IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-002096

First-tier Tribunal No:
HU/52275/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 10th of October 2022

Before

DEPUTY UPPER TRIBUNAL JUDGE JARVIS

Between

MERIA NOKA
(NO ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr J. Dhanji, Counsel instructed by M & K Solicitors Ltd.
For the Respondent: Mr D. Clarke, Senior Home Office Presenting Officer

Heard at Field House on 22 September 2023

DECISION AND REASONS

Introduction

1. The Appellant appeals against the decision of First-tier Tribunal Judge Young-Harry (hereafter "the Judge"), promulgated on 2 February 2022, in which the Judge dismissed the Appellant's Article 8 ECHR appeal.

2. The Appellant's claim centres around her marriage to her husband (the Sponsor) who is a Kosovan national settled in the UK; her desire to continue her family life with him in the UK and her concerns about returning to Kosovo.

3. The initial Grounds for permission to appeal to the Upper Tribunal were drafted by different counsel (Mr Vokes) and were refused by Judge Loke on 1 April 2022. The Appellant's current counsel, Mr Dhanji, renewed his own Grounds directly to the Upper Tribunal on 13 April 2022 - permission was granted by Upper Tribunal Judge Sheridan on 12 August 2022.

4. In the decision to grant permission, the Upper Tribunal Judge gave permission on the two Grounds raised by Mr Dhanji in his renewed challenge.

The Appellant's challenge

5. Mr Dhanji raises two challenges to the detailed decision of the Judge:

    a. That the Judge acted unlawfully by failing to factor into the assessment of whether or not there are insurmountable obstacles to the family life between the Appellant and the Sponsor continuing in Kosovo (by reference to EX.1. read with EX.2. of Appendix FM), the Appellant's evidence that her family had threatened to kill her and the Sponsor if she did not end her relationship with him.

    b. Furthermore, it is asserted that the Judge erred in the assessment of proportionality under Article 8(2) ECHR by failing to apply the Respondent's own concession (recorded at para. 13 of the judgment) that the Appellant met the English language requirement of Appendix FM and by concluding (at para. 29) that the Appellant was unlikely to speak English and therefore could not take the neutral benefit of section 117B(2) of the NIAA 2002.

The error of law hearing

6. I heard helpfully concise but detailed submissions from both representatives to whom I am grateful. In his opening submission, Mr Dhanji confirmed that he was not relying upon any of the arguments made by Mr Vokes in the undated Grounds of challenge to the First-tier Tribunal and he therefore focused upon the two arguments I have summarised above.

Findings and reasons

Ground 1

7. In short, Mr Dhanji contended that it was not enough for the Judge to refer to the Appellant's claim that her family had disowned her for marrying the Sponsor (on 5 May 2021) at paras. 21 & 26 – he averred that the Judge was required to engage with (and make a clear finding on) the Appellant and Sponsor's evidence in their respective witness statements that they have been subject to threats from the Appellant's family.

8. I accept Mr Dhanji's submission that there is no specific reference to the joint evidence that the Appellant's family in Kosovo would seek to harm either her or the Sponsor and I also agree that there is sufficient detail in the two witness statements and the Judge's broad reference to the Appellant being 'disowned' to conclude that the matter was argued before the Judge.

9. However, ultimately I accept the Respondent's argument that this deficiency is not a material error on the basis that at the end of para. 26, the Judge notes the Appellant's claim that she could not return to her family in Kosovo but found that, if this claim was true, that she could return to Kosovo and live in a different part of the country away from her family. The latter finding has not been challenged with any real vigour and I conclude that it is an answer to this aspect of the Appellant's challenge.

10. For completeness, I also accept Mr Dhanji's submission that the Judge's conclusion that the Appellant could turn to familial ties as part of the process of reintegrating into Kosovo by reference to the very significant obstacles test in para. 276ADE(1)(vi) of the Rules (see para. 23), is somewhat inconsistent with the later finding that the Appellant could not return to her family (para. 26) but again, I conclude that this is not a material error.

11. In my view the real focus of para. 23 is upon alternative forms of support which the Appellant could draw upon, including from a friend that she has in Kosovo as well as any financial support from her husband in the UK. Additionally, the Judge also concluded (at para. 21) that there were no insurmountable obstacles to the Sponsor relocating to Kosovo with her and therefore she would not be returning as a lone woman without support. I have already explained why, in my view, the Judge did not err in regards to the claim of threats to kill from the Appellant's family.

12. I therefore conclude that Ground 1 does not establish a material error of law in the Judge's conclusions on insurmountable obstacles.

Ground 2

13. Mr Clarke quite properly accepted that the Judge had erroneously failed to acknowledge the Respondent's concession in respect of the Appellant's English language ability (at para. 13) when assessing proportionality under Article 8(2) at para. 29 of the judgment.

14. Mr Clarke however argued that this error could not be material for two reasons: firstly, the Judge's findings in respect of the insurmountable obstacles test were lawful and secondly, the Judge's error in respect of the Appellant's English language abilities could not be material to the Article 8(2) outcome.

15. I therefore find that, as argued by Mr Dhanji, the Judge did impermissibly ignore the Respondent's own position that the Appellant had reliably

established her English language ability but ultimately, I conclude that this error was not a material one.

16. It is absolutely the case that Parliament considers the ability of a person to speak English is a materially relevant part of a proportionality assessment in respect of Article 8(2) ECHR as detailed in the mandatory consideration at s. 117B(2) of the NIAA 2002.

17. I also find, however, that even if the Judge had concluded in line with the Respondent's finding that the Appellant did have sufficient English language ability under section 117B(2), that this could only have had a neutral effect, applying Rhuppiah v Secretary of State for the Home Department [2018] UKSC 58 at para. 57.

18. That is not to downplay the importance of a person showing that they have the requisite English language ability (albeit I did not hear submissions on whether the language requirement in the Act might be different to the specifically evidenced requirements in the Rules, and in that regard, I note the Upper Tribunal's view on this in AM (S.117B) [2015] UKUT 260 (IAC) at para. 14) but nonetheless to recognise that, in a case like this, the Appellant's failure to establish her case in respect of the insurmountable obstacles test (and the Judge's application of s. 117B(5)) were very significant factors weighing against her in the balancing exercise.

19. I therefore conclude that the Judge's error could not have made a difference to the outcome of the Article 8 assessment.

Notice of Decision

20. On that basis I dismiss the Appellant's appeal and the decision of the Judge therefore stands.

I P Jarvis

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

5 October 2023