



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

Appeal Number: HU/23560/2018

THE IMMIGRATION ACTS

Heard at Edinburgh
On 23 January 2020

Decision & Reasons Promulgated
On 30 January 2020

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

SURREYA LIM

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

For the Appellant: Mr A J Bradley, of A J Bradley & Co, Solicitors
For the Respondent: Mr M Clark, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant applied on 17 October 2018 for clearance to visit her husband in the UK, saying that she intended to stay for 4 months and 5 days.
2. The ECO refused her application by a decision dated 23 October 2018, maintained by an Entry Clearance Manager on 5 February 2019.
3. An appeal was filed with the FtT on 19 November 2018. FtT Judge Green dismissed it by a decision promulgated on 1 August 2019.
4. The UT granted the appellant permission to appeal on 2 grounds, set out in her application dated 11 November 2019.

5. Ground 1 is on these lines. Unlike the ECO, the judge found that the appellant intended to return to Turkey when her visa expired, and so she met the requirements of the rules. The Judge referred to *SS (Congo)* [2015] EWCA Civ 387 and to *MM (Lebanon)* [2017] UKSC 10, where the rules were not met. The rules were intended to produce results compatible with article 8, other than in exceptional cases. In this case, the ECO's decision was not in accordance with the rules or with the law and hence disproportionate, applying *Razgar*, [2004] UKHL 27.
6. Ground 2 is based on the best interests of the children of the marriage, but it emerged in submissions that no such case was before the FtT. Mr Bradley accordingly withdrew this ground.
7. Mr Bradley submitted further to ground 1:
 - (i) There was evidence before the FtT that the sponsor was on home curfew from around September 2018 until 4 March 2019.
 - (ii) Family life could not be carried on other than by the appellant visiting the UK during that period.
 - (iii) It was implicit in the decision that the terms of the immigration rules were met.
 - (iv) The judge should have stated that conclusion explicitly.
 - (v) The judge applied the wrong tests to article 8.
 - (vi) The judge should have found that as the rules were satisfied, the case was made out on human rights grounds.
 - (vii) The decision should be set aside.
 - (viii) The case was to be considered as at the date of the ECO's decision.
 - (ix) The decision should be reversed.
8. Mr Clark replied:
 - (i) The ECO's decision was based not only on doubts about the relationship, but also on concerns about the appellant's personal circumstances, source of funds, and absence of evidence of funds to cover costs, along similar lines to two prior refusals in July and August 2016.
 - (ii) Although the judge accepted there was a relationship, he said nothing about the other reasons given by the ECO and relied upon by the presenting officer in the FtT.
 - (iii) The judge should have decided, explicitly, whether the terms of the rules were met.

- (iv) The judge had not decided, even implicitly, that the rules were met, as he had not dealt with several elements of the case.
- (v) Although the rules were a starting point for article 8, in a visit visa case it did not follow that to meet the rules showed an article 8 right to enter the UK.
- (vi) The appellant and sponsor had chosen over many years to carry on their married life by spending most of their time apart.
- (vii) The decision did not interfere significantly with family life as the appellant and sponsor have chosen to spend it.
- (viii) That was the effective decision of the judge. It involved no error on a point of law. Any error was incidental.
- (ix) The sponsor had the option of applying again, if she had evidence to satisfy the rules.
- (x) The sponsor has been free since 4 March 2019 to visit the appellant.
- (xi) It was accepted for present purposes that the relevant date was the date of decision. However, if the decision were to be remade, either at date of decision or on up to date circumstances, the outcome would be the same.

9. Mr Bradley, finally, submitted:

- (i) The ECO's concerns about the relationship were bound up with his concerns over finances and absence of evidence of support from the sponsor to the appellant.
- (ii) In resolving the question of relationship, the judge effectively answered the other points in the appellant's favour.
- (iii) The case succeeded on *Razgar* question 2.

10. I reserved my decision.

11. Although the appeal was on human rights grounds only, it would have been preferable to consider explicitly whether the terms of the rules were met.

12. The decision is in favour of the appellant on relationship, but it leaves the ECO's concerns about the financial evidence unresolved.

13. Those concerns were valid, and were clearly before the appellant in terms of two recent refusals. It has not been shown that she had any substantial answer.

14. Where the rules deal with family life and are designed with a view to complying with the state's article 8 obligations, proof that the rules were

satisfied at the time of application goes a very long way, and will often be conclusive, in demonstrating an article 8 right. In other areas of the rules - e.g. those concerned with entry to the UK of students, workers, or entrepreneurs - satisfaction of the rules has very little to do with article 8 rights.

15. Visit visa cases relate to family and private life rights according to their circumstances. Some go to fundamental aspects of family life - e.g. attendance at a family wedding, or a visit to a close relative in the end stages of life and unable to leave the country. Some do not relate to family life at all.
16. I do not uphold the submission that satisfaction of the rules in a visit visa case generally establishes an article 8 right.
17. The date at which the circumstances are to be assessed is not an entirely straightforward question; however, in light of the approach of both representatives, I take it firstly as the date of the ECO's decision.
18. At that date, the extent of interference was that the appellant and sponsor could not meet for several months, within a relationship where they have opted to spend most of their time apart. That was not a disproportionate outcome.
19. At any later date, there is nothing to show that the appellant has a general right on family life grounds to enter the UK. She may enter only by bringing herself within the terms of the rules.
20. The decision of the First-tier Tribunal did not involve the making of any error on a point of law, such that it ought to be set aside, so that decision shall stand.
21. No anonymity direction has been requested or made.



27 January 2020
UT Judge Macleman