



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number HU/17005/2016

THE IMMIGRATION ACTS

Heard at Field House
On 9th May 2018

Decision and Reasons Promulgated
On 24th May 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE PARKES

Between

FATIHA-SABRINA KARRECHE
(ANONYMITY DIRECTION NOT MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr A Ali (Legal Representative, Ash Immigration Services Ltd)
For the Respondent: Mr T Lindsay (Home Office Presenting Officer)

DETERMINATION AND REASONS

1. The Appellant was born on the 1st of August 1975 and is a citizen of Algeria. The Appellant entered the UK on the 12th of March 2013 on a spouse visa. The Appellant applied for further leave to remain but that was refused in the Refusal Letter of the 24th of June 2016. The Appellant's appeal was heard by First-tier Tribunal Judge J Robertson at Birmingham on the 28th of June 2017 and dismissed for the reasons given in the decision promulgated on the 14th of August 2017.
2. The Judge set out the Appellant's immigration history and summarised the evidence of the Appellant and the Sponsor including the medical issues that were raised. The Judge found that the Sponsor did earn sufficient to meet the financial requirements of Appendix FM and the Appellant had not passed the English language test and neither were exempt from the requirement. The Judge considered paragraph EX.1 of Appendix FM but found that with the Appellant's and Sponsor's histories including their connections to Algeria the paragraph was not met and removal of the Appellant was proportionate.
3. The Appellant sought permission to the appeal to the First-tier Tribunal in grounds of application of the 26th of August 2017. It was argued that the Judge had not had regard to the

medical evidence that had been submitted relating to the mental health of the Sponsor and the recent suicide attempt by him shortly before the hearing.

4. The grounds argue that having entered with valid leave the Appellant's presence was wrongly characterised as precarious, the Appellant had never been without leave when in the UK. The Judge had found that the relationship was genuine and subsisting and that the Sponsor earned over £18,600. It is argued that the Judge did not consider the medical evidence relating to the Sponsor's mental health and may not have considered the evidence of a suicide attempt shortly before the hearing. The Appellant had previously been advised not to take the English language test but had now done so. The Razgar steps had not been properly addressed. Permission was granted by First-tier Tribunal Judge Keane on the 7th of February 2018.
5. The parties made submissions in line with their respective positions. Mr Ali maintained that the Judge should have considered the attempt shortly before the hearing and the doctors' evidence was in the bundle. I asked what evidence was there to show that the Sponsor's conditions could not be treated in Algeria. It was said that the underlying cause was that he was not managing there. I asked why there had not been an application for an adjournment? The reply was that there had been other occasions referred, I then observed that the Judge was looking at the date of the hearing and needed up-to-evidence why they could not live together in Algeria. It was submitted the debts lack of housing etc had been explained to the Judge but that was not raised as a ground.
6. At this point I raised with the Home Office whether the Judge might have adjourned of her own volition. For the Home Office it was observed that there was still no up-to-date evidence. the Appellant could have applied to admit evidence relating to the attempted suicide under Ladd v Marshall. For the Appellant it was submitted that an adjournment should have followed.
7. Continuing the Home Office submitted that the focus was on whether the Appellant and Sponsor could go and live in Algeria together. Nothing in the medical evidence tied the risk of self harm to the Sponsor to return but to possible separation. Nothing in the suggested a return to Algeria would increase negative feelings or suicidal ideation. The Home Office referred to the Sponsor's witness statement at paragraphs 13, 21 and 22. The Appellant was capable and resourceful, support would be available and friends had helped in the past.
8. In reply Mr Ali observed that paragraph 21 was the central point, the suicide risk. Dr K's letter said that they had lost ties and why they could not survive in Algeria, the Appellant had explained why they could not go back, debts were being paid off and the Judge had accepted that the house had gone. The Judge had not found if the incident had taken place and needed to deal with that. The medical evidence should have been considered carefully.
9. At the hearing before the First-tier Tribunal the Appellant had been represented by experienced counsel who raised in evidence the suicide attempt of the week before. It is clear that there had not been an adjournment application made prior to the hearing or at the hearing itself. I did consider whether the Judge should have adjourned the hearing on her own motion but having heard submissions and having regard to the representation that the Appellant I am satisfied that continuing with the hearing was properly open to the Judge and there is no criticism on that issue.
10. However the problem with the decision is that the Judge did not make a finding on whether the incident did occur, if it did how significant an attempt it was and how it related to the other evidence in the case. With some reluctance I am driven to the conclusion that this is an issue that the Judge had to address and the failure to do so undermines the decision as it cannot be said

how the final analysis would have proceeded. I am not in a position to remake the decision as this is a matter which requires significant exploration and analysis and, given the history, up-to-date evidence relating to the Appellant's mental health and the circumstances of the attempt itself.

11. Given the nature of the case it is surprising that there was not an adjournment application made for further evidence to be provided. In the circumstances this appeal will have to be remitted to the First-tier Tribunal for re-hearing by a Judge other than Judge J Robertson. Evidence will be needed that deals expressly with the Sponsor's mental health but also with the ability of the Appellant and Sponsor to live in Algeria and the ability to access relevant medical services there as well as their wider circumstances.

CONCLUSIONS

The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.

I set aside the decision.

This appeal is remitted to the First-tier Tribunal for re-hearing on all matters, not to be listed before First-tier Tribunal Judge J Robertson.

Anonymity

The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and I make no order.

Fee Award

In remitting this appeal I make no fee award which remains an issues for the First-tier Tribunal at the conclusion of the appeal.

Signed:



Deputy Judge of the Upper Tribunal (IAC)

Dated: 22nd May 2018