Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/10584/2017

THE IMMIGRATION ACTS

Heard at Bradford	**Decision & Reasons Promulgated**
On 2nd July 2018	**On 28th September 2018**

Before

UPPER TRIBUNAL JUDGE LANE

Between

KARAM SHAMRI
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms Cleghorn, instructed by Immigration Legal Advice Centre
For the Respondent: Mrs Pettersen, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, Karam Shamri, claims to have been born on 1 January 1985 and to be an undocumented Kuwaiti Bidoon. He claimed to have arrived in the United Kingdom in January 2012 and claimed asylum on 20 March 2012. His claim was refused and he appealed against that refusal. His appeal was dismissed. The appellant became appeal rights exhausted in August 2012 but he remained living in the United Kingdom. On 27 September 2015, the appellant made further submissions to the respondent

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repeating his original asylum claim but also making a further claim based on his relationship with a British citizen, [S C] (hereafter Ms [C]). His application was refused by a decision of the respondent dated 3 October 2017. The appellant applied to the First-tier Tribunal (Judge Duff) which, in a decision promulgated on 24 November 2017, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. The grounds of appeal are somewhat difficult to follow, in part because they do not contain any clear headings. This is significant given that Judge Boyes, who granted permission in the First-tier Tribunal, has given permission on "ground 2" but not on the first ground. As regards the first ground of appeal, Judge Boyes wrote that, "the factors listed in Section 117B(2) – (3) do not create a positive for the appellant, they are merely statements of relevance." I take it that ground 1 is contained in paragraphs 2 and 3 of the grounds of appeal. As regards what Judge Boyes identified as "ground 2", he writes,

> "The judge seemingly has applied the Razgar principles into the insurmountable obstacles test without first considering the Rules then considering the position outside the Rules. In addition, the inclusion of the test of impossibility is arguably wrong in law."

As I understand it, Judge Boyes has given permission for the appellant to argue the contents of paragraphs 4 – 6 of the grounds of appeal.

3. Judge Duff's decision is not unproblematic. I agree with Ms Cleghorn, who appeared before both Tribunals for the appellant, that the judge appears to move in and out of an analysis of the Immigration Rules and Article 8 ECHR. However, that is not necessarily indicative of a serious error of law. The judge had before him an appeal in which he needed first to consider whether or not the appellant met the requirements of HC 395 and thereafter whether the appeal should be allowed on Article 8 grounds. In his analysis, the asylum grounds are not mentioned at all but it is quite clear, both from the evidence which was led before the First-tier Tribunal and the comments of Ms Cleghorn recorded by the judge, that the only ground of appeal which was being advanced to the First-tier Tribunal was that in respect of Article 8 ECHR.

4. Whilst I agree with Ms Cleghorn that Judge Duff's analysis is a little jumbled, I do not find that he has erred in law. The sole issue at dispute in this appeal concerned not the appellant's claim for asylum or humanitarian protection but his relationship with Ms [C] whom he had met in a coffee shop in York in 2012 and with whom he had cohabited since 2013. The only substantive issue so far as Article 8 was concerned was whether

it was reasonable to expect the appellant and Ms [C] to pursue their relationship outside the United Kingdom, in this particular case in Egypt. Ms Cleghorn made submissions to the First-tier Tribunal that the Secretary of State's country policy and information note on Egypt showed that it would not be possible for Ms [C] to enjoy family life with the appellant in Egypt on the basis of "societal discrimination in that country." [28]. The judge explicitly rejected that submission [32] where he found that Ms [C], who has grown-up children, would find it possible to live in Egypt as a mature woman "in good health" "unencumbered by children" with the appellant notwithstanding any of the difficulties possibly indicated by the country policy and guidance note. In my view, that was a finding available to the judge. For all the apparent confusion regarding EX.1, EX.2 and *Razgar* principles, the judge has ultimately focused upon this central question in this appeal, that is the reasonableness or otherwise of family life between Ms [C] and the appellant continuing in Egypt.

5. The remaining ground of appeal challenges the decision on the basis that the judge has introduced a test of impossibility as regards Article 8 which the appellant submits is inappropriate. That challenge arises from this passage at [32]:

> "[Ms [C]] would, perfectly understandably and properly – rather see the end of their relationship than leave her home, job and her daughters and her grandchildren. That is a wholly understandable choice on her part – but it is her choice. Whilst, if the appellant were living in Egypt, I have no doubt that it would be very difficult for Ms [C] to join and live with him there it would clearly not be impossible."

6. Ms Cleghorn submitted that this test of impossibility was at the back of the judge's mind throughout the analysis and thereby vitiated it. I disagree. The judge has not stated in terms that the test as to whether it would be appropriate for family life to take place in Egypt is one possibility; and has elsewhere in the analysis used the appropriate language of "insurmountable obstacles". Whilst the judge's use of language is arguably not felicitous, I do not find that he has established a new and inappropriate test but has used the words "it would clearly not be impossible" synonymously, concluding that there would be no insurmountable obstacles to family life taking place in Egypt. The judge has correctly recorded that Ms [C] categorically stated that she would not go to Egypt to live with the appellant if he were removed there does not end at the argument. It is the task of the judge to consider whether or not there were insurmountable obstacles to family life taking place in Egypt and, having rejected Ms Cleghorn's submission based on the country policy, and having no other evidence (for example, concerning Ms [C]'s health or other particular circumstances) which might

lead to Ms [C] and the appellant encountering a high level of hardship by relocating to Egypt, he has plainly reached an outcome which was available to him on the evidence.

7. For the reasons I have given, I uphold Judge Duff's decision. In closing, however, I would deprecate his use of language at [31]. Before stating that he intended to dismiss the appeal, Judge Duff wrote that it was a decision which he took "with extreme personal regret." A judge may show empathy for the circumstances of an appellant but it is not appropriate for the judge to express "extreme personal" emotions of any kind when allowing or dismissing any appeal.

Notice of Decision

8. This appeal is dismissed.

9. No anonymity direction is made.

Signed Date 25 September 2018

Upper Tribunal Judge Lane

I have dismissed the appeal and therefore there can be no fee award.

Signed Date 25 September 2018

Upper Tribunal Judge Lane