



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/03280/2016

THE IMMIGRATION ACTS

Heard at Field House
On 9 May 2018

Decision & Reasons Promulgated
On 23 May 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE MONSON

Between

RAHIMI [I]
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Chakmakjian, Counsel instructed by David Grand

For the Respondent: Ms N Willocks-Briscoe, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals from the decision of the First-tier Tribunal (Judge Cameron sitting at Taylor House on 20 March 2017) dismissing her appeal against the decision of the respondent to refuse to grant her, an illegal entrant, leave to remain on the basis of family life established with a British national. The respondent did not accept that there were insurmountable obstacles to the appellant carrying on family life with her British national partner in Albania, and the Judge agreed with this assessment, notwithstanding the opinion of a Country Expert, Antonia Young, to the contrary.

The First-tier Tribunal did not make an anonymity direction, and I do not consider that the appellant requires anonymity for these proceedings in the Upper Tribunal.

The Reasons for Granting Permission to Appeal

2. The initial application for permission to appeal asserted, *inter alia*, that the Judge had given inadequate weight to the expert report showing that the appellant's black husband would not be accepted in Albania. On 17 October 2017 Judge Frankish refused permission to appeal, as (contrary to what was stated in the application) paragraphs [42]-[45] of the decision contained a detailed summary of the expert report followed by an analysis, which included an observation that a promise to add material about black Peace Corp volunteers in Albania had not materialised. The findings that the Judge made as to insurmountable obstacles and very significant obstacles were open to the First-tier Tribunal Judge.
3. In a renewed application for permission to appeal, Mr Chakmakjian of Counsel (who did not appear below) advanced three grounds of appeal. Ground 1 was that the Judge had applied the wrong test as to whether the appellant and her husband would face insurmountable obstacles to carrying on family life in Albania. Ground 2 was that the Judge had misdirected himself in law in not giving weight to the racism that he found that the husband would suffer in Albania, and that he had erred in failing to consider evidence of the endemic nature of racism in Albania. Ground 3 was that the Judge had failed to consider the impact of the lack of family support on the insurmountable obstacles test, and he had failed to give proper consideration to the expert evidence of Ms Young on the issues raised by the appellant having a black partner, combined with her past history and lack of family support. His conclusion that the appellant's partner would be able to protect her was in this context irrational and unreasoned.
4. On 5 February 2018 Upper Tribunal Judge Lindsley held that all three grounds were arguable, and granted permission to appeal accordingly.

The Appellant's Material History

5. The appellant is a national of Albania, whose date of birth is [] 1985. In 2015 she sought to regularise her status in the UK. She said that she had first come to the UK in or about 2000, when she had been brought here by a man called [A].
6. Her father had died when she was aged 10, and her mother had remarried. Her step-father was mean and cruel and drank heavily. He would hit her, and between the ages of 12 and 14 he sexually abused her. When she revealed this abuse to her mother, she did not believe her and threw her out of the house. She lived rough for a few days, and then met [A], who was considerably older. He let her live with him, and then suggested that they travel to England to start a new life.
7. After entering England illegally, [A] registered them both with the British authorities claiming that he was his sister, and giving her the false name of Rahimi [K]. He also

lied about her age. She was in fact only 15. As they had no money, [A] asked her to engage in prostitution. She agreed, because she loved him.

8. As she put it in her subsequent witness statement of 20 March 2017, one day the British Police and Immigration burst through the doors. She was very scared because she still could not speak English. However, they seemed very kind and they explained who they were and what would happen to her. She was separated from [A] and sent back to Albania.
9. She says that she returned to her home town - in 2003 - and visited her mother. Her mother did not take her back in, so she went to live in a student hostel. She became aware of rumours that she had been a prostitute in England. She had only a little money, and it was the loneliest time in her life.
10. [A] returned to Albania, and found where she was staying. He told her that he still loved her, and he was sorry for everything that had happened to her. She said to him that if he really loved her, he would arrange for her to go back to the UK alone, where she would try and build a new and honest life there, as she loved England. [A] agreed, and arranged for her to return illegally to the UK, which she did around a week later. The date of her re-entry to the UK was 3 January 2006.
11. The appellant's application for leave to remain was refused on 25 January 2016.

The Hearing Before, and the Decision of, the First-tier Tribunal

12. Both parties were legally represented before Judge Cameron. He received oral evidence from the appellant and her partner, both of whom adopted as their evidence in chief their respective witness statements dated 20 March 2017.
13. In his subsequent decision, the Judge set out his findings of fact and credibility at paragraphs [29]-[63] (pages 4-9).
14. In her skeleton argument, Counsel for the appellant had summarised the appellant's case as follows: "*[B]eing in a mixed marriage was highly likely to cause this couple extreme and serious hardship on an attempted to resettling in a country where racism against black people would appear to be a pervasive and extreme feature. Apart from the fear of incidents escalating into violence, and suffering from a degrading quality of life, the hostile environment caused by racism would also impact on the couple being able to earn a living. As a black man, Troy fears that he would never be given any employment...[T]he appellant herself faces difficulties by it having become known, in the form of rumours the appellant encountered on return to Albania, that she was involved in prostitution...It is submitted that the appellant's past work as a prostitute will cause the appellant very significant obstacles with resettlement in Albanian. There are also the further very significant obstacles with reintegration caused by the fact that the appellant would not be attempting to resettle on her own, but instead as part of a mixed race couple.*"
15. On the topic of racism, the Judge held at paragraph [54]:

“It was stated on the appellant’s behalf that her husband, because of his colour, would not be able to obtain employment. Although I accept that there is clear evidence that discrimination does take place in Albania and in particular in relation to Roma and other minority groups, I am not satisfied that the evidence shows that simply being someone of colour would be sufficient to prevent the sponsor seeking employment, particularly if they were to go to Tirana.”

