



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

Appeal Number: PA/12838/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 6th June 2019**

**Decision and Reasons Promulgated
On 12th June 2019**

Before

UPPER TRIBUNAL JUDGE COKER

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

**KRISTINE [G]
(anonymity direction not made)**

Respondent

Representation:

For the Appellant: Mr S Kotas, Senior Home Office Presenting Officer

For the Respondent: No appearance

DETERMINATION AND REASONS

1. The Secretary of State sought and was granted permission to appeal the decision by First-tier Tribunal Judge Herbert who allowed Ms [G]'s appeal against the refusal of her human rights appeal on Article 8 grounds. He dismissed her appeal against the refusal of her international protection claim.
2. Permission was granted on the grounds that it was arguable the First-tier Tribunal judge had given inadequate reasons, had failed to afford adequate

weight to the public interest and had made a flawed assessment of Ms [G]'s credibility.

3. Ms [G] did not appear before the Tribunal. She had earlier notified the Tribunal that her former solicitors were no longer instructed, and correspondence should be addressed to her at her home address. Ms [G] was sent a Notice of Hearing for 8th April 2019. For medical reasons, of which Ms [G] notified the Tribunal, that hearing was adjourned. A notice of hearing for today was sent to her at her last notified address. She did not attend the hearing and provided no explanation why she did not attend. No-one attended on her behalf. The Notice of Hearing has not been returned to the Tribunal undelivered.
4. I am satisfied she has been properly served with the hearing date, and, in the absence of an adequate explanation for her non-appearance, I am satisfied the hearing can proceed in her absence.
5. The First-tier Tribunal judge set out Ms [G]'s immigration history which, briefly, is as follows:
 - a. She left Armenia, the country of which she is a national, on 6th January 2015 using papers she had been given by an agent and travelled to Greece.
 - b. She remained in Greece until 25th February when she arrived, by air, in the UK travelling on false documents. She claimed asylum after questioning about the passport.
 - c. Whilst in Greece she had been living with a Greek national since November 2016; he is also in the UK.
6. Ms [G]'s asylum, Article 3 and humanitarian protection claim was found by the First-tier Tribunal judge to be lacking in credibility and was dismissed. There has been no application for permission to appeal those findings.
7. The First-tier Tribunal judge made the following findings with regard to her family life/Article 8 claim:
 66. In relation to the Appellant's family life, I am satisfied to the lower standard set out in Kala that the appellant has been in a long-term relationship cohabiting with her common-law husband since November 2016, they having met the month before.
 67. I am satisfied that they live together effectively as husband and wife and they have genuine plans to marry but for these proceedings.
 68. I have therefore no hesitation in finding that the Appellant is enjoying a significant family and private life with her common-law husband who is exercising freedom of movement rights under the EEA (Immigration) Regulations 2006 [sic].

69. I find that the United Kingdom would be placed in breach of its international obligations under Article 8 of the ECHR and although it is not before me, under the EEA regulations in any event.

Error of law

8. The First-tier Tribunal judge has given no reasons for finding that the decision to refuse Ms [G]'s Article 8 human rights claim was disproportionate. He has applied the incorrect standard of proof. The appeal was an appeal against a decision to refuse a human rights claim, it was not an appeal against a decision made under the Immigration (European Economic Area) Regulations 2016.
9. The First-tier Tribunal judge has failed to undertake the necessary balancing exercise required in order to reach a finding on whether a decision is disproportionate. In particular the judge has failed to consider the Immigration Rules and ss117A -D Nationality Immigration and Asylum Act 2002.
10. The First-tier Tribunal judge fails to address whether there are any obstacles to Ms [G] continuing her family life other than in the UK or whether and to what extent there are obstacles to her and her Greek husband living elsewhere.
11. I am satisfied the First-tier Tribunal judge erred in law in reaching his decision such that the decision is set aside to be remade.

Remaking the decision.

12. The First-tier Tribunal judge was able to make a finding that the couple were living together; such finding stands. I have considered and taken into account the bundle of evidence filed by Ms [G] before the First-tier Tribunal. No application has been made to file further evidence.
13. On the basis of the evidence before me there is no substance in her claim to remain in the UK on the basis of her Article 8 human rights claim. She does not speak English, has been in the UK for a relatively short period of time, her status at the time of the application was precarious, no reasons have been given why the relationship could not continue in Greece, where they had lived prior to coming to the UK. There was no evidence before me that there were special circumstances or that there would be particular hardship for either party if she were to be removed from the UK. There was no significant evidence that she could not return to Armenia, given that her asylum claim has failed, and no significant evidence that it would be unduly harsh for her partner to travel there with her or that there would be significant obstacles to his relocation there. She gave no evidence why she had not claimed asylum in Greece and the credibility of her evidence is called into question by her failure to claim in a country where she had lived for many months without difficulty.

14. Although she has established family life, it is well established that individuals cannot simply choose which country they wish to live in, absent other reasons. The public interest does not lie in permitting Ms [G] to remain in the UK – she does not meet the requirements of the Immigration Rules and there are no identified compelling or compassionate circumstances such as would merit an alternative finding.

Conclusions:

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law in so far as the appeal against the decision to refuse her human rights (Article 8) claim is concerned.

I set aside the decision on article 8; the decision dismissing her asylum, Article 3 and humanitarian protection claims remains.

I re-make the decision in the appeal by dismissing the appeal by Ms [G] against the decision of the SSHD refusing her article 8 claim.

Date 6th June 2019



Upper Tribunal Judge Coker