



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/05998/2017
HU/01546/2017

THE IMMIGRATION ACTS

Heard at Glasgow
Promulgated
On 7th February 2019

Decision & Reasons
On 7th March 2019

Before

DEPUTY JUDGE UPPER TRIBUNAL FARRELLY

Between

LIEN [P]
MOHSIN [K]
(NO ANONYMITY DIRECTION MADE)

Appellants

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Mr S Wintor, Counsel, instructed by Latta and Co
For the respondent: Mr A Govan, Presenting Officer

DECISION AND REASONS

Introduction

1. The 1st appellant is a national of Vietnam and the 2nd appellant is a national of Pakistan. They are married and have a daughter, [A].

2. The 1st appellant came to the United Kingdom on the 28 December 2009 as a student. She was granted further leave until her application as a Tier 1 entrepreneur was refused on the 11th August 2014. Her successful appeal was overturned by the Upper Tribunal. She then made a further application on 8 December 2016 based on article 8 which was refused. There was then a decision on the on 18 April 2017 which, unlike the earlier decision, conferred an in country right of appeal. Her application was founded upon her marriage to the 2nd appellant as well as her private life here.
3. The 2nd appellant came to the United Kingdom as a student on 18 August 2010. He was granted further leave as a general migrant which was subsequently curtailed. Then, on 22 October 2015 he applied for leave to remain also on the basis of his family and private life. This was refused on 11 January 2017.

The First-tier Tribunal

4. The 1st and 2nd appellant's respective appeals were linked. They were heard before First-tier Tribunal Judge R Handley at Glasgow on 12 January 2018. In a decision promulgated on 22 March 2018 they were dismissed.
5. The judge accepted that they were in a genuine relationship. The judge heard expert evidence about the possibility of the family relocating to Pakistan. The judge considered racial and religious differences and concluded there would be significant obstacles to family life continuing there.
6. The judge then turned to consider the possibility of family life continuing in Vietnam. There was expert evidence to the effect that to obtain a spousal Visa the 2nd appellant would need approval from the Pakistani authorities and there would be various other difficulties. Nevertheless, the judge concluded that the family could relocate to Vietnam and family life continuing from there.

The Upper Tribunal

7. Permission to appeal was granted primarily on the basis that the judge had not dealt with the expert report which suggested they would be difficulties about obtaining the necessary household registration document in Vietnam and the parties could be apart for a lengthy period.
8. These were agreement between the parties that there was material error of law in relation to the how the judge dealt with the practicalities of Mr Khan relocating to Vietnam with his wife and the assessment of the expert report on this issue. The other points raised in the grounds were disputed. Both representatives asked

that I remake the decision rather than remit it and indicated that they intended to proceed by way of submissions in relation to the expert report. Given this net point I was agreeable to the course proposed.

9. The expert report was prepared by Dr Anh and there is an update 28 January 2018. Mr Winters took me through the relevant aspects of the report. The expert referred to the problems Mr Khan would face in obtaining entry clearance to Vietnam because he would need to make application for his Visa from Pakistan. The expert considered what would be involved in him applying for a work permit for Vietnam and anticipated difficulties. The expert also referred to the difficulties Mr Khan and the child will experience in accessing healthcare facilities in Vietnam. The expert also set out the employment situation in Vietnam. The expert also looked at matters from the view of the child and referred to healthcare costs and educational facilities in Vietnam. I was referred to the household registration system in Vietnam, with the expert being of the view would take 1 to 2 years before this can be achieved. The delay was attributable to the fact that there was a requirement that Mrs Pham reside in Vietnam for a year before the application is made.
10. In terms of section 117 B he pointed out that both appellants speak English and are not reliant upon public benefits. They also entered the United Kingdom lawfully and their relationship developed in this context.
11. In summary, Mr Winton argued that the effect of the refusal was disproportionate in the circumstance.
12. Mr Govan referred me to the 1st ground upon which permission had been granted and acknowledged the time would be involved in relocating and before the family could be settled as a unit. Whilst he sought to challenge some of the statements expressed in the expert opinion he confirmed the respondent had not provided rebuttal evidence. He acknowledged the expert report had not been adequately dealt with in the First-tier and accepted merit in the 1st ground for which permission was sought. He submitted that the remaining grounds advanced amounted to a disagreement with the outcome. The judge had commented upon the limited information about the child health care needs. At paragraph 27 and 29 of the decision the judge dealt with Mr Khan's ability to integrate into life in Vietnam.
13. Regarding the expert report, Mr Govan submitted it lacked objectivity. Although the respondent had not challenged the judge's finding that the parties could not relocate to Pakistan Mr Govan questioned the ability of the expert to comment upon the situation in Pakistan. He questioned the basis for some of the statements

