



**IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER**

Case No: UI-2024-003590

First-tier Tribunal Nos:
HU/60655/2023
LH/02922/2024

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On the 18 November 2024**

Before

UPPER TRIBUNAL JUDGE MAHMOOD

Between

**Hanh Thi Vu
(NO ANONYMITY ORDER MADE)**

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr M Allison of counsel, instructed by Alstern Solicitors
For the Respondent: Mr E Tufan, a Senior Home Office Presenting Officer

Heard at Field House on 28 October 2024

DECISION AND REASONS

1. This is my oral decision which I delivered at the hearing today.

Background

2. The Appellant appeals with permission against the decision of First-tier Tribunal Judge Louveau (“the Judge”) promulgated on 17 June 2024 whereby the Judge had dismissed the Appellant’s appeal on human rights grounds.

Permission to Appeal and Grounds of Appeal

3. Permission to appeal was granted by Upper Tribunal Judge Kamara on 19 August 2024. The grant of permission states in part:

“The appellant principally resists removal owing to her family life with a British citizen. It was argued on the appellant’s behalf that there were insurmountable obstacles to family life taking place in Vietnam. Relevant factors included the appellant’s disability, that her partner had no links to Vietnam, health issues for both partners and the partner’s private and family life in the United Kingdom. It is arguable that the judge, in finding at [26] that, the appellant failed to prove that there would be very significant difficulties to her private life with (her partner) continuing in Vietnam’ erred in applying the Immigration Rules.”

4. The grounds of appeal refer to EX.1 and EX.2 to Appendix FM to the Immigration Rules. The grounds contend firstly that there was a misdirection in law because EX.1 provided exceptions with regard to family life and deals with certain eligibility requirements and was concerned with family life not private life.
5. Secondly, EX.2 referred to insurmountable obstacles and the question was not whether the Appellant alone would face very significant obstacles. The Rules required a proper assessment of whether there would be very significant difficulties caused to the Applicant or her partner.
6. Ground 2 alleged that there were inadequate reasons as to the Appellant’s ability to obtain work as a journalist and ground 3, referred to failing to deal with exceptional circumstances as raised in the Appellant’s skeleton argument in respect of GEN.3.2.

The Hearing Before Me

7. In his submissions today, Mr Allison said he would take grounds 1 and 3 together because they overlapped. He said that the contents of paragraphs 19 to 25 of the Judge’s decision were effectively matters which might be relevant to private life or to integration. He submitted that there was an error of law at paragraph 26 because the preceding paragraphs referred to private life and not family life.
8. Mr Allison said that the other part to ground 3 showed that there was an error in relation to the failure of the Judge to consider whether there were any exceptional circumstances and whether removal would result in unjustifiably harsh consequences. He said that the determination did not address this specifically. Mr Allison referred to paragraph 31 of the Judge’s decision and to section 117B NIAA 2002 stating that again there was no or no adequate consideration of GEN.3.2.
9. In respect of ground 2 Mr Allison said that this was a reasons-based challenge, the crux of which was that it was well-established that there was no necessity to provide corroborative evidence.

10. Mr Tufan in his submissions said that grounds 1 and 3 had been taken together, at paragraph 26 when considering EX.1. Although the Judge did refer to private life and EX.1 refers to family life, he submitted that it was quite clear from paragraph 18 onwards that the word 'private' was a slip.
11. Mr Tufan submitted that what needed to be shown was that there were insurmountable obstacles for the family life to continue and that the Judge had found against the Appellant. I invited Mr Tufan to consider whether paragraph 26 really was just a slip, particularly when the wrong test of very significant difficulties was being referred to by the Judge. Similarly at paragraph 31 the Judge referred only to private life and not family life. Mr Tufan made no concessions, but said he would leave matters for me to consider.
12. The parties also addressed me as to the appropriate disposal if I was to find a material error of law. Both parties agreed that the appropriate venue for any rehearing would be the First-tier Tribunal.

Analysis and Conclusions

13. I remind myself that the First-tier Tribunal is an expert tribunal. First-tier Tribunal decisions should be respected unless it is quite clear that they have misdirected themselves in law. Appellate courts and tribunals should not rush to find such misdirection simply because they might have reached a different conclusion on the facts or expressed themselves differently. Lady Hale's judgment in *AH (Sudan) v Secretary of State for the Home Department* [2007] UKHL 49; [2008] 1 AC 678, at [30] makes that clear.
14. I also remind myself that I must be particularly alert to 'island hopping'. In *Volpi v Volpi* [2022] EWCA Civ 464; [2022] 4 WLR 48, at [65], the Court of Appeal said in respect of appeals against findings of fact:
 - '65. This appeal demonstrates many features of appeals against findings of fact:
 - i) It seeks to retry the case afresh.
 - ii) It rests on a selection of evidence rather than the whole of the evidence that the judge heard (what I have elsewhere called "island hopping").
 - iii) It seeks to persuade an appeal court to form its own evaluation of the reliability of witness evidence when that is the quintessential function of the trial judge who has seen and heard the witnesses.
 - iv) It seeks to persuade the appeal court to reattribute weight to the different strands of evidence.
 - v) It concentrates on particular verbal expressions that the judge used rather than engaging with the substance of his findings.'

15. Despite having those matters at the forefront, in my judgment, the First-tier Tribunal Judge has materially erred in law in this case in relation to the Appellant's human rights appeal.
16. Paragraph 26 of the Judge's decision refers only to the private life of Mr Khan continuing in Vietnam. Then the wrong test of very significant difficulties was referred to. Compounding matters, when paragraph 117B of the 2002 Act was considered, there was mere reference only to private life and not to family life.
17. Had this been a minor aspect in relation to the rest of the decision, then it may well have meant that Mr Tufan would be correct that there was a mere 'slip' with reference to 'private' instead of 'family' life. In my judgment however, it is clear that there is very little reference, if any, to the family life considerations which the Judge was required to consider.
18. I am well aware of the Respondent's references to the apparent weaknesses in much of the Appellant's factual case. I need not say anything in detail about the merits of the Appellants' case because the First-tier Tribunal will consider carefully the facilities and employment opportunities available to the Appellant and/or her partner. The parties will no doubt also refer the First-tier Tribunal in their submissions to the Supreme Court's decision in *Agyarko v Secretary of State for the Home Department* [2017] UKSC 11.
19. Having found there to be a material error of law in the decision of the First-tier Tribunal, I set it aside.
20. I apply *AEB* [2022] EWCA Civ 1512 and *Begum (Remaking or remittal) Bangladesh* [2023] UKUT 00046 (IAC). I carefully consider whether to retain the matter for remaking in the Upper Tribunal in line with the general principles set out in paragraph 7 of the Senior President's Practice Statement. I take into account the history of the case, the nature and extent of the findings to be made and in considering paragraphs 7.1 and 7.2 of the Senior President's Practice Statement and given the scope of the issues and findings to be made, I consider that it is appropriate that the First-tier Tribunal re-make the decision, noting the parties joint submission to me.

Notice of Decision

The decision of the First-tier Tribunal contains a material error of law.

The decision of the First-tier Tribunal is set aside in its entirety.

The matter is remitted to the First-tier Tribunal for a complete (de novo) hearing.

Abid Mahmood

Judge of the Upper Tribunal
Immigration and Asylum Chamber

28 October 2024