



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-001013

First-Tier Tribunal No: HU/52682/2023
LH/05882/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 29th May 2024

Before

UPPER TRIBUNAL JUDGE KAMARA
DEPUTY UPPER TRIBUNAL JUDGE MONSON

Between

EM
(ANONYMITY ORDER MADE)

Appellant

and

THE ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant:

Ms G Loughran, counsel instructed by Luqmani Thompson & Partners

For the Respondent:

Mr E Tufan, Senior Home Office Presenting Officer

Heard at Field House on 22 April 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant and any member of her family is granted anonymity. No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant and her family. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

Introduction

1. The appellant has been granted permission to appeal the decision of First-tier Tribunal Judge Brannan following a hearing which took place on 11 January 2024.
2. Permission to appeal was granted by First-tier Tribunal Judge RA Pickering on 12 March 2024.

Anonymity

3. An anonymity direction was made previously and is reiterated because the sponsor is a recognised refugee and victim of trafficking.

Factual Background

4. The appellant is a national of Albania now aged nineteen. On 20 September 2022, the appellant made a human rights' claim in an application for entry clearance. The basis of that application was that the appellant relied upon her private and family life with her sister in the United Kingdom.
5. That application was refused in a decision dated 18 January 2023. The respondent considered the application under paragraph 319X of the Immigration Rules but considered there were no serious and compelling family or other considerations which made his exclusion from the United Kingdom undesirable and therefore it was considered that paragraph 319X(ii) of the Rules was not met. The respondent considered there to be no exceptional circumstances to warrant a grant of entry clearance outside the Rules.

The decision of the First-tier Tribunal

6. First-tier Tribunal Brannan accepted that there was family life between the appellant and sponsor, that the decision appealed against amounted to interference with that family life. The judge found that the appellant's circumstances in Albania were not sufficiently serious and compelling, thus the Rules were not satisfied, and the refusal of entry clearance was proportionate for the same reason.

The grounds of appeal

7. There are eleven grounds of appeal which in summary argued.
 - i. there had been a failure to consider the sponsor's right to a family life.
 - ii. there had been a failure to consider an expert medical report relating to the sponsor.
 - iii. there was a failure to consider relevant matters by the judge in discounting the objective risk of trafficking.
 - iv. there was a failure to consider the reason for the disruption in the family life between the appellant and sponsor was that the latter was trafficked.
 - v. the judge erred in his approach to the assessment of family life.
 - vi. there was a failure to have regard to the appellant's minority when the application was made and the nature of the relationship between the appellant and sponsor.
 - vii. there was a failure to consider the appellant's background of abuse and neglect.
 - viii. there was a failure to consider the factors in combination when assessing whether they amounted to serious and compelling considerations.
 - ix. a failure to give any or adequate reasons for finding that family life was not strong.
 - x. a failure to consider future development of family life.
 - xi. there had been a failure to conduct an article 8 ECHR proportionality assessment.
 - xii.

8. Permission to appeal was granted on the basis sought, with the judge granting permission making the following remarks.

In relation to ground one is arguable that the Judge misdirected themselves in not considering the impact upon the sponsor (see KF and others (entry clearance, relatives of refugees) Syria [2019] UKUT 00413 (IAC)). In relation to ground two it is arguable that the Judge did not adequately engage with the report of Dr Veitch. In relation to ground three, four, five, six, seven, eight, nine, ten and eleven I found them indivisible from grounds one and two as they all went to the core of the issues identified.

9. The respondent did not file a Rule 24 response.

The error of law hearing

10. When this matter came before us, Mr Tufan confirmed that there was no Rule 24 response in existence and indicated that the appeal was opposed. Thereafter we heard submissions from both representatives. Ms Loughran followed the format of her grounds, taking us through the eleven points therein. Mr Tufan responded succinctly, contending that there were no errors in the judge's approach.
11. At the end of the hearing, we announced that we were satisfied that the decision of the First-tier Tribunal contained material errors of law, as set out in the grounds. We set that decision aside. In terms of disposal, Ms Loughran argued that the appeal would need to be reheard and the sponsor called to give evidence. Mr Tufan was neutral on this matter. We elected to remit the matter to the First-Tier Tribunal.

