IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case Nos.: UI-2024-000676
First-tier Tribunal No:
HU/56923/2023; LH/00470/2024

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 12 August 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE FARRELLY

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

MS THI NGOC THUY BUI
[ANONYMITY DIRECTION NOT MADE]

Respondent

Representation:
For the Appellant: Ms Everett, Senior Home Office Presenting Officer
For the Respondent: Mr Khan,Counsel,instructed by Thompson and Co,Solicitors

Heard at Field House on 4th April 2024

DECISION AND REASONS

BACKGROUND

1. It is the Secretary of State who is appealing in these proceedings. However, for convenience I will continue hereinafter to refer to the parties as in the First-tier Tribunal.

2. The appellant is a national of Vietnam, born on the 14th of June 1978. She originally came to the United Kingdom as a student. In August 2018 she came on a 6 month visit visa. In February 2019 she began a relationship with a British national, Mr Arvid Rvoji, hereinafter referred to

as the sponsor. He is originally from Kosovo. They began to cohabit in March 2019. It is accepted the relationship is genuine and subsisting.

3. The appellant claimed protection on the 19th of February 2019 on the basis of her religion, she being a Hao Hao Buddhist. There was also a claim she would be suspected of being a spy. Her claim was refused on 8th February 2022 and her appeal dismissed in a decision promulgated on the 2nd of March 2023.Whilst it was accepted her subjective fears were real ,objectively she was of no interest to the authorities and had no profile. Her appeal was unsuccessful.

4. She applied for leave to remain on the 14th of April 2023 .This was refused on the 17th of May 2023. The refusal was maintained in the review of the 8th of December 2023.Her appeal was heard at Hatton Cross on the 31st of January 2024 by First tier Tribunal Judge Farmer. The appellant was represented by Counsel. The respondent was not represented.

5. The focus was upon EX1 in App FM of the rules and free-standing article 8 rights. The appellant had mental health issues and there would be for difficulties her partner living in Vietnam, particularly from a linguistic and cultural point of view. He is progressing in his work and now holds a managerial position .The judge had regard to the determination made in her protection appeal.

6. The appeal was allowed on article 8 grounds. They respondent appeals against the decision of First tier Tribunal Judge Farmer (the decision).

The challenge

7. The Secretary of State suggests the judge failed to provide adequate reasons. At paragraph 20 of the decision the judge considered EX1 ,stating that the sponsor did not speak the main languages used in Vietnam but accepted a lack of knowledge would not usually amount to a significant obstacle. There was no cognitive or other reason he could not in time learn the language.

8. The grounds upon which permission to appeal to the Upper Tribunal was sought are contained in the electronic bundle. It states the judge had found there were no insurmountable obstacles to family life continuing in Vietnam and the decision then to allow the appeal on article 8 was not adequately reasoned. The respondent argues family life can continue in Vietnam.

9. The respondent refers to the possibility of the appellant returning to Vietnam and making an entry clearance application from there. Reference was made to the decisions of Chikwamba and Alam. The respondent accepted if the requirements of entry clearance could be satisfied this can lessen the public interest. However, article 8 does not allow a couple to choose where they want to enjoy family life, and it was submitted the

judge has not shown why the appellant and sponsor leaving together would be exceptional.

10. Permission to appeal was granted by First tier Tribunal Judge Dainty and the reasons are contained in the electronic bundle. The grant of permission accepted arguable there were unexplained inconsistencies between finding of no insurmountable obstacles within X1 and the appeal succeeded under Article 8.

11. There has been no rule 24 response.

The Upper Tribunal.

12. Miss Everett referred me to the grounds and paragraph 20 of the determination which was concerned with paragraph EX1. She pointed out that the appellant's fear on return was only found to be subjective and not objectively justified.

13. Mr Khan took me through the decision of First tier Tribunal Judge Farmer .He referred me to the findings made by. At paragraph 14 the judge referred to the relationship as being extremely close and interdependent. The judge referred to her sponsor having a demanding job. Reference was made to the appellant's subjective to fear of events in Vietnam. A paragraph 16 the judge found that her sponsor does not speak Vietnamese and would struggle to learn the language to the level where he could work. Paragraph 18 of the determination recorded that she remains in touch with her elderly parents, but they are not in a position to provide her with accommodation. The judge found that if she were to return this would have an adverse impact on both her and her sponsor and that her mental health would be affected.

