



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/04382/2014

THE IMMIGRATION ACTS

Heard at Manchester
On 27th August 2014

Determination Promulgated
On 28th August 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE MCCLURE

Between

MRS BUSHRA SULTANA
(NO ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No attendance
For the Respondent: Mr Harrison, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, Mrs Bushra Sultana, date of birth 19 July 1982, is a citizen of Pakistan. Having considered the circumstances I do not make an anonymity direction.
2. This is an appeal by the appellant against the determination of First-tier Tribunal Judge Herwald promulgated on 19th March 2014. The judge dismissed the appeal of

the appellant against the decisions of the respondent dated 19th December 2013 to refuse the appellant further leave to remain in the United Kingdom and to remove the appellant from the United Kingdom to Pakistan.

3. The original application to the respondent was on the basis that the appellant was seeking to remain to help to care for her sister, who suffers from a mental illness. That was the basis upon which the case was advanced in the First-tier Tribunal. It now appears that that is no longer the basis on which the appellant is seeking to remain. In the latest bundle submitted for the appeal the appellant makes reference to a husband and seeking to remain because of that relationship. The appellant married in April 2014.

Preliminary issue

4. There was no attendance by the appellant. Notice of hearing had been sent out on 15 July 2014 to the address given for the appellant and the appellant's sister.
5. By letter received on or about the 13th August 2014 the appellant stated that she had moved to an address in London to live with her husband in London. The appellant asked that her appeal be dealt with on the papers. Accompanying that letter was a bundle of documents. Many relate to the appellant's husband, his job and the appellant and her husband living in the London area. Included in the documentation is a claim that the appellant's husband earns in excess of £18,600 and that the appeal should be allowed by reason thereof.
6. The Tribunal Administration replied on the same day stating that the appeal would proceed as listed. Thus the appeal came before me on 27 August 2014. In the circumstances I am satisfied that it is just and proper to proceed with the hearing in the absence of the appellant. I am satisfied that the appeal can be determined on the basis of the documentation currently before the Tribunal.

Error of law

7. As stated this is an appeal by the appellant against the determination of Judge Herwald. On the 2 July 2014 permission to appeal was granted by Judge McWilliam in the following terms: --

4 Having considered the determination it appears to me that the judge may have failed to take into consideration all of the medical evidence relating to the appellant's sister. Dr Anisoke in a letter of the 23 July 2013 describes the support she gives to her sister as 'invaluable' and that not having the support would 'be detrimental to her overall health'. There is also a letter from Dr Gallagher of 17 June 2013.

5 There is an arguable error of law.

8. The appellant had entered the United Kingdom as a visitor in July 2009 with leave valid until 4 January 2010. The appellant had overstayed. The appellant applied and was granted leave on 25 October 2011 for three months to enable her to put into place

arrangements for the care of her sister, who had a mental disorder. On 24 January 2012 the appellant applied for further leave to remain for the same reason. This was refused on 5 March 2013. The respondent agreed to review the decision after an appeal.

9. The original application does not specify what basis the appellant is seeking to remain in the United Kingdom. However correspondence from her legal representatives at the time indicate that she is seeking to remain on the basis of her sister's, Sadia Sultana, mental illness and need for the appellant to care for the sister.
10. In the determination in paragraph 21 the judge has carefully set out the illness of the sister. It is described as a schizo-affective disorder. The judge has carefully assessed not only the condition but in paragraphs 21 to 25 set out the level of care that is in place with regard to the sister from various agencies. The judge has carefully assessed the degree of support the sister required and is receiving.
11. The judge has carefully noted that the appellant had had an extension of stay on two occasions to be given an opportunity to put in place any further arrangements for the care of her sister.
12. On the documentation now submitted by the appellant it appears that the appellant is no longer living or caring for her sister but has married and is seeking to remain on the basis of her relationship with her husband. At the time of the original application and at the time of the hearing before the judge no reference appears to have been made to such a relationship or marriage, indeed in the application form the appellant was claiming to be single.
13. The only basis upon which the matter was advanced before the first-tier was on the basis that the sister required the care of the appellant. That clearly is not now the case as the appellant is no longer living with the sister.
14. However that is not the issue, the issue was whether or not the judge in assessing the facts as properly assessed the rights of the parties under the immigration rules and under Article 8 of the ECHR.
15. There are provisions in the rules for carers to be given leave to remain in the United Kingdom. The appellant had been given leave appropriate to the needs of the sister to enable the appellant to put in place with the cooperation of the medical services and social services proper care. The judge clearly assessed that and was satisfied that there was no need for the appellant provide immediate care to her sister, which now appears to be justified by the appellant moving to live with her husband. I put aside such considerations as they were not before the original Judge.
16. There is no right to have a care of a specific type or by a specific family member under either the immigration rules or under article 8 of the ECHR.
17. The cases of Haleemudeen 2014 EWCA Civ 558 and MM 2014 EWCA Civ 985 make clear that the immigration rules are article 8 compliant and will cover the majority of

situations, in which an individual can succeed on the basis of family and private life including in this appeal providing care to a family member.

18. The judge has considered all the circumstances with care and acknowledged that where a family member is ill one may have empathy or sympathy with such. However that does not entitle as of right an individual to a specific type of care or care by a family member.
19. The judge has carefully assessed the position with regard to the immigration rules and has given valid reasons for coming to the conclusion that the appellant does not meet the requirements of the rules.
20. The judge has gone on to assess the issues under article 8. The appellant who had not been living with her sister came to the United Kingdom as a visitor and could have no expectation of being entitled to remain. She had been given leave to remain as a carer but for a specific limited basis to enable proper care to be put in place. The judge considered the help and assistance that was already provided to the sister and was satisfied taking all the factors into account that the needs of the sister were being properly met. In light of that there was no basis upon which it can be said that the appellant was needed to be in the United Kingdom to care for her sister.
21. On the facts as presented the judge was entitled to conclude that article 8 family and private life was not engaged on the facts as presented. Even if it was engaged on the facts as presented the judge has gone on and concluded that in this case the decisions by the respondent were proportionately justified. The judge has assessed all the facts and was entitled to come to the decision that he did.
22. With regard to the appellants present position of seeking to remain now on the basis of her relationship to her husband that is not an application that was before the judge or that the judge considered. It cannot be a basis for challenging the decision by the judge. If the appellant wishes to pursue such she will have to make an application on that basis. It may be that the appellant will have to return to her home country to make that application. However that is not the basis upon which the present decision can be challenged.
23. The judge has fully justified his decision both under the immigration rules and on article 8 grounds. There is no error of law in the decision. The decision to dismiss this appeal on all grounds stands.

Signed

Date

Deputy Upper Tribunal Judge McClure