



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

Appeal Number: PA 06584 2018

**THE IMMIGRATION ACTS**

**Heard at FIELD HOUSE  
On 26.9.2018**

**Decision and  
Promulgated  
On 03.10.2018**

**Reasons**

**Before**

**DEPUTY JUDGE OF THE UPPER TRIBUNAL  
G A BLACK**

**Between**

**MISS T L B  
(ANONYMITY ORDER MADE)**

Appellant

**and**

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

Respondent

**ANONYMITY ORDER MADE**

**Representation:**

For the Appellant: Mr CG Talacchi (Counsel )

For the Respondent: Mr I Jarvis (Home Office Presenting Officer)

**ERROR OF LAW DECISION AND REASONS**

1. This is an error of law hearing. The appellant appeals against the decision of the First -tier Tribunal (Judge N. Lodge)(“FtT”) promulgated on 4<sup>th</sup> July 2018 in which the appellant’s appeal on protection and humanitarian grounds was dismissed.

### **Background**

2. The appellant is a citizen of Vietnam born on 18.10.1972.

### **Grounds of appeal**

3. In grounds for permission to appeal the appellant argued that the FtT erred by applying the incorrect burden and standard of proof to her genuine and subsisting relationship [65-66] following **Goudey** (subsisting marriage – evidence) Sudan [2012] UKUT 00041 (IAC) and failing to take into consideration the oral evidence given by the appellant and her partner.
4. The FtT erred by considering Ex 1(b) having found that there were no insurmountable obstacles to family life outside the UK [66] and considered material that was irrelevant .
5. The FtT ought to have considered the appeal out side of the Rules having regard to strong and compelling circumstances.

### **Permission to appeal**

4. Permission to appeal to the Upper Tribunal (UT) was granted by FTJ SPJ Buchanan on 6.8.2018. In granting permission the FTJ considered that the FtT had not specifically considered the oral evidence in reaching conclusions as to the genuine and subsisting relationship. The FtT stated that “there is no requirement to look beyond the rules” and thus it was arguable that the FtT erred and ought to have considered Article 8 outside the Rules.

### **Submissions**

5. At the hearing before me Mr Talacchi argued that the main complaint was the finding in relation to the genuine and subsisting relationship and that there had been no reference to the oral evidence at all in that context. The appellant had also adduced evidence of an invoice for medical treatment received following a miscarriage and that the sponsor was the father of the child. The FtT had not considered this evidence. There had been no cross examination of the witnesses challenging their relationship. The FtT failed to consider or make findings on evidence of harassment in Vietnam relied on by the sponsor relevant to insurmountable obstacles test. The FtT failed to consider Article 8 and to apply section 117B and made no findings as to proportionality.
6. In response Mr Jarvis contended that the FtT had considered the main claim for asylum and found the appellant not to be credible. There was no support for the contention that the respondent had not challenged the genuineness of the relationship and Counsel had not appeared before the FtT. The FtT had made findings as to inconsistencies in the evidence

between the parties as to addresses [23 & 27]. There was no formal concession by the respondent that the parties were in a genuine relationship. The FtT was entitled to look at the extent to which it was corroborated in documentary evidence.

7. There was no material error in the FtT considering Ex 1 and paragraph 276ADE. Whilst no findings were made as to the sponsor's evidence the FtT referred to it in the decision at [25 & 26] and in any event it could not have amounted to insurmountable obstacles. The FtT had not considered Article 8 outside of the Rules.
8. The grounds were simply wrong by reference to **Goudey**. The burden was on the appellant to show that she met Appendix FM in terms of a genuine and subsisting relationship.

### **Discussion and conclusion**

9. I find no material error of law in the FtT's assessment of whether or not the appellant was in a genuine and subsisting relationship. There was no allegation made by the respondent that the appellant had entered into a marriage of convenience and so the burden was on the appellant to show that she met the Rules on family life under Appendix FM. There is no material error on the issue of Ex1.
10. I accept that the FtT did not make specific findings in respect of the oral evidence of either the appellant or the sponsor as to the genuineness of their relationship, however, I am satisfied that this was not a material error. The FtT did not believe the appellant in her asylum claim and having regard to the witness statement and the record of proceedings, I am satisfied that the oral evidence amounted to a confirmation of the relationship and cohabitation between 2015-2017. There was some cross examination as to how the parties met and where they lived. There was no witness statement from the sponsor. Even if the FtT failed to specifically reject the oral evidence, it was entitled to consider the documentary evidence relied on and to conclude that there was insufficient evidence to meet the criteria for a genuine and subsisting relationship. The FtT set out the oral evidence of both the appellant and the sponsor [27-30 & 10-11] and referred to discrepancies in their evidence as to places where they claimed to live. There was no submission made that any particular aspect of the oral evidence would have had a material impact on the decision made. Further, the fact that there was no major challenge by the respondent takes the matter no further. The record of proceedings recorded that the respondent submitted that there was little direct evidence of the relationship. The FtT was entitled to place weight on the documentary evidence. The evidence to the medical treatment received by the appellant did not substantiate that there was a genuine and subsisting relationship as there was no reference to the sponsor as the father and no evidence that it was he who paid for the treatment.

11. This was primarily an asylum appeal and the grounds of appeal did not argue that Article 8 was relied on and there is no record of such a submission being made at the hearing before the FtT. I accept that the FtT did not go on to consider Article 8 outside of the Rules. However, it made clear that it had considered the same and had regard to the fact that no argument had been made to suggest that there was anything outside of the rules capable of justifying consideration under Article 8 (**SSH D V SS(Congo) & ors** [2015] EWCA Civ 387 ). There was no argument put to me at the hearing that there were compelling circumstances to support Article 8 or that any interference would be disproportionate, given that the FtT had found there was not a genuine and subsisting relationship.
12. In conclusion the appellant has failed to make out her grounds of appeal and I dismiss the appeal.

**Decision**

13. There is no material error of law disclosed in the decision which shall stand.

Signed

Date 27.9.2018

GA Black

Deputy Judge of the Upper Tribunal

ANONYMITY ORDER MADE

**Direction Regarding Anonymity - rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014**

Unless and until a tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

NO FEE AWARD

Signed

Date 27.9.2018

GA Black

Deputy Judge of the Upper Tribunal