



IAC-AH-VP/DP-V1

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

Appeal Numbers: IA/21368/2014  
IA/21375/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 17<sup>th</sup> December 2015**

**Decision & Reasons Promulgated  
On 6<sup>th</sup> January 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE M A HALL**

**Between**

**LIDIJA DESPOTOVIC  
ANDJELA DESPOTOVIC  
(ANONYMITY ORDER NOT MADE)**

Appellants

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellants: Mr B Hawkin of Counsel instructed by Arlington Crown Solicitors

For the Respondent: Mrs S Sreeraman, Senior Home Office Presenting Officer

**DECISION AND REASONS**

**Introduction and Background**

1. The Appellants appeal against a decision of Judge Davidson of the First-tier Tribunal (the FtT) promulgated on 25<sup>th</sup> June 2015.

2. The Appellants are citizens of Serbia born 26<sup>th</sup> September 1969 and 22<sup>nd</sup> November 1997 respectively. The first Appellant is the mother of the second Appellant.
3. The Appellants entered the UK on 19<sup>th</sup> August 2008 with visit visas valid until 19<sup>th</sup> February 2009. Following the expiry of their visas the Appellants overstayed without leave.
4. On 23<sup>rd</sup> November 2011 the Appellants submitted applications for leave to remain based upon Articles 3 and 8 of the 1950 European Convention on Human Rights (the 1950 Convention). The applications were refused without a right of appeal on 14<sup>th</sup> January 2013. Further applications for leave to remain outside the Immigration Rules were submitted in February 2014 and refused on 30<sup>th</sup> April 2014.
5. The Appellants appealed to the FtT, and their appeals were heard together on 21<sup>st</sup> May 2015. The FtT, having heard evidence from both Appellants, dismissed the appeals with reference to Articles 3 and 8 of the 1950 Convention.
6. The Appellants applied for permission to appeal to the Upper Tribunal and permission to appeal was granted by Judge Cox on 18<sup>th</sup> September 2015 in the following terms;
  - “1. The Appellants (A1 and A2) are citizens of Serbia and are mother and 17 year old daughter. They seek permission to appeal, in time, against a decision of First-tier Tribunal Judge Davidson whereby he dismissed their appeal against the Respondent’s decision to refuse LTR outside the Rules having regard to Articles 3 and 8 ECHR.
  2. I have carefully considered the decision in relation to the grounds, settled by Counsel who appeared below. The grounds in essence contend that the judge failed to give adequate reasons for his adverse credibility finding and in particular why the corroborative evidence of A2 was rejected; and secondly erred in his approach to A2’s private life claim and associated section 55 best interests.
  3. On consideration, I am just persuaded that both grounds may be arguable in the terms in which they are couched.
  4. The grounds disclose an arguable material error of law in the decision and permission is granted.”
7. Following the grant of permission the Respondent lodged a response pursuant to rule 24 of The Tribunal Procedure (Upper Tribunal) Rules 2008 contending that the FtT had directed itself appropriately. In summary it was contended that the FtT gave adequate reasons at paragraph 38 for not accepting the first Appellant’s account that she was the victim of domestic violence. It was contended that in paragraph 38 the FtT referred to both Appellants who claimed to be in fear of the first Appellant’s ex-husband. It was contended that the FtT clearly had regard to the evidence of both Appellants.

8. It was contended that the FtT had properly considered the best interests of the second Appellant, as a child, and balanced this against the public interest. The FtT noted at paragraph 60 that the first Appellant stated that she was in a relationship, but not living with her partner, and it was unclear what the nature of the evidence was before the FtT regarding this relationship, and what difference it would have made to the outcome of the appeal.
9. Directions were subsequently issued making provision for there to be a hearing before the Upper Tribunal to decide whether the FtT decision contained an error of law such that it should be set aside.

### **The Appellants' Submissions**

10. Mr Hawkin relied and expanded upon the four Grounds of Appeal which are summarised as follows:

#### **Ground 1**

The FtT erred at paragraph 38 in rejecting the first Appellant's account of domestic abuse by failing to take into account the second Appellant's corroborative evidence. If the FtT rejected the second Appellant's evidence on this point, reasons should have been given and no reasons were given.

#### **Ground 2**

The FtT erred in paragraph 32 by proceeding on the basis that it was "clearly in her interest" for the second Appellant to return with her mother to Serbia. The description of the second Appellant's private life, and the evidence in support, in fact provided strong arguments that it was in her interest to remain in the UK.

