



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: AA/02047/2014

THE IMMIGRATION ACTS

**Heard at Bennett House, Stoke
On 27th November 2014**

**Determination Promulgated
On 14th January 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE GARRATT

Between

**SA
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A White, Counsel instructed by Braitch Solicitors

For the Respondent: Mr A McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

1. On 26th June 2014 Judge of the First-tier Tribunal Bird gave permission to the appellant to appeal against the decision of Judge of the First-tier Tribunal Crawford in which he dismissed the appeal on all grounds against the decision of the respondent to refuse asylum, humanitarian and human rights protection to the appellant a 20 year old citizen of Afghanistan.
2. In her decision Judge Bird noted that the grounds of application sought permission on the basis that the judge failed to deal adequately with the appellant's Article 8 rights and was wrong to consider Article 8 under the Immigration Rules. It was also alleged that the judge had failed to make

adequate findings in relation to the appellant's private and family life stemming from his relationship with his girlfriend.

3. Whilst Judge Bird thought that the judge was not in error by considering the application of the Immigration Rules in relation to the human rights claim, she thought it arguable that the judge's consideration of human rights issues under Article 8 was inadequate when the threshold of engaging Article 8 was low by reference to the Court of Appeal decision in *AG (Eritrea)* [2007] EWCA Civ 801.
4. The grounds of application themselves refer to the Court of Appeal decision in *Edgehill* [2014] EWCA Civ 402 for authority that the proportionality assessment should have been performed outside the Immigration Rules bearing in mind that the appellant's application for leave had been made on 16th February 2012. Further, it is pointed out that the application was a variation to leave already granted in 2009. Whilst the judge had applied the *Razgar* five stage tests at paragraph 65 of the decision it was considered that the proportionality assessment was inadequate.
5. As to the judge's findings of fact it is argued that the judge was wrong to conclude that the appellant had precarious immigration status when entering into his relationship bearing in mind that he had discretionary leave at that time when the relationship began in December 2011. Additionally, the judge had applied western standards to the appellant's relationship with a single Muslim female coming from a conservative and religious family. Additionally, the Article 8 rights of the appellant's girlfriend should also have been considered.

Submissions

6. At the hearing Ms White confirmed that the judge's dismissal of the asylum claim was not challenged. She then reminded me of the grounds of application and the skeleton argument submitted with the bundle on 11th November 2014 which expands upon the grounds of application. She also added that, in relation to the family life claim, there was no requirement for the parties to live together and so the judge was wrong to reject family life by applying western standards.
7. Mr McVeety reminded me of the response filed on 7th July 2014 which pointed out that the appellant had established his private life on the back of two false asylum claims and emphasised the relevance of the appellant never having lived with his girlfriend whose family had not been introduced to him. The judge had correctly applied the five stage *Razgar* tests and reached conclusions open to him. As to the judge's consideration of the Immigration Rules he argued that *Edgehill* had no relevance. In this respect he referred to paragraph 30 of that decision (although this puts forward an argument of counsel before the Court of Appeal rather than the conclusions of the court). In any event the judge had considered the five stage test in *Razgar* in relation to someone with a limited family life. He argued that the appellant's status was precarious as he only had discretionary leave and had not been granted asylum. He also argued that the appellant was clearly

in the early stages of his relationship and so family life could not be in existence.

8. In conclusion Ms White reminded me that she also argued that the respondent's delay in making the decision enabled the appellant to further his relationship which had started in December 2011.

Conclusion

9. The determination of Judge Crawford is 34 pages long and gives very detailed reasons, in over eight pages of cogently argued text, for rejecting the asylum claim and dismissing the human rights claim calling upon relevant conclusions reached in relation to the asylum claim particularly the appellant's manipulation of the asylum system on two occasions in an attempt to remain.
10. Despite the fact that the appellant claims to have been in a relationship with his girlfriend since 2011 it is difficult to see how his status in this country at any stage could be described as anything other than precarious. He was only granted discretionary leave on account of his age. Whilst he has been able to remain in this country during the appeal process and this has enabled his relationship to continue, that does not mean that the judge was wrong to reach the conclusion that there were limitations to the relationship which had not progressed to arrangements for marriage nor had the appellant even been introduced to his girlfriend's family. It is not evident that the judge was applying western standards to his conclusions in this respect particularly bearing mind his acknowledgement that a family introduction was necessary.
11. The fact that the judge unnecessarily applied the provisions of Appendix FM and paragraph 276ADE to part of his decision on human rights issues does not mean that the conclusions he reached in respect of that claim can be said to be wrong. The Rules reflect human rights provisions and, most significantly, the judge went on to give comprehensive consideration to the parties' circumstances and the human rights claim by applying the five stage *Razgar* tests which are fully set out in paragraph 65. It is evident that, in setting out the conclusions in that paragraph, the judge was referring back to the copious conclusions he reached about the appellant's family and private life in the United Kingdom which are to be found from paragraph 60 onwards of the decision. These were conclusions properly open to him.
12. It is to be noted that, despite the allegation that the judge applied western standards to his consideration of the relationship, the judge was entitled to take into account that the appellant's girlfriend supported herself as a nursing assistant, was 32 years of age and no attempts had been made for the relationship to be furthered because of the conservative attitude of her family. The judge was not in error in reaching the conclusion that family life had not been established in those circumstances albeit that he accepted that the appellant's private life involved his relationship with his girlfriend.

13. The comprehensive nature of the judge's consideration of human rights issues acknowledging private life incorporating the appellant's girlfriend entitled the judge to conclude that the respondent's decision was not disproportionate.

NOTICE OF DECISION

The decision of the First-tier Tribunal did not involve a material error on a point of law and shall stand.

Anonymity

The First-tier Tribunal made an anonymity direction in order, in particular, to protect the interests of the appellant's girlfriend who was not named. I make the same direction in the Upper Tribunal as follows:

DIRECTION REGARDING ANONYMITY – RULE 14 OF THE TRIBUNAL PROCEDURE (UPPER TRIBUNAL) RULES 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date **14th January 2015**

Deputy Upper Tribunal Judge Garratt