



IAC-AH-SAR-V2

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

Appeal Number: IA/45147/2014

**THE IMMIGRATION ACTS**

**Heard at Manchester**

**On 30<sup>th</sup> March 2016**

**Decision & Reasons  
Promulgated  
On 11<sup>th</sup> May 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS**

**Between**

**MR BOJAN STAKIC  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: In person

For the Respondent: Mr G Harrison, Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant is a citizen of Montenegro born on 2<sup>nd</sup> May 1977. The Appellant entered the UK with entry clearance as a spouse on a visa valid from 9<sup>th</sup> February 2012 to 9<sup>th</sup> May 2014. On 9<sup>th</sup> May 2014, i.e. the date of

expiry of the original visa, the Appellant applied for indefinite leave to remain in the United Kingdom as a victim of domestic violence. That application was refused by the Secretary of State in a Notice of Refusal dated 14<sup>th</sup> October 2014.

2. The Appellant appealed and the appeal came before Judge of the First-tier Tribunal Alis sitting at Manchester on 13<sup>th</sup> March 2015. In a decision promulgated on 18<sup>th</sup> March 2015 the Appellant's appeal was dismissed under the Immigration Rules and under ECHR legislation.

3. On 18<sup>th</sup> March 2015 Grounds of Appeal were lodged with the Upper Tribunal. Those grounds noted that the judge had found that the Appellant's application could not succeed under the Immigration Rules and that whilst the judge had found the Appellant had established a private life, his application was dismissed pursuant to Article 8 of the European Convention of Human Rights. The Grounds of Appeal contend that the judge erred in his approach to the evaluation of Article 8 and that the judge had not followed the approach adopted by Laws LJ in *SS (Nigeria) v the Secretary of State for the Home Department [2013] EWCA Civ 550* of:

*"The principle of minimal interference is the essence of proportionality: it ensures that the ECHR right in question is never treated as a token or a ritual, and thus guarantees its force".*

4. The Grounds of Appeal contend that this was not the approach followed by the judge and that the judge had fundamentally misunderstood the evidence with the Appellant's witness statement. The grounds contend the Appellant initially entered the UK as a visitor and applied for a certificate of approval to marry. Following the grant of that certificate he married and voluntarily returned to Montenegro from where he applied for and was granted leave to enter as a spouse. The grounds contend that it is apparent from the determination that this was the decisive factor in finding that because the Appellant purportedly established his private life whilst in the UK unlawfully, the decision to remove him was proportionate and it is submitted that this factual mistake was material to the outcome of the judge's decision. Consequently it was contended that the judge's evaluation of proportionality was flawed.

5. On 27<sup>th</sup> May 2015 Judge of the First-tier Tribunal Pirotta refused permission to appeal.

6. On 12<sup>th</sup> June 2015 the Grounds of Appeal were renewed. I note those Grounds of Appeal are identical to the initial grounds. On 29<sup>th</sup> July 2015 Upper Tribunal Judge Kekic granted permission to appeal relying on the contention that the Appellant contended that he had established his private life during a period when he had been lawfully in the UK with entry clearance as a spouse after his visit here and his marriage, and that the judge had erroneously found that it was established when he had been here unlawfully and that that had negatively influenced his assessment and that had he understood the evidence, the outcome may have been

different. Further she considered that the judge's rejection of the claim of domestic violence was arguably based on a cursory examination of the claim and that the Appellant's evidence was not fairly considered. On 19<sup>th</sup> August 2015 the Secretary of State responded to the Grounds of Appeal under Rule 24.

7. It is on that basis that the appeal comes before me to determine whether or not there is a material error of law in the decision of the First-tier Tribunal Judge. The Appellant appears in person. The Secretary of State appears by her Home Office Presenting Officer, Mr Harrison.
8. I explained fully the court procedure and the issues that were before me to the Appellant. I indicated to the Appellant that I would listen without interruption to his submissions and that I would then consider any responses made by the Secretary of State and give him the opportunity to briefly reply to those points. The Appellant indicated that he fully understood the court procedure.

