



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

Appeal Number: OA/15431/2013

THE IMMIGRATION ACTS

Heard at Field House

On 2nd September 2014

Determination

Promulgated

On 9th September 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE J G MACDONALD

Between

MRS SYEDA TUSHI BEGUM

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Bhanji, Counsel instructed by East London Law Chambers

For the Respondent: Ms A Everett, Home Office Presenting Officer

DETERMINATION AND REASONS

- 1.** The Appellant is a national of Bangladesh who applied to come to the United Kingdom as a spouse of a British national and whose application

was refused and a subsequent appeal dismissed by First-tier Tribunal Judge Seelhoff in a determination promulgated on 14th March 2014.

2. Grounds of application were lodged on three grounds. I refer only to Ground 3 as this is the only ground on which permission was granted. This ground refers to the rights of the child and says that in considering whether the Respondent's decision is lawful the judge had materially erred in failing to adequately, or at all, consider the rights and interests of the child. Reliance was placed on **T (entry clearance - S55 BCIA) [2009] Jamaica [2011] UKUT 483 (IAC)**. First-tier Tribunal Judge Andrew who granted permission said that although it would seem that there were no submissions in relation to Article 8 the judge considered this. In so doing he should have considered the best interests of the child as a primary consideration. He did not do so and thus "I find there is an arguable error of law in relation to the Article 8 point".
3. Before me Mr Bhanji sought to lodge a witness statement of the Sponsor dated 2nd September 2014 and also reapplied for permission to appeal in respect of Grounds 1 and 2.
4. Given the fact that permission had only been granted on one ground only and that I was being asked to extend the grounds very late in the day indeed, namely on the date of the hearing, I refused this application.
5. Accordingly, the appeal before me was limited to the extent of whether or not the judge had erred in law in his findings under Article 8 of the ECHR.
6. Mr Bhanji said that the best interests of the child was that both parents should be with the child and the family should be together. It was a commonsense point and went to proportionality. There was post decision evidence which would assist the Appellant in a further application but I was asked to set the decision aside on the basis that the judge had not properly considered the best interests of the child and order a re-hearing. In response in submissions from the Home Office it was agreed that the existence of a British child was not a "slam dunk" in terms of the appeal.
7. For the Home Office it was said that this was a slightly strange application given that Article 8 had not even been argued before the judge. Nevertheless the judge had taken the issue on board, albeit briefly. It was clear that having a British child was a salient feature but on its own was not a "slam dunk" winner. The recent case of **MM** in the Court of Appeal had indicated that the maintenance requirements as set out in the Immigration Rules were lawful and this was a case before the judge where the maintenance requirements had not been met. I was asked to uphold the decision.

Conclusions

8. What is slightly odd about this case is that the Appellant's representative before the judge did not ask the judge to allow the appeal on Article 8

grounds. The point might be said to be **Robinson** obvious (**R v SSHD ex-parte Robinson**) [1997] 3WLR 1162) but a judge generally cannot be expected to say very much about a point that is not specifically argued before him. What the judge did note was that the Respondent made the point in the decision letter that the Sponsor chose to marry someone who had no right to live here and thus the Sponsor could never have had a legitimate expectation that his wife would be allowed to live with him here if he did not meet the requirements of the Immigration Rules. The judge said that this was a case where refusing the application in light of the shortfall of funds was entirely proportionate and legitimate even although there was now a British child.

9. As has often been found and as parties acknowledged having a British child is not necessarily a trump card in the outcome of an appeal even although the best interests of the child must be a primary consideration. That having been said it seems to me that absent further information being given to the judge and given the lack of argument by the Appellant's representative on this point the judge cannot be said to have fallen into error in his dismissal of the claim under Article 8. Indeed given the paucity of evidence on this issue it is difficult to see how the judge could possibly have allowed the appeal.
10. In addition given that the Appellant failed to meet the maintenance requirements of the Rules and following what was said by the Court of Appeal in **R (on the application of MM) Lebanon) and Others v SSHD [2014] EWCA Civ 985** the judge was clearly entitled to go on and dismiss the appeal. Absent legal error by the judge the decision must stand. The remedy for the Appellant is to make a fresh application which I understood from Mr Bhanji might have reasonable prospects of success.

Decision

11. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.
12. I do not set aside the decision.

Signed

Date

Deputy Upper Tribunal Judge J G Macdonald