



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/05624/2017

THE IMMIGRATION ACTS

Heard at Glasgow  
On 21 March 2019

Decision & Reasons Promulgated  
On 10 May 2019

Before

MR C M G OCKELTON, VICE PRESIDENT  
DEPUTY UPPER TRIBUNAL JUDGE MACLEMAN

Between

[L S]

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Winter, Advocate, instructed by Katani & Co. Solicitors.  
For the Respondent: Mr Govan, Senior Home Office Presenting Officer.

DETERMINATION AND REASONS

1. The appellant is an undocumented Bidoon from Kuwait. She is recognised as a refugee in Sweden. Mr [N J] is also an undocumented Bidoon from Kuwait. He has refugee status in the United Kingdom. The two of them have a relationship: whether

or not it is recognised as a valid marriage in the United Kingdom, in Sweden, or anywhere else is not entirely certain.

2. The appellant made an application under paragraph 352A of the Immigration Rules for reunion with Mr [J] as his wife. It is, as we understand it, accepted not merely that that application could not succeed, but that it was clear from the beginning that it could not succeed. The appellant then claimed that despite not being able to succeed under the Immigration Rules, it would be disproportionate, and a breach of article 8 of the European Convention on Human Rights, not to admit her to the United Kingdom to live with Mr [J], following the application under paragraph 352A which she had made.
3. Judge Agnew, who heard the appeal in the First-tier Tribunal, concluded that the two of them were not legally married but that they had a relationship that she was prepared to recognise for the purposes of article 8. She noted, however, that they had only lived together for a very short period of time, and that if they wish to live together now there seemed to be no reason why Mr [J] should not live with her in Sweden. Further, as the judge noted, there are other avenues which they might pursue in order to live together in the United Kingdom: for example, the appellant might apply for a visa with a view to entry as a fiancée. Judge Agnew dismissed the appeal.
4. The grounds of appeal to this Tribunal assert that there were areas of law in assessing proportionality. Permission to appeal was granted by Judge Scott Baker: her determination does not really indicate what point she considered arguable, or why.
5. So far as concerns the matters that were canvassed before the First-tier Tribunal Judge, it is clear beyond peradventure that the appellant and those acting for her made no attempt at all to demonstrate why she should be granted entry outside the Immigration Rules, having failed to attempt to establish any right under the Rules. The formal details of the relationship were elusive; the details of the relationship itself were vestigial; there was no evidence of the circumstances in which the appellant is living now or in which the couple would live if she were admitted. A claim based on article 8 outside the Rules needs to be accompanied by evidence both of the circumstances the continuation of which is said to amount to a disproportionate interference with the individual's family and private life, and some comparative information from which it could be concluded that the proposed remedy overcomes that disproportionality. Without such material, a claim based on article 8 is hopelessly inchoate.
6. For those reasons the judge was obviously right to reach the conclusions she did.
7. There is a further issue, which was not canvassed before her. As we pointed out to Mr Winter, the appellant appears to have made no attempt to have her refugee status transferred to the United Kingdom. In general, as we put it to him, the question is why, on the evidence, is it said that it is disproportionate to expect the appellant to

make the correct application instead of trying to build on the refusal of an application which could not succeed. He indicated that he had no sensible response to that point. We did not need to call upon Mr Govan.

8. The appellant's appeal is dismissed.

C. M. G. OCKELTON  
VICE PRESIDENT OF THE UPPER TRIBUNAL  
IMMIGRATION AND ASYLUM CHAMBER  
Date: 23 April 2019