



**Upper Tribunal
(Immigration and Asylum Chamber)
HU/10201/2015**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

Decision & Reasons

On 9th August 2017

Promulgated

On 15th August 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE GRIMES

Between

MR ELMAZ MEMA

(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Khan, Counsel instructed by Malik & Malik Solicitors

For the Respondent: Mr S Whitwell, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant, a citizen of Albania, appealed to the First-tier Tribunal against the decision of the Secretary of State dated 15th October 2015 refusing his application for leave to remain on the basis of his private and family life in the UK with his partner, a British citizen, Ms E. First-tier Tribunal Judge Callender Smith dismissed the appeal. The Appellant now appeals with permission to this Tribunal.

Error of Law

2. There are two grounds in the application for permission to appeal. In granting permission First-tier Tribunal Judge Robertson considered that there was arguable merit in Ground 2 but little arguable merit in Ground 1. In these circumstances Mr Khan indicated at the outset of the hearing that he would pursue the second ground only and not the first ground. It is contended in the second ground that the First-tier Tribunal Judge erred in his assessment of proportionality in failing to consider the impact on the Appellant's partner of his temporary absence from the UK whilst he pursued an application for entry clearance.

The Background

3. The background as set out in the papers is that the Appellant claims to have arrived in the UK in May 2002 and he claimed asylum on 21st May 2002. This application was refused, his appeal against that decision was dismissed and he was considered to have exhausted his appeal rights on 17th January 2003. The Appellant claimed that he met Ms E in August 2009 and to have been in a relationship with her since then. The Appellant made an application for leave to remain under Article 8 on 15th December 2014, that application was refused on 31st December 2014. He made further submissions on 14th October 2015 based on his relationship with Ms E. The refusal of that application is the subject of this appeal.

4. In considering the appeal the First-tier Tribunal Judge found that the oral and documentary evidence given by the Appellant and his partner was generally cogent and credible. However the judge did not accept that the Appellant had supported himself from January 2003 until 2009 when he met his partner and thereafter until the present without working and only receiving financial help from friends [31-32]. The judge noted the Appellant's partner's mental health problems. The judge considered that it was a realistic possibility that if the Appellant returned to Albania to apply for entry clearance Ms E and her mother (with whom the Appellant currently lives) could combine their two households and support each other until he returned. The judge found that the Appellant and his partner are in a genuine and subsisting relationship akin to marriage [38] although as a result of immigration bail conditions the Appellant lives with his partner's mother. The judge accepted that for all practical purposes the couple lived together although they are not always in the same place at the same time. The judge accepted that there are "clearly issues of particular dependency between the Appellant's partner, because of her unhappy background, and the Appellant" [40]. The judge did not find that these issues are

"so grave as to create the kind of very significant obstacles (inside the Immigration Rules) or exceptional circumstances outside the Immigration Rules to permit the Appellant to remain in the UK without returning to Albania to regularise his immigration status." [41]

5. The judge noted the Appellant's claim to be estranged from his mother and two sisters but considered that there was no objective evidence of this. The judge concluded that it would be proportionate for the Appellant

to return to Albania and go through the proper entry procedures to rejoin his partner in the UK. He noted that the Appellant's partner will have the support of her mother with whom the Appellant has been staying for the last two years. The judge noted at paragraph 47 that the effect of his finding is that it is proportionate to expect the Appellant to return to Albania and seek entry clearance to return to his partner because the temporary interruption in their relationship would not leave his partner unsupported due to the support she and her mother provide each other which provides a practical buffer or assistance to deal with a situation where she did not wish to accompany him to Albania.

