



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-002050

First-tier Tribunal No: HU/59884/2022
LH/05369/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 26th November 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE WELSH

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

NP

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr Osmani

For the Respondent: Mr Wain, Senior Home Office Presenting Officer

Heard at Field House on 9 August 2024

DECISION AND REASONS

Anonymity Order:

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the Appellant or members of her family. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings. I make this order because the sponsor has been recognised as a refugee and is a family member of the Appellant.

Introduction

1. This is an appeal against a decision of First-tier Tribunal Judge Trevaskis (“the Judge”), promulgated on 14 March 2024. By that decision, the Judge allowed NP’s appeal against the decision of the Secretary of State to refuse her human rights claim.
2. I refer to the parties as they were before the First-tier Tribunal.

Factual background

3. The Appellant is a national of Afghanistan currently living in Turkey (without any legal status). She applied for entry clearance relying upon her family life with the sponsor to whom she is married and with whom she has five children (all British citizens). Four of the children live with the sponsor in the United Kingdom (“UK”) whilst the other child lives with the Appellant in Turkey. It was accepted at the time of the application that she could not meet the requirements of the Immigration Rules because the sponsor is now naturalised as a British citizen.
4. By the time of the Respondent’s review, the Respondent was of the view that “family life may exist” (error of law bundle, part 4, pdf 68) but submitted that this family life could continue with the couple separated and, even if there was an interference with their family life, their continued separation was a proportionate interference in all the circumstances. In the review, the Respondent did not resile from the earlier position that family life could continue in Afghanistan.

Decision of the Judge

5. Insofar as is relevant to this appeal, the Judge found as follows:
 - (1) The couple enjoy family life. The Judge noted that the sponsor being forced to leave Afghanistan did not bring that family life to an end [14].
 - (2) Maintaining the refusal was an interference with family life because (i) family life cannot continue in Afghanistan given the sponsor is a refugee and (ii) neither the sponsor nor the Appellant has any legal status in Turkey.
 - (3) Whilst the Appellant cannot meet the requirements of the Immigration Rules, the sole ground for her being unable to meet the requirements is because the sponsor is now a British citizen [16].
 - (4) The best interests of the five British children are for the family to be united in the UK [17]
 - (5) The interference with the family life of the Appellant outweighed the public interest in the maintenance of effective immigration control [19].

The grounds of appeal and grant of permission

6. The grounds, as I understand them, plead that the Judge erred by failing to take into account:

- (1) the fact that the sponsor had lived in Afghanistan and established family life with the Appellant from 2009 until August 2021. In the renewed grounds, the Respondent added that “there are no reasons given that the family could not continue their family life in Afghanistan as previously”;
- (2) that the sponsor married the Appellant whilst still married to his first wife. The first wife was granted leave to remain as his spouse on 16 September 2008.

Upper Tribunal hearing

7. Mr Wain relied upon the grounds of appeal and renewed grounds of appeal and both advocates made oral submissions. During the course of this decision, I address the points they made.

Discussion and conclusions

Ground 1

8. The Respondent is correct to note that the Judge, when deciding whether family life could continue in Afghanistan, did not mention the fact of the Appellant and sponsor having lived in Afghanistan until 2021. However, given that the sponsor has been recognised as a refugee by the UK and given the evidence before the Judge of the conditions in Afghanistan (which led to the family leaving that country in 2021), this factor was either irrelevant or of such little relevance that it could not possibly have had any effect on the decision of the Judge. Indeed, it is difficult to see how the Judge could have reached any other conclusion about the feasibility of family life continuing in Afghanistan.

Ground 2

9. In the grounds of appeal and in the renewed grounds, the Respondent did not explain what the error of law is said to be. Mr Wain submitted, in summary, that there is a legitimate aim to exclude those who engage in polygamous marriages and the Judge therefore failed to take into account a relevant consideration.
10. However, as rightly submitted by Mr Osmani, that was not the basis upon which the application for entry clearance was refused. In the refusal decision, the Respondent raised the fact of the polygamous marriage in the context of the question of whether the relationship was genuine and subsisting. Thereafter, the Respondent’s review made no mention of this point and Mr Osmani submitted that it was not raised by the Presenting Officer at the appeal hearing.
11. Even if the question of whether the relationship was genuine and subsisting was still in issue at the time of the appeal hearing, it is unsurprising, and certainly not an error of law, for the Judge not to mention the fact of the polygamous marriage because it was either irrelevant or so little relevance it could not possibly have affected his view about the existence of family. In circumstances in which the couple have five children together, and

there being no dispute that they had previously lived together and visits had taken place, the Judge's finding was plainly open to him.

12. The decision of the Judge was admirably concise and dealt with all key issues in dispute. I respectfully agree with the observations of First-tier Tribunal Judge Gibbs, when she refused permission to appeal, that "the brief grounds amount to no more than a disagreement with the Judge's conclusions".

Notice of Decision

13. The decision of the First-tier Tribunal did not involve the making of a material error on a point of law and so the decision stands.

C E Welsh
Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

25 November 2024