Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/04342/2017

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 23 November 2017	**On 26 January 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE SHAERF

Between

AU
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mrs H Adejumo of Counsel instructed by J F Batula Solicitors
For the Respondent: Mr N Bramble of the Specialist Appeals Team

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 their 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.

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DECISION AND REASONS

The Appellant

1. The Appellant is a national of Rwanda born [ ] 1976. On 17 October 2009 she arrived with leave as a student which was extended until 28 October 2016 on which day she sought asylum on the basis of her sexual orientation. She also made a claim based on her private and family life with her partner.

The Home Office Decision

2. On 24 April 2017 the Respondent refused the Appellant's application on all grounds. For reasons which will be later adumbrated, it is necessary only to detail the reasons why the Respondent refused the Appellant's claim based on her private and family life.

3. The Respondent noted the Appellant did not supply any evidence of her partner's status in the United Kingdom. She was not a parent and she did not meet any of the time critical requirements of paragraph 276ADE(1) of the Immigration Rules. Having rejected her claim for international surrogate protection, the Respondent considered there were no very significant obstacles to the Appellant's integration into Rwanda and so she did not satisfy the requirements of paragraph 276ADE(1)(vi). The Respondent considered the Appellant had not shown there were any exceptional circumstances which would warrant a grant of leave under Article 8 of the European Convention outside the Immigration Rules.

The Original Appeal

4. On 8 May 2017 the Appellant lodged through her solicitors notice of appeal under Section 82 of the Nationality, Immigration and Asylum Act 2002 as amended (the 2002 Act). The grounds are entirely generic and formulaic.

Proceedings in the First-tier Tribunal

5. By a decision promulgated on 14 June 2017 Judge of the First-tier Tribunal D Reid dismissed the Appellant's appeal on all grounds. On 10 July 2017 Judge of the First-tier Tribunal Lambert refused the Appellant permission to appeal. The Appellant renewed her application to the Upper Tribunal supported by amended grounds. On 11 September 2017 Upper Tribunal Judge McWilliam refused permission to appeal in respect of the Appellant's claim for international surrogate protection but granted permission on grounds founded on the Appellant's private and family life stating that the evidence before the Judge was that the Appellant's partner had permanent residence.

The Hearing in the Upper Tribunal

6. The Appellant and her partner attended with one of the witnesses in the First-tier Tribunal proceedings. A bundle for the Appellant had been filed with the Upper Tribunal on 21 November 2017 but it appears that this is

the same as the bundle before the First-tier Tribunal Judge with the addition of a copy of the grant on 19 October 2012 to the Appellant's partner of a Residence Permit described as "Settlement" with the remarks "indefinite leave to remain" but expressed to be valid until 30 May 2022.

7. There was a discussion about the Residence Permit issued to the Appellant's partner. Ms Adejumo started by submitting that the Judge had erred in law by not making an express finding that the Appellant's partner was settled in the United Kingdom. After taking some time to review the contents of the Tribunal file, I noted that at para.4 of her decision the Judge had identified the Respondent's bundle with documents A – F and the Appellant's bundle paginated to page F3. The last item in the Appellant's bundle before the First-tier Tribunal is numbered H1, followed by a copy of the Respondent's bundle. I then referred to the Appellant's bundle filed on 21 November 2017 for the Upper Tribunal hearing and noted that it included a copy of the partner's residence permit at page numbered I.1 and consequently could not be considered to have been before the First-tier Tribunal. In this light I concluded the reference at paragraph 59 of the Judge's decision to the partner's length of residence in the United Kingdom could not be taken as a finding that she had status. However, I did accept that now that a copy of the Residence Permit had been produced, there was clear evidence of Appellant's partner's status in the United Kingdom as a person with indefinite leave to remain since 19 October 2012, the date the Residence Permit was issued. Her partner said she had lost the permit and was in the process of obtaining a replacement.

8. Ms Adejumo explained that the Appellant's partner had obtained the Residence Permit following an initial grant of leave as a refugee minor from the Democratic Republic of Congo. I remarked that the Tribunal contained no documentary evidence to show the extent to which the Appellant would meet the relevant requirements of the Immigration Rules in particular paragraph 295D and Appendix FM that the extent of compliance with the Immigration Rules would be a factor in the assessment of the proportionality of the Respondent's decision to refuse the Appellant's claim.