14. In relation to Article 8 the judge had referred to Chikwamba v SSHD [2008] UKHL 40 and R (Chen) v SSHD (Appendix FM – Chikwamba – temporary separation – proportionality) ILR [2015] UKUT 189 (IAC). He said the principles in Alam and Rahman v SSHD 19 January 2023 only applied where there were more issues. I was referred to paragraph 110. He pointed out that the relationship was not in dispute. The judge had due regard to the public interest factors in section 117B and in particular the little weight provisions. He submitted that the judge carried out a proper legal analysis and that there was no material error of law.

15. The representatives suggested that if there were an error of law then the decision could be remade without a further hearing in the Upper Tribunal. In the alternative, the appellant's representative suggested the First tier Tribunal as being the most appropriate and new evidence could be submitted.

Consideration

16. I have considered primarily the impugned decision of Judge Farmer. I have also had regard to the application for leave, the grant of leave and the submissions at hearing. I have had regard to the papers relating to hearing in the First-tier tribunal.

17. I have borne in mind that the judge had the advantage of seeing and hearing directly from the appellant and her sponsor. The relationship has not been challenged and the Secretary of State decided not to be represented at the hearing and there was no cross examination of the appellant or her sponsor nor submissions by the Secretary of State.

18. The judge considered the appeal under two headings. The first related to EX .1 in the immigration rules which is relevant where certain of the eligibility rules under appendix FM were not meet. The primary difficulty she faced was her immigration status: she had no valid leave since the 8th of February 2019. The respondent in the refusal considered X1 and it was accepted she was in a genuine and subsisting relationship with her British sponsor. However, the Secretary of State did not see evidence of insurmountable obstacles to their continuing family life in Vietnam. The refusal said there was no evidence to show she would face undue hardship in Vietnam. It refers to her family in Vietnam as a possible source of support. It was suggested she could return to Vietnam and apply from there to join her partner. Furthermore, the respondent suggested it was open to her sponsor to relocate to Vietnam until the necessary entry clearance was obtained.

19. The judge set out EX1 and EX2 and referred to Lal [2029]EWCA 1925. The judge set out the various relevant facts and considerations at paragraphs 14 through to 18. In this context the judge turned to X1 and accepted the high threshold anticipated. The judge referred to significant difficulties for the sponsor in Vietnam. The principle difficulty would be linguistic. Whilst acknowledging this the judge concluded the high threshold in the test was not met. I find the judge gave clear reasons for this conclusion, indicating the matters that were considered. The respondent has obviously not challenged this conclusion.

20. The judge then turned to Article 8. The first point was that the judge found article 8 was engaged. It is difficult to see how on the facts it would not have been. The judge then moved on to consider the proportionality of the decision in relation to the public interest factors in immigration control.

21. It is worth noting that the considerations in EX1 and in the proportionality exercise under Article 8 are different. The judge weighed up the various factors in relation to the appellant and the sponsor and the public interest. The judge found the appellant had not been a burden on the taxpayer and this was likely to continue to be the case. She also had a level of English and, if permitted, was likely to seek employment. The judge then had regard to the appellant's private life including the length of time she had been here.

22. The judge was mindful of the consideration in section 117B . Having done this, the judge concluded the factors in the appellant's favour outweighed the public interest. The judge pointed out that although the appellant could not meet the immigration rules when considering proportionality, it was necessary to consider all the people affected by the decision.

23. The judge was open to the possibility of the appellant returning to Vietnam and making an entry clearance application. The judge concluded even a short absence would adversely affect her health and harmful to her sponsor and the judge concluded in the circumstance it was not proportioned.

24. I see no inconsistency in the judge finding X1 did not assist the appellant but that she succeeded under Article 8. The considerations are different. I find the judge considered relevant factors and evaluated them properly and the conclusion was one open to the judge.

CONCLUSION

25. I conclude that there is no error of law in the Decision. Accordingly, I uphold the Decision allowing the appellant’s appeal.

NOTICE OF DECISION

The Decision of Judge Farmer did not involve the making of an error of law. I therefore uphold the Decision allowing the Appellant’s appeal .

Francis J Farrelly

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber
3rd August 2024