Decision on error of law

12. As stated above, the appellant's sponsor, her eldest sister is a recognised refugee and victim of trafficking. Evidence before the First-Tier Tribunal included a report from the sponsor's treating clinician at the Helen Bamber Foundation. That detailed report emphasised the strength of the sponsor's relationship with the appellant, that the relationship was quasi-parental and that the sponsor was concerned with safeguarding the appellant's wellbeing. The report stressed that the sponsor's mental state was adversely affected by the continued separation from the appellant and that the sponsor's PTSD symptoms have re-emerged or been triggered when the appellant was abused in Albania.
13. The First-Tier Tribunal made a fleeting mention of the report at [49] to address a different issue but there was no assessment of this evidence in relation to the appellant or sponsor's Article 8 right to family life, the presence of serious and compelling factors or the proportionality assessment.
14. It follows that grounds one and two are made out.
15. The First-Tier Tribunal rejected the sponsor's subjective fear that the appellant would also be at risk of being trafficked. In making that finding, no regard was had to the similar circumstances of the appellant and sponsor, including that they are sisters, that both had been subjected to neglect and abuse and that the appellant is now at the age the sponsor was when she was trafficked. In short, there was no consideration of the appellant's personal circumstances in reaching the conclusion that the appellant was not at risk of trafficking, applying *TD and AD* (Trafficked women) CG [2016] UKUT 00092 (IAC). Ground three is established.

16. At [12-13] the First-tier Tribunal finds that the disruption to the family life of the appellant and sponsor was caused by the sponsor's decision to leave Albania and the family home, concluding that what was said at {14} of *H (Somalia)* [2004] UKIAT 00027 was of 'limited assistance;'

It cannot be right to approach the disruption to family life which is caused by someone having to flee persecution as a refugee as if it were of the same nature as someone who voluntarily leaves, or leaves in the normal course of the changes to family life which naturally occur as children grow up.

17. The judge was mistaken in finding that *H (Somalia)* did not apply in circumstances where the sponsor was vulnerable and impoverished, misled by her trafficker and ultimately trafficked for sexual exploitation. Evidently, the error identified in the fourth ground is made out. The materiality of this error is that the judge's view of the reasons for the sponsor's departure from Albania fed into his ultimate finding at [58] that any family life between the appellant and sponsor was not strong.

18. The fifth ground raises criticism of the judge's comments when assessing family life between the appellant and sponsor which focused on the fact that the sponsor was expecting a child with a partner. Comments made by the judge such as the following are insensitively expressed and further suggest that a conventional family unit is deserving of more weight than other types of family life.

Mum, dad and child are the epitome of a family. It seems strange to suggest that the sponsor has no family life in the UK with the man whose baby grows inside her, while she has family life with the sister she has not seen for 10 years.

19. There are sufficient errors exposed by the first five of the grounds to justify setting the decision aside on the basis that it is unsafe. That is not to say that there is not also merit in the remaining grounds.
20. We carefully considered the venue of any rehearing, taking into account the submissions of the representatives. Applying *AEB* [2022] EWCA Civ 1512 and *Begum* (Remaking or remittal) Bangladesh [2023] UKUT 00046 (IAC), the panel carefully considered whether to retain the matter for remaking in the Upper Tribunal, in line with the general principle set out in statement 7 of the Senior President's Practice Statements.
21. We took into consideration the history of this case, the nature and extent of the findings to be made as well as our conclusion that the nature of the errors of law in this case meant that the appellant was deprived of a fair consideration of her human rights appeal. We consider that it would be unfair for either party to be unable to avail themselves of the two-tier decision-making process and we therefore remit the appeal to the First-Tier Tribunal.

Decision

The making of the decision of the First-Tier Tribunal did involve the making of an error on a point of law.

The decision of the First-Tier Tribunal is set aside.

The appeal is remitted, de novo, to the First-Tier Tribunal to be reheard by any judge except First-Tier Tribunal Judge Brannan.

T Kamara
Judge of the Upper Tribunal
Immigration and Asylum Chamber

19 May 2024