



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/05713/2013

THE IMMIGRATION ACTS

Heard at Newport
On 2 December 2013

Determination Sent
On 9 January 2014

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

MB

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No representative

For the Respondent: Mr I Richards, Home Office Presenting Officer

DECISION AND REMITTAL

1. This appeal is subject to an anonymity order made by the First-tier Tribunal pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 (SI 2005/230). Neither party invited me to rescind the order and I continue it pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698).
2. The appellant is a citizen of Algeria who was born on 16 July 1981. It would appear that the appellant entered the UK illegally on or around 11 May 2010 as he was arrested on that day by the police leaving a lorry near the M25. He produced a false ID. He claimed asylum but his application was treated as withdrawn on 5 November 2010 as he had

absconded from his allotted accommodation and had failed to advise the UKBA of his whereabouts. On 12 November 2010 he was arrested on suspicion of theft, namely shoplifting. He then provided a different but false ID and, as a result of fingerprints, he was linked to the previous false ID that he had provided. He failed to report regularly to the UKBA and was again registered as an absconder. On 12 March 2013, he was arrested by immigration officers whilst attending the wedding of his brother at the Cardiff Register Office. During that arrest, he provided ID in his current name which it is accepted is his true identity. On 3 May 2013, the appellant again claimed asylum. On 30 May 2013, the Secretary of State refused the appellant's claim for asylum and also his claim under the Immigration Rules and under Article 8 for leave to remain in the UK on the basis of his marriage to a British citizen which had taken place on 12 February 2013. I will refer to his wife as LB. She is 21 years of age and, as a result of her relationship with the appellant is pregnant and their baby is due on 20 January 2014.

3. The appellant appealed to the First-tier Tribunal. In a determination promulgated on 24 July 2013, Judge B Lloyd dismissed the appellant's appeal on asylum grounds. He made an adverse credibility finding and did not accept that the appellant would be at risk on return to Algeria. In addition, he found that the appellant did not meet the requirements of the Immigration Rules and that he had not established a breach of Article 8 on the basis of his private life and his family life with his wife.
4. The appellant sought permission to appeal against the Judge's decision in respect of Article 8. The appellant did not challenge the Judge's dismissal of the appeal on asylum grounds. On 22 August 2013, the First-tier Tribunal (Judge Brunnen) granted the appellant permission to appeal to the Upper Tribunal on the basis that:

"It is arguable that the Judge did not make adequate findings as to whether it would be reasonable to expect the appellant's wife to accompany him on removal and did not give adequate reasons for finding that the decision was proportionate".
5. Thus, the appeal came before me. The appellant was unrepresented at the hearing and when the hearing initially commenced it became clear that the appellant required an interpreter which had not been booked by the Tribunal. Having made enquiries, the hearing was adjourned for around two hours until an interpreter could attend. The hearing then continued with the appellant having the benefit of an interpreter.
6. The appellant relies essentially on the fact the Judge Lloyd had found that the appellant's wife could accompany him to Algeria and, in the appellant's view, that is impossible. She would not be able to find work and neither would he. The appellant also pointed out that his wife's salary was about £800 monthly after tax and deductions and that he and his wife could not meet the requirement in the Rules of £18,000 annual income. He told me that he did not feel that he could leave her here given her circumstances.
7. Mr Richards submitted that the Judge had taken account of all the relevant evidence and he was clearly aware that the appellant's wife was pregnant. He submitted that the Judge had considered the possibility of the appellant's wife travelling to Algeria and the processing times in Algeria for visa applications and had concluded that the appellant's

removal was proportionate. Whilst the appellant might disagree with that finding, the Judge had not erred in law in reaching it.

