Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/04679/2015

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 30 May 2017	**On 01 Jun 2017**

Before

UPPER TRIBUNAL JUDGE KAMARA

Between

MR BUJAR ALIU
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Plowright, counsel instructed by Fisher & Myftari Solicitors
For the Respondent: M I Jarvis, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. This is an appeal against the decision of First-tier Tribunal Judge Buckwell, promulgated on 31 October 2016. Permission to appeal was granted by First-tier Tribunal Judge Grant-Hutchison on 10 April 2017.

Anonymity

2. No direction has been made previously, and there is no reason for one now

Background

3. During 1999, the appellant entered the United Kingdom under a false identity and unsuccessfully claimed asylum. The appellant remained in the United Kingdom unlawfully until November 2007 when he returned to Albania to seek entry clearance as the spouse of a person settled in the United Kingdom. That application was refused and his appeal against that decision was unsuccessful on 29 May 2009. On 8 June 2009, the appellant married his partner in Albania and thereafter entered the United Kingdom unlawfully. On 22 May 2012, he made an unsuccessful human rights application and on 3 August 2015 a further application was made on the same basis. It is the refusal of that claim, on 6 August 2015, which is the subject of this appeal.

4. The decision of 6 August 2015 informed the appellant that the respondent considered there to be no insurmountable obstacles to family life with his wife being enjoyed in Albania, there were no dependent children, no very significant obstacles to him integrating in Albania and absence of exceptional circumstances. The appellant was afforded a right of appeal against the decision to refuse his human rights application, solely on the ground the decision in question breaches his rights under section 6 of the Human Rights Act 1998.

The hearing before the First-tier Tribunal

5. At the hearing before the First-tier Tribunal, both the appellant and his wife gave evidence. The judge concluded that the appellant could not meet the requirements of the Immigration Rules relating to family and private life and there was no gap between the Rules and the circumstances of the appellant. The appeal was dismissed under and outside the Immigration Rules.

The grounds of appeal

6. There were three grounds of appeal. Firstly, it was argued that the judge erred in failing to take into account that the appeal was on human rights grounds; Article 8 was not considered directly and he did not apply section 117B of the Nationality, Immigration and Asylum Act 2002. Secondly, that the judge erred in failing to make any factual findings about whether there would be financial support for the wife's daughter in the Philippines or funds for travel to the Philippines if the wife moved to Albania or the objective evidence of discrimination which "*strongly*" suggested that she would not be able to work owing to her gender and race. Thirdly, it was contended that the judge, having found the marriage to be genuine and subsisting, failed to consider the relevance of the repeated refusals of entry clearance on the basis that the relationship was not genuine.

7. Permission to appeal was granted on the basis on the basis sought.

8. The respondent's Rule 24 response, received on 25 April 2017 opposed the appeal, arguing that the judge engaged with Article 8 outside the Rules, finding that there were no compelling circumstances.

The hearing

9. Mr Plowright relied on his skeleton argument and the grant of permission. Starting with the first ground, he accepted that the judge did in fact refer to section 117B of the 2002 Act at [37] and [44] of the decision. Turning to the second ground, he contended that there were issues that the judge did not adequately address which included the support provided by the appellant's wife to her relatives in the Philippines as well as her concerns that she would be discriminated against in Albania. Mr Plowright referred to an expert opinion which supported the wife's fears but accepted that this had not been before the First-tier Tribunal. Furthermore, Mr Plowright argued that the judge had a report from Home office on "ethnic issues" in Albania as well as the United States State Department report on Albania but that there had been no reference to that objective evidence in the decision. Finally, he argued that the judge did not adequately carry out the proportionality exercise

10. In reply, Mr Jarvis urged me not to take the expert report into account as this was not before the judge. He submitted that the judge engaged with the evidence and submissions presented and was aware what was said regarding discrimination and the ability of the appellant's wife to support her mother and daughter in the Philippines. Furthermore, he argued that there was insufficient evidence before the judge to establish that there was such a high level of discrimination against women or people of Filipino ethnicity to the extent that it prevented family life from continuing in Albania. In relation to the third ground, Mr Jarvis relied on Agyarko and Ikuga, R (on the applications of) v Secretary of State for the Home Department [2017] UKSC 11, accepting that a person might not meet Ex.2 of Appendix FM but yet meet the criteria outside the Rules, however in this case, he contended that section 117B was not going to benefit the appellant given his immigration history and the precariousness of his stay when the relationship was established.

11. In closing, Mr Plowright described the First-tier Tribunal decision as brief and argued that it did not address the issues, other than in generalised terms

12. At the end of the hearing, I announced that the judge made no material error of law and that his decision was upheld.

Decision on error of law

13. As conceded by Mr Plowright, there is no merit in the first ground, given that the judge recorded the respondent's reference to section 117B during

submissions, set out the relevant provisions under the part of the decision dealing with the law and was clearly aware of the those provisions. There was no need for the judge to make any further reference to them, given that there was nothing which could have assisted the appellant in view of his complete disregard for immigration laws.

14. The arguments as to the judge's treatment of the circumstances of the appellant's wife amount to little more than disagreement with his findings. The judge listed all the documentation before him including the Home Office Country Information and Guidance Report on Albania relating to ethnic minority groups as well as the US State Department Report at [13] of his decision. Furthermore, he set out, verbatim, the oral evidence and submissions between [14] and [40]. At [45], at the start of his findings and reasons, the judge specifically recorded that he took into account all the evidence submitted, including the oral evidence, submissions and a skeleton argument.

15. Contrary to what was argued in the grounds, the judge clearly engaged at [46] with the occasions when the appellant made lawful entry clearance applications to return to the United Kingdom and he proceeds to find that the relationship is genuine and subsisting. At [48], the judge confirms that he has looked at the evidence in the round, noting that both the appellant and his wife have proved capable of relocating by the fact that they did so when they, separately, moved to the United Kingdom.

16. The burden was on the appellant to demonstrate that he would be unable to support himself his wife or her family and the judge demonstrated that he understood the focus of the human rights claim. At [49] the judge accepts that for family life to continue the appellant's wife would need to relocate to Albania but gives sound reasons for concluding that the reasons provided on their behalf did not amount to insurmountable obstacles entitling the appellant to be granted leave to remain in the United Kingdom. Those reasons include the fact that the appellant had property in Albania, was fluent in Albanian and could assist his wife with the language, had close relatives in Albania, that the appellant could find work to support his wife and that he had recently lived in that country. Those findings were more than adequate. Mr Plowright did not argue that the background evidence before the judge in relation to discrimination demonstrated that family life could not take place in Albania. Clearly, those instructing him have decided that further evidence was required and instructed an expert in this regard. That report was not before the judge and I have not considered it.

Conclusions

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 is upheld.

Signed Date: 19 July 2017

Upper Tribunal Judge Kamara