### **Submissions/Discussion**

9. The Appellant stated that whilst noting the decision and that there were negative findings made about his behaviour, he wished to emphasise that he had not been violent and that the police had said that there was no evidence of violence. He emphasised that he had never been here unlawfully and that he had applied for variation before his visa had expired. He believed his evidence was not read through nor properly considered, and that he left following an argument with his wife. He believes that she called the police to make sure he did not come back and that there were no criminal proceedings. He emphasises that he is a business development manager for a rental car firm from the former Yugoslavia and that his job is important to him and he wishes to remain in this country. He believes that he has been very badly treated by his solicitors and that in fact his employers are desperate that he remains because he speaks both Serbo-Croat and English.
10. Mr Harrison relies substantially on the Notice of Refusal and the Rule 24 response. As the Appellant is in person he takes me through the Rule 24 response which he indicates gives a very good analysis of the manner in which the judge properly addressed this matter. He submits it was accepted by both the Appellant and the judge that the Appellant could not succeed under the Immigration Rules due to his conviction for harassment. He notes that certainly in the Grounds of Appeal no dispute is made regarding the findings in relation to domestic violence and that the judge appropriately engaged with the evidence and made findings open to him at paragraphs 30 to 32 and 41 of his decision.
11. Thereafter, he submits, the judge went on to consider the Appellant's claim under the human rights legislation and at paragraph 35 found that the Appellant had no family life but that he had established private life. Importantly, he states that at paragraph 39 the judge addressed the

Appellant's private life stating it had been established whilst the Appellant had been here unlawfully and with a precarious immigration status. The Secretary of State accepts that the Appellant's status in the UK was not unlawful but that it has always been precarious and Section 117B states that little weight should be given to a private life with either status. In any event, he contends this finding did not influence the First-tier Tribunal Judge's assessment of the Appellant because the First-tier Tribunal Judge had stated "I have approached it from the position that he was here lawfully when he obtained his employment and met the two friends who gave evidence on his behalf". He consequently contends that it cannot be said that the First-tier Tribunal Judge has erred in law and he asked me to dismiss the appeal.

## **The Law**

12. Areas of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational conclusions on fact or evaluation or to give legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.
13. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue of argument. Disagreement with an Immigration Judge's factual conclusion, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence which was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration Judge concludes that the story is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

## **Findings**

14. It is important to note that the issue before me is whether or not the judge materially erred in law in his decision. Whilst acknowledging that the Appellant is a litigant in person, the main thrust of the oral submissions he has made are a criticism of the findings of domestic violence and of his wife. Such arguments are firstly not the subject of this appeal, and secondly, even if they were allowed in, amount to no more than disagreement with the findings of the First-tier Tribunal Judge. The main thrust of the Appellant's appeal is the mistake made by the First-tier Tribunal Judge as his decision was influenced because he mistakenly

addressed the issue of the Appellant's private life on the basis that it had been established whilst he was here unlawfully when in fact that was not the case.

15. Whilst clearly that was a mistake, it is clear from paragraph 39 of his decision that the judge approached the Appellant's claim from the position that his private life was established whilst he was here lawfully even though the Appellant had himself stated at paragraph 5 of his own witness statement that he came as a visitor and regularised his status after his marriage. Therefore the judge had balanced the positive factors of Section 117B but concluded that removal was not disproportionate. In such circumstances, any error is effectively corrected by the judge himself when he applies the correct and proper approach to the consideration of the Appellant's claim for private life and the relevant factors pursuant to Section 117B of the 2002 Act. Consequently the decision discloses no material errors of law and the judge made findings that he was perfectly entitled to and the appeal is dismissed.

### **Notice of Decision**

The decision of the First-tier Tribunal Judge discloses no material error of law and the Appellant's appeal is dismissed and the decision of the First-tier Tribunal Judge is maintained.

No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge D N Harris

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

No application is made for a fee award and none is made.

Signed

Date

Deputy Upper Tribunal Judge D N Harris