Error of Law

6. Permission to appeal was granted in relation to Ground 2 because First-tier Tribunal Judge Robertson considered that it is not clear from the decision whether the judge considered the possibility of further deterioration of the Appellant's partner's mental health condition in the absence of the Appellant and it is not clear whether the judge accepted that there may be a deterioration nor was it clear whether there was any medical evidence before the judge to establish that deterioration was likely.
7. In his submissions Mr Khan pointed to the findings made by the First-tier Tribunal Judge that the Appellant and his partner are in a genuine and subsisting relationship akin to marriage, that they are living together and that there are issues of particular dependency between them [37-39]. He submitted that there seems to be an acceptance that the Appellant's partner is very vulnerable and that the Appellant does provide her with support. He argued that the judge erred in failing to consider the impact of even a short absence on the part of the Appellant would have on his partner. He submitted that the judge erred in failing to explore this issue. He submitted that the fact that the judge accepted that the Appellant provides his partner with support and that there is particular dependency in this case meant that the judge could draw a conclusion that there would be an adverse impact on his partner of a separation.
8. In response Mr Whitwell submitted that this ground amounts to a disagreement with the judge's findings. He contended that the findings were open to the judge on the evidence. He submitted that the witness statements were silent on the issue of temporary separation and there was limited evidence on this point. He submitted that the letter from the Appellant's partner's GP just confirms that she suffers from depression but does not assist in supporting the submissions now made. In any event he submitted that the judge did in fact deal with this issue when he talked about the support the Appellant's partner would receive from her mother at paragraphs 36 and 37. He argued that the judge considered whether there were insurmountable obstacles to the family life continuing in Albania at paragraph 41. He submitted that these conclusions were right based on the evidence before the judge which did not reveal anything exceptional in this case.

9. In response Mr Khan submitted that a proportionality assessment is very fact specific and the judge's conclusions at paragraphs 36 and 37 were not as clear as they should be. The judge assumed that the partner's mental health needs could be met by her mother but it was not known whether the mother could provide the same level of care as that provided by the Appellant who provides his partner with emotional and moral support.
10. In my view there is no error of law in this decision. The judge makes an assessment under Article 8 through the prism of the Immigration Rules as he was required to do. Although the judge refers to EX.1 and EX.2 at paragraphs 45 and 46 in my view it is clear in the 'Findings and Reasons' section of the decision that it is through this prism that the facts have been considered.
11. The judge took into account the Appellant's partner's mental health problems and acknowledged that there is a particular dependency between the Appellant and his partner because of her difficult background. However the judge clearly found at paragraph 41 that these issues are not so grave as to amount to very significant obstacles within the Immigration Rules. This is a clear finding that the judge did not consider that the circumstances of this case amount to insurmountable obstacles to the Appellant's family life with his partner continuing outside the UK.
12. The judge noted at paragraphs 33 and 47 that the Appellant's partner had indicated that she did not wish to accompany him to Albania. In these circumstances the judge gave consideration to the prospect of the Appellant leaving the UK for a temporary period in order to apply for entry clearance to return to the UK. In this context the judge, having acknowledged the particular dependency, considered the circumstances as they are where the Appellant lives with his partner's mother. The judge noted that Ms E will have the support of her mother, that they could combine their households and that it was open to them to seek local authority support [36, 37, 44]. Mr Khan was unable to point to anything specific in the evidence to demonstrate that there would be a deterioration in the Appellant's partner's mental health as a result of the Appellant's temporary absence from the UK. He pointed to nothing in the evidence that the judge failed to take into account.
13. The conclusion that Ms E could seek her mother's support during any temporary absence was entirely open to him on the basis of the evidence before him.
14. In these circumstances I am satisfied that the judge reached a decision open to him on the evidence. There is no material error of law in the judge's consideration of this appeal under Article 8 and the Immigration Rules.

Notice of Decision

15. The decision of the First-tier Tribunal does not contain a material error of law.

16. The decision of the First-tier Tribunal shall stand.

17. No anonymity direction is made.

Signed

Date: 14th August 2017

Deputy Upper Tribunal Judge Grimes

To the Respondent
Fee Award

As the appeal has been dismissed there is no fee award.

Signed

Date: 14th August 2017

Deputy Upper Tribunal Judge Grimes