



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/04385/2017

THE IMMIGRATION ACTS

Heard at Glasgow
on 3 January 2018

Decision & Reasons Promulgated
on 8 January 2018

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

I P

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT


Respondent

For the Appellant: Mr E MacKay, of McGlashan MacKay, Solicitors
For the Respondent: Mr M Matthews, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant appeals against a decision by First-tier Tribunal Judge Farrelly, promulgated on 22 August 2017. She now pursues article 8 grounds only.
2. The first and main point in the grounds is that there was no evidence to justify the finding of no subsisting relationship between the appellant and her husband.
3. Mr Matthews correctly pointed out that the decision at ¶29 states 3 reasons: “limited evidence available”; the parties continued to live apart even after they were both living in Glasgow; and evidence from witnesses from a shelter was “historical”.

4. In course of submissions, and on reference to the evidence, however, Mr Matthews acknowledged that the evidence was not as limited as appeared from the decision, and that the witnesses spoke not only to the period some years ago when the appellant made use of a shelter, but to recent times; and that while reasoning was not absent, it was difficult to argue that it was adequate.
5. The one reason which survives scrutiny is that the parties continued to live apart at a period when they gave no good reason for doing so. Mr MacKay suggested that was due to accommodation providers not permitting co-occupation, but that is unsubstantiated and unlikely. (There might be an economic motive which is less creditable to the appellant and her partner, but which does not exclude a relationship; but this is not the time to speculate further.)
6. The judge accepted that the relationship subsisted until a couple of months before the hearing, and that the appellant was pregnant; apparently with her husband's child, which the judge appears also to accept. That did not exclude a finding of no subsisting relationship, but it would take more than the one reason which survives scrutiny to justify it.
7. The decision of the FtT is **set aside**. It stands only as a record of what was said at the hearing.
8. Parties agreed that the nature of the case is such that it is appropriate in terms of section 12(2)(b)(i) of the 2007 Act and of Practice Statement 7.2 to **remit the case to the FtT** for an entirely fresh hearing.
9. The member(s) of the FtT chosen to consider the case are not to include Judge Farrelly.
10. The FtT made an anonymity direction. The matter was not addressed in the UT. Anonymity has been maintained herein.
11. Parties also agreed that so far as practicable the case should be listed to be heard along with a pending appeal by the appellant's husband, case reference HU/13895/2017.



4 January 2017
Upper Tribunal Judge Macleman