



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

Appeal Number: PA/00947/2018

THE IMMIGRATION ACTS

Heard at North Shields

On 7 December 2018

**Decision & Reasons
Promulgated**

On 10 January 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE ZUCKER

Between

[K H]

(~~ANONYMITY DIRECTION NOT MADE~~)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Brakaj, Iris Law Firm

For the Respondent: Mr M Diwnycz, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Iran whose date of birth is recorded as [~] 1988. He made an application for international protection as a refugee. The application was refused. There were then a number of submissions made to the Respondent coupled with some delay on the Respondent's part. However, on 20 December 2017 a further decision was made to refuse the application and it is that decision which is the subject matter of this appeal.

2. However, before the matter had been resolved by the Secretary of State representations were also made on human rights grounds based upon a relationship formed by the appellant, whilst in the United Kingdom with one Miss Allison, with whom the Appellant claimed to cohabit.
3. On 20 February 2018 the appeal on all matters was heard at North Shields by Judge Holmes and Judge Gumsley sitting as a Panel. They dismissed both the asylum and the human rights appeals.
4. Not content with those decisions, by Notice dated 21 March 2018, the Appellant made application for permission to appeal to the Upper Tribunal. Permission to appeal was refused on the asylum claim but allowed in respect of the human rights claim because the Panel found in terms that the couple who living together out of wedlock/civil partnership could not rely on family life but rather only private life in the context of Article 8 of the European Convention on Human Rights (ECHR).
5. Mr Diwnycz accepted immediately and without argument, quite rightly in my view that it was simply wrong as a matter of law for the panel to have approached the issue of Article 8 ECHR in this way. Family life has long been established, as a matter of law to include de facto relationships outside of marriage and includes also the right to establish family life: X, Y. and Z. v. UK [1997] ECHR 20. The concern that I have is the extent to which that misdirection has infected the thinking of the Panel in the proportionality assessment.
6. In my judgment the Appellant cannot be confident that his appeal was dealt with on a proper basis. It may be that had the Panel properly categorised the relationship, they would have come to the same view as that expressed in this decision, but one cannot know. Though a relationship built when it is precarious is to be given less weight than one that is not built when precarious, family life considerations generally carry greater weight than private life considerations, such as in student cases.
7. Mr Diwnycz, for the Respondent accepts that the proper course of this case is for the matter to be remitted to the First-tier Tribunal, but only on the human rights appeal, consistent with the grant of permission. If a fresh application for international protection were to be made by the Appellant for international protection, as a refugee, that would go back to the Secretary of State to deal with in the usual way.
8. For the avoidance of doubt therefore the decision of the First-tier Tribunal contained a material error of law with respect to the human rights aspect of the appeal, being the discreet human rights aspect of this appeal i.e. the relationship contended for between the Appellant and Miss Allison.
9. The asylum decision is affirmed but the human rights appeal is set aside for error of law remitted to the First-tier Tribunal to be remade.

10. In so far as it may be said that the issue of cohabitation may be in issue, that matter is resolved given the concession which appears at paragraph 49 of the Decision of the panel and which concession is maintained by the Respondent and preserved as a finding by this Tribunal.

Decision

The appeal is allowed: The decision of the First-tier Tribunal with respect to the asylum appeal is affirmed. The Decision made on human rights grounds with respect to the relationship contended for between the Appellant and Ms Alison, and what flows from that however, is set aside for error of law to be remade in the First-tier Tribunal, not before Judges Holmes, Gumsley, Page or Hands.



Signed
Deputy Upper Tribunal Judge Zucker

Date: 20 December 2018