



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/00278/2019

THE IMMIGRATION ACTS

Heard at Field House
On 19 August 2019
Extempore Decision

Decision & Reasons Promulgated
On 10 September 2019

Before

UPPER TRIBUNAL JUDGE SHERIDAN

Between

MM
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Iengar, Counsel instructed by Osprey solicitors
For the Respondent: Mr Avery, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Ukraine who entered the UK unlawfully in 2007 and remained without leave.
2. In 2018 the appellant made a human rights and protection claim. He claimed that he would be at risk on return to Ukraine because he had evaded military service. He also claimed that removing him from the UK would breach article 8 ECHR because he is in a relationship akin to marriage with an EEA national that he has been living with since 2014.
3. In a decision promulgated on 27 March 2019, First-tier Tribunal Judge Khan dismissed the claim. The judge did not find the appellant credible. At paragraph 43

of the decision the judge described the evidence of the appellant and his partner as “extremely vague and evasive”. In respect of the asylum claim, the judge found that the appellant “was simply making up his evidence as he went along”. With regard to the article 8 claim, the judge found at paragraph 48 of the decision that there were clear inconsistencies between the evidence of the appellant and his partner and concluded that the evidence did not establish that the relationship was genuine.

4. The grounds of appeal make only one argument, which is that the judge failed to give clear reasons why no weight was given to the evidence of the appellant’s partner. Ms Iengar submitted that the judge gave inadequate consideration to the evidence supporting that there is a genuine relationship between the appellant and his partner, including four separate letters in support. She acknowledged that the appeal only relates to article 8 and that the judge’s decision in relation to the protection claim is not being challenged.
5. As this appeal turns on the evidence of the appellant’s partner, it is necessary to consider both what she said in her evidence and what was not included in her evidence. The evidence of the appellant’s partner, as set out in her witness statement, is that she is a citizen of Latvia who has been in a relationship with the appellant since 2014, that they live together and that although they are not married the relationship is as if they are husband and wife. The appellant’s partner did not give evidence about any children who would be negatively impacted by the appellant’s removal from the UK, or any obstacles to the relationship continuing outside the UK, either in Latvia or Ukraine.
6. Even if the judge had accepted the evidence of the appellant’s partner in full, that evidence could not, on any legitimate view, have changed the outcome of the appeal. The relationship between the appellant and his partner commenced (and developed) when the appellant was in the UK unlawfully and therefore at a time when he had no legitimate basis either for being in the UK or for believing that he was entitled to remain in the UK on a permanent basis. There was no evidence before the First-tier Tribunal (from the appellant’s partner or anyone else) to support a finding that there would be obstacles to the relationship continuing outside the UK. Moreover, there was no evidence to indicate that any child would be adversely affected by the removal of the appellant. Taking these factors together there was simply no basis upon which a judge could have allowed the appeal under article 8 on the basis of the appellant’s relationship with his partner or on the basis of the evidence given by his partner.
7. The error that is said to undermine the decision of the First-tier Tribunal is that there was inadequate consideration of, or inadequate reasons given for rejecting, the evidence of the appellant’s partner. However, given that this evidence could not, even taken at its highest, have affected the outcome of the appeal, I am satisfied the judge gave it sufficient consideration.


Decision

The appeal is dismissed and the decision of the First-tier Tribunal stands.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

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.

Signed

A handwritten signature in black ink, appearing to be 'SJ', followed by a horizontal line extending to the right.

Upper Tribunal Judge Sheridan

Dated: 28 August 2019