#### **Ground 3**

The FtT erred at paragraph 46 by concluding that the second Appellant's best interests in remaining with her mother outweigh her interest in remaining and being educated at public expense. The FtT had not explained how the second Appellant's best interest outweighed her interest in remaining. The FtT erred by appearing to consider that the second Appellant's claim concerned the wish to be "educated at public expense". This was not the case, as her claim concerned the totality of her personal, social and private life accumulated during her nearly seven years of living in the UK. In focusing on the simplistic assumption that the case is just about "education", the FtT had not considered these other relevant points or the evidence provided in support.

#### **Ground 4**

In considering at paragraph 50 the proportionality of removal the FtT erred by leaving out of account the first Appellant's relationship with Igor Filipboc, who has indefinite leave to remain in the UK, and supports both Appellants.

## **The Respondent's Submissions**

11. Mrs Sreeraman relied upon the rule 24 response. In summary it was contended that the FtT had given adequate reasons for the findings in paragraphs 37 and 38. There was specific reference in paragraph 37 to an ashtray being thrown, and that was evidence given by the second Appellant, which indicated that her evidence had in fact been taken into account by the FtT. The FtT in these paragraphs gave cogent reasons for rejecting the claim that the Appellants would be at risk from the first Appellant's former husband if they returned to Serbia and there was no error disclosed in the dismissal of the appeals with reference to Article 3.
12. It was contended that there was no error disclosed by the consideration of the FtT in relation to Article 8. The FtT correctly referred to the guidelines in EV (Philippines) [2014] EWCA Civ 874.

## **The Appellants' Response**

13. Mr Hawkin disagreed that paragraphs 37 and 38 of the FtT decision disclosed a consideration of the second Appellant's evidence. It was submitted that these paragraphs related only to the evidence given by the first Appellant.
14. Mr Hawkin reiterated that the FtT had neglected to consider that the second Appellant was almost an adult, and did not consider the second Appellant's case fairly, because the FtT consideration related to her education, and not other aspects of her private life.
15. At the conclusion of oral submissions I reserved my decision.

## **My Conclusions and Reasons**

16. I do not find a material error of law disclosed by the first Ground of Appeal. The FtT was entitled to find in paragraph 37 that there was little evidence of domestic violence, except the account of the ashtray which was thrown, and my reading of this paragraph is that this aspect of the account was accepted. It was this aspect that was corroborated by the second Appellant's evidence, which is referred to in paragraph 21 of the FtT decision.
17. The FtT was entitled to note that the first Appellant had not sought any help from the Serbian authorities in relation to domestic violence, and to take into account that her explanation for that, as explained in paragraph 37 was that she claimed that her former husband was politically influential and above the law. The FtT was entitled to reject this aspect of the first Appellant's account noting that when her former husband received a letter from the second Appellant's primary school teacher, threatening to report him to the authorities, he was frightened into relinquishing control of the second Appellant. The FtT was entitled to find that this did not indicate that he was above the law.

18. In addition the FtT was entitled to note in paragraph 38, that the Appellants, having left Serbia in 2007 claiming to be in fear of the first Appellant's former husband, in fact returned to Serbia in 2008 to visit family members, which indicated that they were not genuinely in fear of the first Appellant's former husband.
19. The FtT adequately assessed the evidence in relation to the claimed risk on return, and did not fail to take into account any material evidence, and the finding in paragraph 48 that the Appellants had not proved that they would be at risk on return from the first Appellant's former husband, was a finding open to the FtT. The evidence submitted to the FtT did not prove the Appellants would be at risk from the first Appellant's former husband of treatment that would breach Article 3 of the 1950 Convention.
20. In my view grounds 2 and 3 of the application for permission to appeal are linked and I will deal with them together. The second Appellant was a minor at the date of the FtT hearing and therefore the FtT had to consider her best interests as a primary consideration and would have committed an error of law had it not done so.
21. Despite incorrect references in paragraphs 32, 43 and 46 to the best interests of a minor being paramount as opposed to primary, I am satisfied that the FtT realised that the best interests of a child are a primary consideration, and a finding must be made in relation to those best interests, and then an assessment made whether those best interests are outweighed by the strength of any other considerations.
22. The FtT stated in paragraph 32;

"I therefore accept that Andjela, who is still a minor, has over six years of private life which deserved to be taken into account in this case. It is clearly in her interest to remain with her mother, and that her social, cultural, and educational life is not disrupted unless there are compelling reasons to the contrary. In view of the fact that she has over six years of meaningful life in the UK, and is currently aged 17, and will be an adult in six months' time, she is at the stage where she would normally be preparing to take her A levels and preparing to go to university."
23. I find no error of law in the statement set out above. The FtT recognised that the second Appellant's social, cultural and educational life needed to be considered, and recognised that although still a minor, she would be an adult in six months' time.
24. The second Appellant's witness statement dated 21<sup>st</sup> May 2015, which was presented to the FtT, does not give comprehensive details of her private life but confirms in paragraph 3 that she is permanently resident with her mother in the UK, and that they last entered the UK in August 2008 together, and have lived together ever since. Paragraph 5 describes the second Appellant and her mother having significant social and community ties, and explains that they both considered the UK to be their home, and paragraph 7 describes the Appellant and her mother feeling more settled

and happier and that they both wished to be given the opportunity to continue their life in the UK. It is therefore apparent that the second Appellant has always lived with the first Appellant since coming to the UK, and that there is a close bond between them, and it is not apparent that it was suggested to the FtT that the best interest for the second Appellant would be to separate from her mother.