16. At paragraph [55], the Judge accepted that the husband’s colour might well be an issue in Albania, but he was not satisfied that the evidence which had been provided was sufficient to show that the husband would not be able to function in Albania simply because of his colour. He did not accept that there would be constant harassment to such a degree that the husband could not function.

17. On the issue of the alleged problems that the appellant would face on account of her being a victim of trafficking, the Judge held at paragraph [56]:

“The appellant would be returned to Tirana and although she indicates that she herself would face societal discrimination, I am not satisfied the evidence shows that on return to Tirana, particularly if she were in the company of her husband, that her previous history of being trafficked would come to light. Although she states when she last returned that her mother did not want to have much to do with her and there were rumours in her local area, she was still able to remain there albeit that she states that she was lonely. She has not given any evidence that she herself was targeted by the general population or other traffickers whilst in Albania.”

18. On the issue of the alleged risk posed to her by her abusive stepfather and by the man who trafficked her to the UK for prostitution, the Judge held at paragraph [59]:

“I do not accept that the appellant would be at any risk from her stepfather. There is nothing in her statement that indicates when she returned on a previous occasion and re-contacted her mother that she had any particular difficulties from the stepfather. She was in fact then assisted by [A] to leave Albania on her own and again I do not accept that there is a realistic prospect that she would face any difficulties from him on return.”

The Hearing in the Upper Tribunal

19. At the hearing before me to determine whether an error of law was made out, Mr Chakmakjian developed the arguments advanced in the renewed application for permission to appeal. Ms Willocks-Briscoe opposed the appeal, submitting that the Judge had applied the correct test, and had made findings which were reasonably open to him on the evidence, and which were adequately reasoned. She conceded, with reference to Ground 3, that the reasoning in paragraph [60] was “*somewhat scant*”. But if there was an error, it was not a material one.

Discussion

20. In South Bucks District Council v Porter (2) [2004] UKHL 33 Lord Brown said at [26]:

The reasons for a decision must be intelligible and they must be adequate. They must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the 'principal important controversial issues', disclosing how any issue of law or fact was resolved. Reasons can be briefly stated, the degree of particularity required depending entirely on the nature of the issues falling for decision. *The reasoning must not give rise to a substantial doubt as to whether the decision maker erred in law, for example, by misunderstanding some relevant policy or some other important matter or by failing to reach a rational decision on relevant grounds. But such adverse inference will not readily be drawn* (My emphasis). The reasons need only refer to the main issues in the dispute, not to every material consideration.

21. Ground 1 is that the Judge erred at paragraph [55] in applying the wrong test for insurmountable obstacles.
22. At paragraph [53], the Judge reminded himself of the definition of insurmountable obstacles contained in Appendix FM: namely, the very significant difficulties which would be faced by the applicant or their partner in continuing their family life together outside the UK and which could not be overcome or would entail very serious hardship for the applicant or their partner.
23. However, Mr Chakmakjian submits that the Judge failed to apply this test at paragraph [55] where he found that the appellant's husband would be able to "function" in Albania, despite his colour being an issue. Mr Chakmakjian submits that the Judge was thereby applying a higher test, ignoring the possibility of the husband being able to function, but only in circumstances which would entail very serious hardship for him.
24. It is tolerably clear that what the Judge had in mind when he referred to the husband being able to function in Albania was him being able to function at a level which would not entail very serious hardship for him. It is unreasonable to draw the adverse inference that, despite correctly directing himself as to the test in paragraph [53], the Judge had forgotten the correct test by the time he reached paragraph [55].
25. Mr Chakmakjian's subsidiary argument is that the Judge has not adequately explained in paragraph [55] why the appellant's husband would be able to function without serious hardship.
26. But the answer to this is to be found in the discussion of the expert evidence of Ms Young which immediately precedes the self-direction at paragraph [53].
27. The Judge noted that Ms Young's evidence about expressions of racism by the Albanian populace towards black people was entirely based on the experience of black Peace Corps volunteers ("PCVs") operating in the smaller towns and cities of Albania - not in the cosmopolitan capital of Albania, Tirana (see below) - which had been communicated to her by a former PCV (who had served for three years between 2007 and 2010), and whose evidence on the issue is analysed by the Judge at paragraphs [46] and [47]. Seth Pyerson reported harassment of black PCVs, one incident of a black PCV having rocks thrown at him; and black PCVs having issues

with regard to housing. Mr Pyerson expressly observed that Tirana was “different”. He said he was going to consult current Black African PCVs for their experiences. However, as the Judge observed, nothing further had been provided.

