



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

Appeal Number: HU/17280/2019
HU/17042/2019
HU/17043/2019

THE IMMIGRATION ACTS

**Heard at Manchester CJC via Decision & Reasons Promulgated
Skype On 30 October 2020 On 03 December 2020**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

**LEJLA TABAKOVIC
DINO TABAKOVIC
OMER TABAKOVIC**

(Anonymity direction not made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Komusanac of Igor & Co Solicitors.

For the Respondent: Mr S Kotas, Senior Home Office Presenting Officer.

ERROR OF LAW FINDING AND REASONS

1. The appellants' a family unit composed of a mother and her two adult sons, all citizens of Bosnia and Herzegovina, appeal with permission the

decision of First-tier Tribunal Judge Richardson ('the Judge') promulgated on 10 February 2020 in which the Judge dismissed the appeals on human rights grounds.

2. Permission to appeal was refused by another judge of the First-tier Tribunal but granted on a renewed application by the Upper Tribunal. The operative part of the grant being in the following terms:
 - “3. The grounds of appeal contend, in summary, as follows. Firstly, that the First-tier Tribunal failed to decide whether there would be very significant obstacles to integration on return to Bosnia and Herzegovina by applying the correct test set out in *SSHD v Kamara* [2016] EWCA Civ 81 and the facts of this case which include significant on going threats of domestic violence and mental health problems; secondly it is argued that little weight is wrongly given to the private lives of the appellants because of their precarious residence but given that this private life is found to be “substantial” by the First-tier Tribunal this is not correct in light of the decision of the Supreme Court in *Rhuppiah* [2018] UKSC 58.
 4. The grounds are arguable. It is arguable that there was a failure to address the test in *Kamara* with a fact specific analysis looking at all the evidence in the round.”

Background

3. At [13] the Judge writes: “I found all the witnesses gave their evidence sincerely and in a straightforward manner and I accept their written and oral evidence. Mrs Tabakovic clearly found the evidence about the abuse she had suffered a testing experience.”
4. The Judge refers to an earlier decision by First-tier Tribunal Judge Hawden-Beale promulgated on 13 February 2014 in which it was found at [25]:
 - “25. Although I have every sympathy with the appellants and their wish to stay here in the UK, which would undoubtedly give them a happier and probably much better life, there is protection available to her and her sons in Bosnia in spite of the first appellant’s claims and they can take action against their husband/father. The first appellant has reported her husband before not only for the assault in 2002 but also for the threats in 2010 and the authorities did take action, albeit that the action they took 2010 was constrained by the first appellant herself. Given that I am satisfied that protection, albeit limited, is available to the appellant and her sons in Bosnia and that they still have family there who have assisted them in the past, I find that there are no compelling circumstances which merit a grant of leave to remain outside the rules under Article 8, nor do I consider that it would be unjustifiably harsh to expect them to return to family with whom they live from 2010 - 2012.”
5. The appellant asserts the Judge failed to consider country information or the question of integration, focusing solely on sufficiency protection and failing to undertake the required broad holistic assessment. It is also asserted the Judge failed to consider the issue of the appellant’s private

life on return or relationships and applied the wrong test between [9] and [12]. It is asserted the appellant has PTSD but there is no evidence regarding availability of treatment in Bosnia. The case was not about article 3 ECHR on medical grounds and the lack of treatment, but the appellant argues the Judge was required to factor this into the assessment.

6. The Judge is criticised in the article 8 assessment. The appellant asserts the Judge has some flexibility in determining the weight to be given to a person's private life even if their immigration status is precarious and that the Judge was required to consider this on the basis of his or her own discretion and not limit matters.
7. It is also asserted the Judge erred as the issue in relation to article 8 was the proportionality of the decision. The appellant argues there are barriers to the appellants reintegration; being lack of police protection, being the victim of domestic violence, the medical condition of the first appellant and how it will deteriorate on removal, length of residence in the United Kingdom of eight years, stability in the United Kingdom with another family member (her uncle) in the UK, and lack of support on return.

