



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

Appeal Number: PA/00432/2018

THE IMMIGRATION ACTS

Heard at Bradford

On 4th February 2019

Decision & Reasons

Promulgated

On 27th February 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE D E TAYLOR

Between

RLY

(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Greer (Counsel)

For the Respondent: Mrs R Pettersen (Home Office Presenting Officer)

DECISION AND REASONS

1. This is the appellant's appeal against the decision of Judge O'Neill made following a hearing at Manchester on 9th February 2018.

Background

2. The appellant is a citizen of Algeria born on 10th May 1990. She entered the UK as the spouse of a British citizen on 24th February 2017 and was divorced on 20th November 2017.
3. The respondent accepted that during her marriage she was the victim of domestic violence from her husband.

4. She claimed asylum on 4th July 2017 and was refused on 20th December 2017. It was this refusal which was the subject of the appeal before Judge O'Neill.
5. The judge dismissed the appellant's asylum claim and permission was not granted to challenge that aspect of his decision.
6. Permission to appeal was however granted by Upper Tribunal Judge Kekic on 13th August 2018 in respect of the judge's failure to address the human rights claim which was relied upon in submissions by the appellant's representative. It is clear from the judge's notes that this argument was made to him at the hearing and Mr Greer, who appeared in the First-tier Tribunal, confirmed that this was the case.
7. Mrs Pettersen did not seek to argue that the decision could be maintained nor that it should be reversed and allowed on Article 8 grounds.

Findings and Conclusions

8. It is accepted by the respondent that the appellant meets the requirements of Section E-DVILR: eligibility for indefinite leave to remain as a victim of domestic violence.
9. The appellant's first grant of limited leave was as a spouse of a British citizen. Under GEN.1.9 the requirement to make a valid application will not apply when an Article 8 claim is raised as a part of an asylum claim or as part of a further submission in person after an asylum claim has been refused.
10. Mrs Pettersen in fact confirmed from her records that the appellant had written to the Secretary of State asking for a grant of indefinite leave to remain as a consequence of domestic violence. She did not seek to argue that the appellant did not meet the substantive Immigration Rule and therefore accepted that the appellant should succeed on Article 8 grounds.

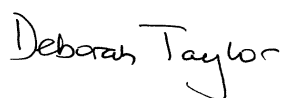
Decision

11. The Immigration Judge's decision is set aside. He erred in law in that he failed to take into account a relevant matter. It is remade as follows. The appellant's appeal is allowed on human rights grounds.

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 23 February 2019

Deputy Upper Tribunal Judge Taylor