



**Upper Tribunal
(Immigration and Asylum Chamber)
AA/08194/2015**

Appeal Number:

THE IMMIGRATION ACTS

Heard at North Shields

On 16 March 2016

**Decision & Reasons
Promulgated**

On 7 April 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

S T T

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr C Dewison, Home Office Presenting Officer

For the Respondent: Unrepresented

DECISION AND REASONS

Introduction

1. For ease of reference, I shall refer to the parties as they were before the First-tier Tribunal. The Secretary of State is therefore the Respondent and S T T is once more the Appellant.
2. This is an appeal by the Respondent against the decision of First-tier Tribunal Judge Fisher (the judge), promulgated on 18 September 2015, in which he allowed the Appellant's appeal on Article 8 grounds only. That appeal was against the Respondent's decision of 11 May 2015, refusing the protection claim made on 8 December 2014.

3. Although legally represented before the First-tier Tribunal, this ceased at some point thereafter.
4. The Appellant did not attend the hearing before me. There had been no communications from her. I waited until shortly before 1pm to start her case, but to no avail. I was satisfied that the notice of hearing had been sent out to the last known address. Having regard to rules 2 and 38 of the Upper Tribunal's Procedure Rules, I decided that I could fairly proceed in the Appellant's absence.

The judge's decision

5. In essence, the Appellant's claim was based upon her marriage to her former husband and the problems arising therefrom.
6. The judge accepted that the Appellant had been subjected to domestic violence in this country and that there was no sufficiency of protection in Bangladesh. However, he found that the Appellant could internally relocate. On this basis the protection claim failed.
7. There has been no cross-appeal in relation to the protection claim.
8. In respect of Article 8, the judge accepted that the Appellant was a prosecution witness in a forthcoming criminal trial involving her ex-husband and mother-in-law as defendants. They were both charged with violent offences against the Appellant. The trial was due to take place in November 2015. The judge found that this aspect of the Appellant's case engaged Article 8 (outside of the Immigration Rules). He found that it was in the public interest that those who commit violent offences were brought to trial and punished if found guilty. Ultimately, the judge concluded that the public interest in removing the Appellant was outweighed by the need for her to give direct evidence in the trial, particularly as this was due to take place shortly after the appeal hearing.
9. At the hearing the Presenting Officer had given an undertaking on behalf of the Respondent not to remove the Appellant until she had given her evidence at the trial.

The grounds of appeal and grant of permission

10. The grounds are in essence threefold: the judge failed to say why the Appellant could not give her evidence from outside of the United Kingdom; the facts of this case did not engage Article 8; the judge failed to consider how the benefits of any Discretionary Leave granted to the Appellant would impinge on the public interest.
11. Permission to appeal was granted, with some reservations, by Upper Tribunal Judge Perkins on 20 November 2015.

Decision on error of law

12. There are no material errors of law in the judge's decision.
13. He was perfectly entitled to find that the ability of the Appellant to give live evidence at the criminal trial of two defendants who had allegedly used violence against her person engaged the private life limb of Article 8. Frankly, it would be surprising if the judge had not found this to be the case. The Appellant's physical integrity had allegedly been violated by others, and she had the opportunity (through the criminal justice system) to seek redress of sorts. That set of facts clearly falls within the ambit of Article 8. To my mind, the Respondent's assertion that private life was not even engaged is entirely misconceived.
14. The suggestion in the grounds that the Appellant could/should have given her evidence from outside the United Kingdom is equally misconceived. It takes only a little knowledge of criminal law and procedure to appreciate that such a course of action would have had very serious implications for the prosecution's chances of success. The judge did not expressly deal with this point in his decision, but it is of such little merit that the failure is immaterial.
15. The judge's application of Article 8 to the Appellant's case was not a case of using this provision as a "general dispensing power", as alleged in the grounds. He quite properly found that Article 8 was engaged, and correctly went on to consider the rest of the Razgar questions. This case is far removed from the scenario in Nasim [2014] UKUT 25 (IAC).
16. The judge was fully entitled to conclude that the prosecution of violent offenders was in the public interest. It would be somewhat bizarre for the Respondent to suggest otherwise. The Appellant's presence in this country pending her evidence at the trial was, as implicitly held by the judge, in furtherance of that public interest.
17. The Respondent's contention that the judge failed to consider the benefits of obtaining Discretionary Leave is flawed on three bases. First, the period of any such leave was entirely a matter for the Respondent. Quite properly, the judge did not direct any period. The Respondent's own guidance on Discretionary Leave states that a period of less than thirty months can be made in appropriate cases. Thus, given the very particular facts of the present case, any period of leave could/would have been very short. The benefits accruing to the Appellant (and the consequent impact on the economic wellbeing of the United Kingdom) would have been negligible. Second, the grounds fail to take any account of the benefits to the public interest by the Appellant being able to give evidence at the criminal trial. Third, in any event, the grant of Discretionary Leave on Article 8 grounds following a successful appeal is simply a 'by-product' of the availability of recourse to the ECHR by individuals. Absent evidence of likely reliance on public funds, for example (of which there was none before the judge), it is difficult to see how the benefits consequent upon obtaining leave as a result of winning one's case should have an adverse impact on the ability to succeed in the first place.

18. Finally, although the Respondent's undertaking was in place at the hearing before the judge, and whilst he does not address this point in his decision, the grounds do not take the point. Mr Dewison, whilst confirming that the undertaking remained in place to date, did not seek to try and amend the grounds.
19. The decision of the judge stands.
20. I was informed by Mr Dewison that the criminal trial is now due to take place in the week beginning [] at [] (reference - ???). Any leave to be granted to the Appellant as a result of my decision and the new trial date is a matter for the Respondent.

Anonymity

21. **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 original Appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings. This direction has been made in order to protect the Appellant from serious harm, having regard to the interests of justice and the principle of proportionality.**

Decision

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

The decision of the First-tier Tribunal stands.

Signed
H B Norton-Taylor

Date: 30 March 2016

Deputy Judge of the Upper Tribunal

TO THE RESPONDENT FEE AWARD

No fee is paid or payable and therefore there can be no fee award.

Signed

Date: 30 March 2016

Judge H B Norton-Taylor

Deputy Judge of the Upper Tribunal