made in the report, such as a requirement that Mr Khan obtain permission from the Pakistan government to apply for entry to Vietnam. He also question the relevance of the report dealing with Mr Khan's ability to obtain Vietnamese nationality rather than whether he could be with his wife and child there. The expert report referred to the need for Mr Khan to have a job offer and to have applied for a work permit. He submitted it was not clear from the report why he could not do this.

14. Mr Govan referring to the limited evidence about the healthcare needs of the child of the family and questioned how the expert can give an opinion here.

Consideration

15. The 1st Tier judge accepted the genuineness of the relationship between the appellants. He also found that they could not live together in Pakistan. The respondent has accepted these findings. This then leaves the question of family life being enjoyed in Vietnam.
16. It is not in dispute that family life exists. The appellant have a young child. The child as a heart murmur. There was limited evidence before the judge as to its severity but what there was indicates that she is currently stable and will be reviewed in a few years' time. In considering the decision her interests must be a primary consideration. Those interests are best served by her being in a stable home environment with both parents. It is common case that the only place, apart from the United Kingdom, where the family can live as a unit is in Vietnam.
17. I place reliance upon the expert report. Mr Govan has attempted to challenge the opinions expressed there and has suggested the expert had acted in places as if an advocate for the appellants. However, the respondent has not provided any country information which would call into doubt the key findings of the expert. The report indicates the family would face difficulties in trying to establish themselves in Vietnam. Primarily this relates to the fact that Mr Khan is not a Vietnamese citizen and by reason of the household registration system which is necessary to access key services.
18. The expert acknowledges that there are routes whereby Mr Khan could enter Vietnam but it seems likely that this would involve a separation for at least a time of the family unit. The expert has suggested a period of at least 2 years. The expert states that before his wife can obtain household registration she would have to have lived in Vietnam for one year. Then, there would be the processing time. For Mr Khan to gain access he would have to return to

Pakistan and make application from there. In order to obtain employment in Vietnam he would need to have obtained a work permit. This would involve the employer justifying his employment over and above a domestic worker. As he is not from Vietnam and has no experience of the country, its culture or language he would appear to be at a disadvantage in the labour market. Whilst he has his own skills the evidence would not suggest they are so scarce he can command employment. I have not seen anything which detracts from the expert opinion in this regard.

19. There are other features which have been raised in argument, primarily towards the appellant's child. There have been issues about healthcare and education. However, the issue arising is not a comparison between different countries. I find these arguments carry less weight.

20. Ultimately, bearing in mind the best interests of the child and the limited options available to the couple it is my conclusion the respondent's decision is disproportionate. As stated I do place reliance upon the expert report. Clearly this anticipates a significant period of separation within the family and then an uncertain future in Vietnam. It is my conclusion that the child's best interests are in the family remaining in the United Kingdom. What is in the child's best interests is not determinative but is a primary consideration. Allied to this I am influenced by the immigration history of the couple and the circumstances were their relationship began. I have had regard to the factors set out in section 117 B. Looking at all of these facts is my conclusion that it would be a disproportionate breach of their protected rights not to allow them to remain.

Decision

The appeals are allowed under article 8.

DEPUTY JUDGE UPPER TRIBUNAL FARRELLY