9. Ms Adejumo referred to para.59 of the Judge' decision and accepted that there was no evidence before the Judge of the nature and quality of the relationship between the Appellant and her partner for the period between 2014 and 2016. However, the Judge had accepted it was a genuine subsisting relationship and so had erred in then dismissing the appeal under Article 8 at para.62. Having found Article 8 was engaged the Judge could not then go on to dismiss the appeal. There then followed a discussion about the recommended structured approach to the assessment of claims made under Article 8 set out in *R (Razgar) v SSHD [2004] UKHL 27* after which Ms Adejumo had no further submissions to make.

10. Mr Bramble for the Respondent relied on the response of 5 October 2017 pursuant to Procedure Rule 24. Even if the Judge had made an unforced

error about the status of the Appellant's partner, the question remained whether that error, if it be an error, was material. The Judge had dealt with the claim and set out the evidence about the Appellant's relationship at paras.56-57 of her decision, relying on evidence contained in paras.20-21 and the Appellant' statement of 29 May 2017. The evidence was the Appellant and her partner had not been living together for a minimum of two years and therefore the application was bound to fail under the terms of the Immigration Rules.

11. At para.60 of the Judge's decision she had considered the relevant factors identified in Section 117B of the 2002 Act and in effect this covered much the same ground as the important elements of the structured approach endorsed in *Razgar*. The Appellant's immigration status had been precarious throughout and there was very little evidence about the nature and quality of her relationship with her partner. He submitted it might be said the Judge's consideration of Section 117B and assessment and consideration of the relevant factors to be to be taken into account in the assessment of the proportionality of the Respondent's decision could have been articulated at greater length but the Judge had done sufficient. In the light of her findings whether or not the Appellant's partner had settled status would have made no difference. The Judge's decision should be upheld.

12. Ms Adejumo submitted that the Appellant's status was not precarious because she had been in the United Kingdom for a considerable period of time. I pointed out the length of stay did not indicate a degree of lawful status in the United Kingdom. The Appellant had entered as a student and then claimed asylum. Her status throughout had been precarious: see *Rhuppiah v SSHD [2017] EWCA Civ.803*. Ms Adejumo had nothing further to submit in reply.

13. I decided that the decision of the First-tier Tribunal did not contain a material error of law such that it should be set aside for reasons which I would give in this decision.

14. The Judge cannot be criticised for not finding that the Appellant's partner had settled or similar status since I have found that there was no evidence of the partner's status before the Judge and it would appear there was no explanation for the failure to supply such evidence. In any event, the Appellant's claim under the Immigration Rules was bound to fail because there was no documentary evidence to show she went any way towards meeting the requirements of Appendix FM and additionally there was no evidence other than mere assertion to show her relationship with her partner had endured for at least two years at the date of the application.

15. The hearing in the first-tier Tribunal was on 5 June 2017. The Appellant's evidence at paras.20-21 of her statement was that she had met her partner in 2010. They had started an intimate relationship in 2014 and started to live together in May 2016. There was no evidence other than

her assertion and that of her partner. There was no explanation for the absence of such evidence before the Judge.

16. The standard of proof is the civil standard; that is the balance of probabilities and the burden is on the Appellant. On the limited information before the Judge it cannot be said the Appellant had shown there were exceptional circumstances which warranted the grant of discretionary leave by reference to her private and family life in *R (Agyarko) v SSHD [2017] UKSC 11.* The Judge's treatment of the structured approach recommended in *Razgar* could have been more full and better articulated but she has in the circumstances of this particular appeal done sufficient to give sustainable reasons for her conclusion at para.62 of her decision to dismiss the claim on Article 8 grounds.

17. It follows that the decision of the First-tier Tribunal did not contain a material error of law and shall stand. The Appellant's appeal is dismissed.

18. Given what the Appellant and her partner claim about the nature, present length and durability of their relationship they may now wish to seek legal advice about promptly making a new application and the evidence they will need to support it.

SUMMARY OF DECISION

The decision of the First-tier Tribunal on both protection and human rights grounds dismissing the appeal shall stand.

Appeal dismissed.

Anonymity direction made.

Signed/Official Crest   Date 25. i. 2018

Designated Judge Shaerf
A Deputy Judge of the Upper Tribunal