



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal no: IA/20061/2015

THE IMMIGRATION ACTS

Heard At Rolls Building
on 21.05.2018

Decision and Reasons Promulgated
On 31 May 2018

Before:

Upper Tribunal Judge
John FREEMAN

Between:

Mehrdad [A]
(anonymity direction not made)

appellant

and

Secretary of State for the Home Department

respondent

Representation:

For the appellant: *Deborah Revill* (counsel instructed by Ata & Co, Harrow)

For the respondent: Mr Ian Jarvis

DECISION AND REASONS

This is an appeal, by the appellant, against the decision of the First-tier Tribunal (Judge Kamini Roopnarine-Davies), sitting at Taylor House on 6 June 2017, to dismiss a dependent partner appeal by a citizen of Iran, born 1986.

2. Permission was given on all grounds:

- (i) the judge seemed to have relied on her own research in reaching two conclusions of fact, to which I shall return;

*NOTE: (1) no anonymity direction made at first instance will continue, unless extended by me.
(2) persons under 18 are referred to by initials, and must not be further identified.*

- (ii) medical evidence available to the judge showed that the health of the sponsor ([AY], a Turkish citizen with indefinite leave to remain here) was likely to decline if she were put under stress (as by having to go and live in Turkey with the appellant); and
 - (iii) an application by the appellant for entry clearance was in any case likely to succeed.
3. The two points of fact referred to in (i) both come in the judge's paragraph 12. First there is here statement that "The background evidence (*unreferenced*) is that there are similarities between Farsi and Turkish language". This I am afraid is plain wrong: while the two languages share a number of words of Arabic origin, derived from their common Islamic heritage, Persian is an Aryan language, like English and most European ones, while Turkish is in a group of its own.
 4. The other point was the judge's statement that "Turkey is today a prosperous country with a booming economy". This on the other hand (whatever may be thought of that country's government) is a matter of common knowledge to anyone with a passing interest in this part of the world. While it would have been better for the judge to make some reference to it during the hearing, so that Miss Revill could have commented on it as she wished, there was nothing wrong in law in mentioning it. I can take account of both these points in reaching my decision, if necessary.
 5. The medical evidence came in a letter to the sponsor's GP from Mr Anthony Silverstone, a consultant gynaecologist, who had seen her on 20 May 2016. The sponsor, then 39, had complained of heavy periods, which medical advice in Istanbul had already suggested were stress-related. Mr Silverstone agreed, and saw no significant gynaecological problem; but he too said, referring to these proceedings "The situation is very difficult indeed, and I am sure that this is contributing to her period problem".
 6. The judge dealt with this point without referring to Mr Silverstone's letter, but fairly setting out the appellant's own evidence at 11. She concluded at 14 that "It was not argued that medication and treatment was not available in Turkey and scant evidence that it was likely to worsen there". The sponsor's real problem is of course stress, and its effects: it is likely only to be a question of degree whether that would be worse when setting up house afresh in her own country with her partner (they have been through an unrecognized religious ceremony of marriage here, but there does not seem to be any reason why they should not be lawfully married in Turkey), compared to how it has been during the undoubted stress of this case, now on its second appearance before the Upper Tribunal.
 7. I do not think the judge can be regarded as wrong in law in not regarding the effects of the sponsor's condition as amounting to 'insurmountable obstacles' to her and the appellant's going on with their family life in Turkey, as required by the Rules; still less to the 'compelling circumstances' (see *Agyarko and Ikuga* [2017] UKSC 11) required for consideration of article 8 outside the terms of the Rules.
 8. The final point is on the argument raised in ground (iii), and dealt with by the judge at 18. The respondent's grounds for refusal under the 'partner route' had been that the appellant and the sponsor were unable to show they were or had been (my numbering: as usu:none):
 - (a) living together for at least two years

- (b) in a genuine and subsisting relationship
- (c) (since the appellant was an overstayer) to satisfy the requirements of EX.1

9. On (a) the judge made no express finding, though there may have been no real issue about it, even then, and certainly there seems to be none now. She accepted the appellant's case on (b); but her decision was really about (c). EX.1 would not have to be satisfied on an entry clearance application; but the same financial requirements would apply as those referred to in the decision letter. The decision-maker had not been satisfied that the sponsor could show the necessary gross annual income of at least £18,600 by the prescribed methods. No further details were given on this point; but the judge had said this (at 18):

Given that the sponsor's income is derived from employment and self-employment it has not been shown that the financial requirements have been met in form or substance. Although special weight should not be afforded to [*the Rules on this point*] - *MM (Lebanon) & others* [2017] UKSC 10 – there must still be cogent evidence on balance that the couple will be able to support themselves by reference to the minimum threshold. I find there was not.

10. The appellant's case here is that the sponsor could meet the minimum threshold. While at 14 the judge took the view that her evidence about her business here was not entirely candid, she made this finding in dealing with the sponsor's contention that she would not be able to carry on her self-employment to the same level in Turkey (and so would face at least serious obstacles to family life there). The judge apparently rejected this on the basis that the sponsor's employed earnings had in fact been more significant: she noted, without expressing any doubt on this (and by implication the reverse), that in the last available tax year (2016 – 17) the sponsor had employed earnings of over £16,000, and £5,000 self-employed.

11. That would be more than enough to satisfy the minimum income requirements of the Rules. The judge, and Mr Jarvis, correctly referred to the other leading authority on this point, *Agyarko and Ikuga* [2017] UKSC 11: the relevant passage is this (at 51 in the judgment of the Court, drawing a distinction between this type of case and ones involving deportation

If, on the other hand, an applicant - even if residing in the UK unlawfully - was otherwise certain to be granted leave to enter, at least if an application were made from outside the UK, then there might be no public interest in his or her removal.

12. Miss Revill incorrectly stated the test (in her unusually lucid and concise – for this field – written grounds) as being (see paragraph 9) whether an application for entry clearance was *likely* to succeed. However, Mr Jarvis did not go further than pointing out this error, and arguing, correctly, that the income requirements had to be met as a matter of certainty.

13. Since that is the only remaining basis on which entry clearance might be refused, and since the judge effectively accepted the sponsor's tax figures, on which her decision was not challenged by Mr Jarvis, I do not see how it can be said that in this case leave to enter would *not* be certain to be granted. The result is that the appeal is allowed on this ground.

Appeal allowed

A handwritten signature in black ink, consisting of stylized, cursive letters that appear to be 'JLH' followed by a horizontal flourish.

(a judge of the Upper Tribunal)

Dated 26 May 2018