Error of law

1. Full consideration has been given to the submissions and written pleadings forming the grounds of appeal.
2. The Judge sets out the correct self-direction at [7] that in a human-rights appeal the relevant point at which the issues have to be considered is at the date of hearing.
3. Even if the Judge did not mention Kamara the grounds do not establish a material misdirection in the approach taken by the Judge or the manner in which the evidence was assessed.
4. The Judge clearly considered the issue of domestic violence and whether the same would amount to very significant obstacles to integration into Bosnia.
5. The Judge clearly considered country material and the medical evidence that had been provided.
6. The appellants had not established they are 'outsiders' and there was no evidence before the Judge that either the first appellant or her children had lost their language skills, knowledge of life in Bosnia, or would not be accepted on return or be able to integrate.
7. As noted, there was no contact with the appellant husband and the two sons are now adults. The findings at [24] relating to the lack of very significant obstacles to integration has not been shown to be a finding outside the range of those available to the Judge on the evidence. In that paragraph the Judge writes:

“24. Therefore on the evidence before me and given the previous judge's finding on the sufficiency of protection I find that the first appellant could seek assistance from the Bosnian authorities if she considered that she was at risk from her husband. Since the appellants left Bosnia the evidence provided in the appellant's bundle which I was taken to by Mr

Komunsanac shows, in my view, that the treatment and protection of victims of domestic violence has improved from around 2012 due to the introduction of new legislation, the training of police and the provision of services for victims of domestic abuse by both the authorities and NGOs. I accept that may require the first appellant to make a positive report against her husband and pursue any action against him but from the evidence before me I find that there is sufficiency of protection from the Bosnian authorities so that the threat of domestic violence from her husband and her sons does not create the “very significant obstacles” that are required. Furthermore for the reasons given above there are no other grounds that on the evidence before me allow me to find that there are very significant obstacles to them living in Bosnia.”

8. Having found the appellant unable to succeed under the Immigration Rule the Judge went to consider article 8 ECHR. There is merit in the submission of Mr Kotas that the Judge was not required to set out the matters which had previously been considered or the findings made again.
9. The Judge undertakes a properly structured assessment in which competing interests are weighed against each other.
10. It has not been made out that the weight the Judge gave to the evidence, due to immigration status or otherwise, was irrational.
11. In relation to health matters the Judge writes at [20]:

“20. Mr Komunsanac also highlighted medical condition of first appellant. I was taken to two letters from the appellant’s GP [AB2 27-29]. They explain that her GP records show that she has a history of anxiety and depression as well as post-traumatic stress disorder. Her GP believes her condition is one of severe anxiety and feels that if the appellant is returned to Bosnia mental health would deteriorate further. The appellant has been referred to the wellbeing services for help with her PTSD however she is still awaiting an appointment. I accept the appellants evidence on this point but I have no evidence that the appellant could not seek assistance or treatment in Bosnia. In light of this I am not satisfied that her medical conditions provide sufficient reasons that would prevent or seriously inhibit her from being able to integrate into the county of return.”

12. The Judge’s conclusion is set out at [30] in the following terms:

“30. Therefore, in totality, and having considered all the evidence presented me in the round, and after referring to my findings given in paragraphs 17 to 24 above, I find that any interference would be in accordance with the law, and for the legitimate public and necessary in a democratic society of the interests of the economic well-being of the country referred to in Article 8(2) which includes the maintenance of proper immigration control. There is nothing before me which is capable of showing that the decision to refuse the appellant’s permission to remain in the UK would constitute a disproportionate interference

under any freestanding Article 8 claim in considering their matters outside the Immigration Rules.”

13. Whilst it is understandable that the appellants may wish to remain in the UK article 8 does not give a person the right to choose where they wish to live.
14. Whilst the appellants disagree with the manner in which the Judge assessed the evidence, the findings made, and suggests alternative more favourable findings, it has not been made out that those findings actually made are outside the range of those reasonably open to the Judge on the evidence. The finding in relation to the medial evidence does not undermine the decision on proportionality, and in fact supports it.
15. The Court of Appeal have reminded appellate courts that they should not interfere with a decision of a judge below unless there is good reason to do so based upon established legal error material to the decision. In this appeal the appellant has failed to establish sufficient legal error material to the decision to warrant the Upper Tribunal interfering any further in relation to this matter.

Decision

16. **There is no material error of law in the Immigration Judge’s decision. The determination shall stand.**

Anonymity.

17. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....
Upper Tribunal Judge Hanson

Dated the 26 November 2020