25. In paragraph 47 the FtT concluded that the Appellants had established a family life in the UK as mother and daughter, and that conclusion discloses no error of law. It was open to the FtT, having considered the evidence submitted on behalf of the Appellants to conclude that the best interests of the Appellant, as a minor, would be to remain with her mother, and to return to Serbia, the country of which both are citizens, and where they have spent the greater part of their lives.
26. The FtT took into account the wishes of both Appellants to remain in the UK, and the length of time that they had resided here, and the fact that their residence had been unlawful since February 2009.
27. I do not accept that the FtT has adopted the “simplistic assumption that the case is just about education”. I do not accept the FtT has not considered other relevant points. I do find that there was a lack of comprehensive evidence in relation to the second Appellant’s private life, and that her evidence, and that of the first Appellant, did focus upon her education. The second Appellant referred to her education in paragraph 8 of her witness statement confirming her enjoyment in attending school. Paragraph 7 of the Grounds of Appeal contained within the first Appellant’s witness statement confirms that the second Appellant is currently attending school and is at an important stage of her education, and that removing her from the UK would severely disrupt her ability to focus on her education.
28. The FtT acknowledges and considers in paragraphs 32 and 43, that the second Appellant has social and cultural private life in the UK, in addition to the educational aspect of her private life. In my view the FtT has considered all the evidence submitted on behalf of the Appellants in relation to their private and family life, and not taken into account irrelevant factors, and was entitled to reach the conclusion that the second Appellant’s best interests would be to remain with her mother and to return to Serbia, even if that was not the wishes of the Appellants.
29. I find no merit in the fourth Ground of Appeal which contends that the FtT left out of account when considering proportionality, the first Appellant’s relationship with Igor Filipboc. The FtT referred to this relationship in paragraphs 16 and 35 of the decision but did not specifically refer to it in considering proportionality and that is an error, but it is not material. It is apparent that the FtT placed no significant weight upon that relationship and that is not an error. It is noteworthy that although Mr Hawkin advised me that Mr Filipboc had attended the FtT hearing, he was not called to give any oral evidence in relation to the relationship between himself and

the first Appellant, and he did not submit any witness statement to confirm the details of that relationship.

30. In fact, the Grounds of Appeal submitted to the FtT, which were contained within the first Appellant's witness statement, rely at paragraph 6 upon the first Appellant's relationship with another individual, Stanko Raonic, contending that the couple have been in a relationship for a considerable period of time, and that Mr Raonic is a father figure to the second Appellant, and has maintained and accommodated the Appellants in the UK without recourse to public funds.
31. There was no reference to Mr Filipboc in the witness statements filed by either of the Appellants. The first Appellant's case had altered by the time the FtT heard the appeal, as her relationship with Mr Raonic had ended and she had commenced a new relationship with Mr Filipboc, but they did not live together. It appears that it was not contended that the Appellants had a family life with Mr Filipboc but that the relationship should have featured as a consideration in their private life. The lack of a finding on this relationship is not a material error, given the absence of any evidence from Mr Filipboc, and the lack of any reference to him in the second Appellant's witness statement dated 21<sup>st</sup> May 2015, and the acceptance that the Appellants did not live with him, and the fact that the first Appellant was in a relationship with another individual who was providing maintenance and accommodation for them, when the appeal was lodged in May 2014, which contradicted the assertion made by the first Appellant and referred to in paragraph 16 of the FtT decision, that she had been with Mr Filipboc for thirteen months.
32. The grounds contained within the application for permission to appeal display a disagreement with the findings made by the FtT, but do not disclose a material error of law.

### **Notice of Decision**

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law such that the decision must be set aside.

I do not set aside the decision. The appeals are dismissed.

### **Anonymity**

The First-tier Tribunal did not make an anonymity direction. There has been no request for anonymity made to the Upper Tribunal, and I see no need to make an anonymity order.

Signed

Date: 18<sup>th</sup> December 2015

Deputy Upper Tribunal Judge M A Hall

**TO THE RESPONDENT  
FEE AWARD**

The appeals are dismissed. There is no fee award.

Signed

Date: 18<sup>th</sup> December 2015

Deputy Upper Tribunal Judge M A Hall