8. As I have already indicated, the Judge Lloyd first concluded that the appellant could not meet the requirements of the Immigration Rules. It is not entirely clear upon what basis he came to that view. The respondent, in her refusal letter, had done so on the basis that she did not accept that the appellant's relationship with his wife was a "genuine and subsisting relationship" for the purposes of EX.1. That cannot have been the basis for the Judge's finding as he accepted that the appellant and his wife had "family life in the UK" and such a finding would be wholly inconsistent with the Secretary of State's view that their relationship was not "genuine and subsisting". The Judge's reasoning is brief and is found at para 43 of his determination as follows:

"43. Taking into account the totality of the evidence relating to his family circumstances in the UK I conclude that he does not satisfy the Immigration Rules under the new regime constructed by HC194 and Appendix FM."

9. It maybe that the Judge had in mind the financial requirements of Appendix FM but, if that is the case, no where in his determination does he set out any of the evidence concerning the income of the appellant's wife. Alternatively, perhaps he concluded that the requirements in EX.1 were not satisfied because it had not been shown that:

"There are insurmountable obstacles to family life with [the appellant's wife] continuing outside the UK."

10. However, the Judge does not appear to have made any finding in respect of the appellant and his wife carrying on their family life in Algeria. In relation to Article 8, the Judge said this at paras 48-50:

"48. I have listened with great care to the evidence which Ms Robins has given about her strong disinclination to travel to Algeria with her husband if he is required to return. Her reluctance extends to a temporary as well as any permanent return.

49. The Appellant may of course upon return to Algeria make a prompt application for re-entry to the UK on the basis of his marriage to Ms Robins. Mr Hammonds argues that the processing times are not necessarily excessive. The Presenting Officer refers also to the foreign travel advice relating to Algeria (<http://www.gov.uk/foreign-travel-advice>). The FCO advise against all but essential travel specifically to the following administrative districts east of Algiers: Pומרdés Bouira and Tizi Ouzou. This is because of a threat from terrorism. However the Appellant has stated in his own evidence that his parents have been mobile to avoid any trouble. He could, if absolutely necessary, adopt the same policy for himself and his family upon return to his home country.

50. Having regard to the totality of the evidence and the relevant law (and with regard to the guiding principles of the judgment in **FM**) I find that a decision to remove the Appellant to Algeria is a proportionate one in all the circumstances having regard to the qualified rights of Article 8.

11. In fact, the Judge said this is the context of Article 8. But, the evidence of the appellant's wife was that she could not travel to Algeria temporarily or permanently. The Judge approached Article 8 on the basis that the appellant could be expected to return to

Algeria to obtain entry clearance. There is no finding here concerning the reasonableness of the appellant's wife accompanying him certainly on a permanent basis or whether, for the purposes of the Rules, there were no insurmountable obstacles to them living in Algeria.

12. It seems to me that the Judge's decision to dismiss the appellant's appeal is flawed for two reasons. First, the Judge failed to give any reasons for his conclusion that the appellant could not meet the requirements of the Immigration Rules, in particular, the Judge made no finding on whether there are "insurmountable obstacles" to the appellant and his wife continuing family life in Algeria. Secondly, in relation to Article 8, the Judge failed to consider whether the appellant had any prospect of obtaining entry clearance to return as a spouse, in particular, the financial requirement of Appendix FM. If it was the case that the appellant was unlikely to obtain entry clearance, the Judge made no findings on whether: (a) it would be reasonable to expect the appellant's wife to live in Algeria with the appellant given that she is a British citizen and would shortly give birth to a child who will be a British citizen; and, if it was not reasonable, whether the inevitable interference with their family life that would result was proportionate.
13. The Judge's failure to make those findings amounted, in my judgement, to errors of law which flawed his finding that the appellant's removal would not breach Article 8. Although the legitimate aim of effective immigration control merited considerable weight in this appeal given the appellant's very poor immigration history, I cannot be satisfied that this appeal would have inevitably failed.

Decision and Disposal

14. As a consequence, the decision of the First-tier Tribunal to dismiss the appellant's appeal under the Immigration Rules and Art 8 cannot stand and I set it aside.
15. The decisions in respect of those grounds of appeal must be remade. The appeal is remitted to the First-tier Tribunal to be decided *de novo*.
16. The Judge's decision to dismiss the appeal on asylum and humanitarian protection grounds stands.

Signed

A Grubb
Judge of the Upper Tribunal

Date: