 21.

Tribunal promulgated on 6 June 2018 contains a material error of law and is set aside. I remit the outstanding article 8 ECHR appeal to the First-tier Tribunal sitting at Birmingham to be heard before any First-tier Judge other than Judge Asjad.

Signed
September 2018
Deputy Upper Tribunal Judge Doyle

Date 20