



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

Appeal Number: PA/12339/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 15 April 2019**

**Decision & Reasons
Promulgated
On 2 May 2019**

Before

**DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL**

Between

**C H A
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr D Coleman, Counsel instructed by UK & Co Solicitors

For the Respondent: Mr L Tarlow, Home Office Presenting Officer

DECISION AND DIRECTIONS

1. The appellant, a national of Iraq, has permission to challenge the decision of Judge Page of the First-tier Tribunal (FtT) sent on 28 January 2019 dismissing his appeal against the decision made by the respondent on 5 October 2018 refusing his protection claim.
2. The principal grounds of appeal allege that the judge erred in failing to give any consideration to the appellant's Article 8 grounds of appeal. At the outset of the hearing Mr Coleman and Mr Tarlow said they were jointly

of the view that the judge's treatment of Article 8 was vitiated by legal error. After discussion with them I have come to the same view. In the asylum process the appellant had identified that he had a girlfriend in the UK. In the refusal decision the respondent addressed this aspect of his claim under the heading "Article 8 Exceptional Circumstances". The appellant had not specifically raised Article 8 in his grounds of appeal, but he had included a general ground reliant on s. 6 of the Human Rights Act 1998 and he had also produced witness statements from him and his partner regarding their relationship and the judge recorded at paragraph 12 that "... submissions were made on behalf of the appellant that he wished to pursue an appeal under Article 8 on the grounds of his relationship with his girlfriend, Ms BG, a Hungarian national ...". The judge also heard evidence from her. In the same paragraph the judge notes that the appellant's reliance on Article 8 had also been expressly raised in the appellant's skeleton argument served a few days before the hearing.

3. At paragraph 27 the judge stated:

"For the above reasons I dismiss the asylum appeal and the grounds of appeal under Articles 2 and 3 that stand with the asylum appeal in every respect. The appellant did not appeal under Article 8 when he raised this appeal and for the reasons I have set out above I have declined to make findings under Article 8 on the basis of his relationship with an EU national that he is living with. The appellant appears to have this relationship with her and it is open to him to make proper application if he wishes to remain in the United Kingdom as the partner of an EU national."

and went on to dismiss the appeal under the Refugee Convention and "under Articles 2 and 3" [of the ECHR].

4. The judge's refusal to accept that the appellant's appeal included a human rights claim and his consequent refusal to make findings relating to it was a material error of law. Given that the respondent had treated his human rights claim as including Article 8 and the fact that the appellant had raised human rights grounds without restriction to Articles 2 and 3, the judge was obliged to treat the appellant's appeal as incorporating an Article 8 claim. Such a claim was also clearly raised by the written and oral evidence before the judge.
5. If it was the case that the appellant had formulated his claim based on his relationship solely as an EEA claim to a durable relationship, it may have been open to the judge to decline to engage with it on the basis that such a claim required an application to be made by the respondent who would then make a decision that if negative could be appealed on EEA grounds. However, the appellant did not so confine his claim nor, manifestly, did the respondent treat it as so confined.
6. For the above reasons I conclude that the judge materially erred in law and that the case must be remitted to the FtT.

7. However, it is clear from the failure of the appellant to challenge the judge's adverse findings on his asylum claim that his findings on this issue can be preserved. The only issue before the FtT concerns Article 8, with particular but not exclusive reference to his relationship with his girlfriend. In assessing the efficacy of the respondent's decision, the next judge may well regard it as a relevant factor that despite claiming to have been in a durable relationship with BG since July/August 2018 (see paragraph 8 of the AIR), the appellant has not yet made an application on the basis of a durable relationship.

Notice of Decision

8. To conclude:

The decision of the FtT Judge is set aside for material error of law;

The case is remitted to the FtT (not before Judge Page).

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date: 30 April 2019



Dr H H Storey
Judge of the Upper Tribunal