



IAC-AH-SC-V1

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

Appeal Number: OA/05627/2015

THE IMMIGRATION ACTS

**Heard at Bradford
On 30 August 2018**

**Decision & Reasons
Promulgated
On 4 October 2018**

Before

UPPER TRIBUNAL JUDGE LANE

Between

**ZOHRA BENMERABET-SAID
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Not present or represented

For the Respondent: Mr McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, Zohra Benmerabet-Said, was born on 6 September 1986 and is a female citizen of Algeria. The appellant had applied for entry clearance to the United Kingdom for indefinite leave to remain as the spouse of Mr Hamid Benmerabet-Said (hereafter referred to as the sponsor). The sponsor entered the United Kingdom in 1993 and claimed asylum. Although his application was refused by the respondent he was nevertheless given indefinite leave to remain in 2010. The sponsor and the appellant married in Algeria on 6 June 2012. The appellant's

application to join her husband was refused by the Secretary of State and the appellant appealed to the First-tier Tribunal which dismissed her appeal. She now appeals, with permission, to the Upper Tribunal.

2. The appellant's representatives did not attend the hearing before the Upper Tribunal in Bradford on 30 August 2018 nor was she represented. I am satisfied that the notice of hearing was sent to the appellant's representatives (Kirklees Law Centre) by second class post on 25 July 2018. It appears a copy of the notice of hearing may also have been sent to the United Kingdom sponsor. The appellant has provided no explanation as to why the representative or the sponsor did not attend court (I assume the appellant herself remains living in Algeria). In the circumstances, I proceeded with the hearing in the absence of the representative and/or the sponsor.
3. The appellant had been represented before the First-tier Tribunal (Mr M F Ali) and the representative, on behalf of the appellant, had accepted [First-tier Tribunal determination, 21] that the appeal could not succeed under the Immigration Rules because of the problems identified by Judge Kelly [4(ii) and (iii)] concerning the failure of the sponsor's two employers' letters to mention the length of employment of the period over which he had been paid his salary at the required level. Thereafter, Judge Kelly had moved on to consider Article 8 ECHR. The judge accepted that family life had been established. The couple have a daughter who is an Algerian citizen. At [25], Judge Kelly wrote:

"There is nothing in relation to the facts of this case that suggest that the decision of the appellant and the sponsor [to reside] in the United Kingdom arises from anything other than choice as opposed to necessity. I am not therefore satisfied that the consequences of the decision are sufficient to engage the potential operation of Article 8."
4. Notwithstanding that finding, the judge went on to consider proportionality. He noted that, "the sponsor has lived and worked in the United Kingdom for some thirteen years. He nevertheless remains fluent in Arabic, French and Algerian languages. All his close family members ... continue to reside in Algeria." The judge identified the only possible obstacle to married life being continued in Algeria as being the loss of the sponsor's United Kingdom employment. However, he found that the,

"... with the sponsor's continuing cultural and familial links to Algeria, that obstacle would be easily overcome or at least without undue hardship to any member of the family. The judge found that the refusal of entry clearance strikes a fair balance between the rights and interests of the appellant and her daughter on the one hand and the wider public interest in maintaining immigration controls on the other."
5. The application for permission to the First-tier Tribunal was refused by a decision of Judge Martins which is dated 3 March 2018. On renewal to the Upper Tribunal, permission was granted by Judge McWilliam by a decision dated 10 July 2018. I confess that I am surprised that permission has been

granted in this case. First, Judge McWilliams' reason for granting permission (that it was arguable that the judge had not considered evidence of the sponsor's earnings in connection with Article 8) was not actually pleaded in either set of grounds of appeal. I am aware that the Upper Tribunal should not interpose its own reasons for challenging a First-tier decision save in exceptional circumstances. It should, instead, address only those grounds which are actually pleaded. Both sets of grounds of appeal are short and singularly unhelpful. The grounds argue that the sponsor has spent many years living in the United Kingdom and cannot "merely uproot himself" and go to Algeria whilst the best interests of the child (who is resident in Algeria) had not been considered. Contrary to what is said in the grounds, those issues were considered by the judge who reached clear and cogent findings supported by the evidence. Both sets of grounds of appeal complain that the judge placed too much weight on the fact that the sponsor could relocate to Algeria. With respect, that consideration was quite properly central to the judge's analysis of the appeal on Article 8 ECHR grounds. There is no evidence at all in this appeal to suggest that family life could not be reasonably pursued in Algeria. The finding that it could reasonably be pursued there finding was available to the judge and, having made it, the judge had no alternative but to dismiss the appeal. The grant of permission by Judge McWilliam is puzzling. The appellant's representative had accepted that the appeal could not succeed under the Rules. The appellant had accepted that she had provided inadequate evidence of the sponsor's earnings. It is not clear to me why the judge should have accepted other, less adequate evidence of the sponsor's income than that required by HC 395 (as amended) and, in consequence, allowed the appeal under Article 8. Indeed, whatever the evidence regarding the sponsor's income, the appeal fell only to be considered under Article 8 in the First-tier Tribunal and the judge's unequivocal finding that family life could reasonably be continued in Algeria effectively disposed of the appeal.

6. In the circumstances, the appeal is dismissed.

Notice of Decision

7. This appeal is dismissed.

8. No anonymity direction is made.

Signed

Date 26 September 2018

Upper Tribunal Judge Lane

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date 26 September 2018

Upper Tribunal Judge Lane