28. At paragraph [50] the Judge noted that the COIRs did not appear to cover issues in connection with the issue of colour. They concentrated on discrimination against Roma and other minority groups.
29. The Judge cited the Peace Corps document, “Diversity and Cross-cultural Issues in Albania” for the proposition that, “*although there are currently foreigners from a variety of countries and races in Tirana there are very few people of colour in the smaller towns and rural communities.*”
30. At paragraph [51], the Judge held:

“The Peace Corps document ... indicates that volunteers may encounter varying degrees of harassment in day-to-day life because of ignorance, stereotyped cultural perceptions or Albania’s historic involvement with certain countries. [H]owever, it is quite clear that this document does not advocate that people of colour do not go to Albania as volunteers.”
31. Since black members of the Peace Corp were not discouraged from going to Albania as volunteers, despite the varying degrees of racial harassment which they might face on a day-to-day basis, it was clearly open to the Judge to find that the requirements of EX.1 were not met for the reasons which he gave.
32. Ground 2 is that the Judge failed to give any, or any proper, weight to the issue of racism. Mr Chakmakjian submits that this erroneous approach is apparent from the following finding at paragraph [58]: “*Notwithstanding the issue of racism which I do accept takes place not only in Albania but across the world, I am not satisfied that the appellant has shown that this of itself even with other factors mentioned above would be sufficient to amount to insurmountable obstacles ...*”
33. Mr Chakmakjian submits that it is irrelevant that racism occurs across the world. He submits that the Judge has clearly overlooked the fact that Albania has a particular problem of endemic racism, and thus the appellant and her husband face a far higher risk of being the victims of racist action in Albania, compared to elsewhere.
34. In paragraph [58] the Judge is simply adding a gloss to his findings on the issue of racism which he has made earlier at paragraphs [54]-[56]. It is tolerably clear that he is not saying that because racism happens elsewhere in the world, this means that racism in Albania is - for that reason alone - something which the appellant and the husband must put up with. The Judge has earlier considered the expert evidence on racism towards black people in Albania, and also the Country of Origin Information Reports on the same topic. Having regard to the reported experiences of black PCVs, and the contents of the Peace Corps document cited at paragraphs [50] and [51], it was open to the Judge to find that the appellant had not shown that there were insurmountable obstacles to her and her husband carrying on family life in Albania on account of racism.

35. The Peace Corps document indicated that, although there were currently foreigners from a variety of countries and races in Tirana, there were very few people of colour in the smaller towns and rural communities. It was not within the contemplation of the Judge, or indeed the couple, that they would live anywhere elsewhere than cosmopolitan and multi-ethnic Tirana, where the risk of harassment on racial grounds would be less than in smaller towns or rural communities.
36. Ground 3 is that the Judge erred in failing to consider objective evidence regarding barriers to reintegration due to the lack of any family support. In particular Mr Chakmakjian takes issue with paragraph [60], where the Judge said: *“Although the appellant may not have any assistance from family in Albania, she would have assistance from her husband.”*
37. Mr Chakmakjian submits that the Judge irrationally presents the husband as being a panacea, when the objective evidence is that her husband’s presence will only increase the risk for the appellant. He submits that the Judge has given no reason for finding that a black Caribbean male will be able to protect the appellant in an alien, hostile society that speaks a different language from him.
38. I consider this error of law challenge is predicated on various premises which are not shown by the appellant’s claimed previous experiences to be tenable. As the Judge noted at paragraph [49], the appellant did not claim to have suffered harm on her return to Albania in 2003. On her account, she had lived an undisturbed life in a student hostel for a period of three years, and had obtained some employment in Tirana shortly before coming to the UK in 2006. In this period of her life, the appellant was, on her account, a lonely young woman without social status. Despite there being rumours of her having being a prostitute in England, she remained in her home town, living in a student hostel. She was able to maintain and accommodate herself. She did not become destitute. She did not resort to prostitution to survive. She did not become prey to traffickers. In short, none of the bad things that the expert opined were likely to happen to her on her return to Albania had materialised in the past, when she was objectively far more vulnerable.
39. It was not proposed that the appellant and her husband should return to her home town, where rumours of her being a prostitute had circulated. It was open to the Judge to find that her former history would not come to light in Tirana.
40. Against this background, it was not perverse of the Judge to find that the presence of her husband would be of assistance to her in her reintegration into life and society in Albania. Instead of returning to Albania as a lone woman potentially vulnerable to trafficking on that account, she would be returning with the status of a married woman. It was clearly open to the Judge to find that overall it would be advantageous to the appellant in readjusting to life in Albania to have her husband alongside her, having earlier found that there were not insurmountable obstacles to them carrying on family life together on account of them being a mixed race couple.

Notice of Decision

The decision of the First-tier Tribunal did not contain an error of law, and accordingly the decision stands. This appeal to the Upper Tribunal is dismissed.

I make no anonymity direction.

Signed

Date 18 May 2018

Judge Monson
Deputy Upper Tribunal Judge