



IAC-BH-PMP-V1

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

Appeal Number: IA/14947/2014

THE IMMIGRATION ACTS

**Heard at Bennett House, Stoke
On 17th August 2015**

**Decision and Reasons Promulgated
On 17th September 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE GARRATT

Between

**MARYAM ROSTAMIJAME
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr K Gayle, Solicitor instructed by Elder Rahimi Solicitors
For the Respondent: Mr A McVeety, Senior Home Office Presenting Officer

DECISION AND DIRECTIONS

Background

1. On 9th April 2015 Deputy Upper Tribunal Judge Archer gave permission, on renewed application to the Upper Tribunal, to the appellant to appeal against the decision of Judge of the First-tier Tribunal T R P Hollingworth in which he dismissed the appeal on immigration and human rights grounds against the decision of the respondent to refuse further leave to remain as a spouse in accordance with the provisions of paragraphs 284 and 276ADE and Appendix FM of the Immigration Rules.

2. Judge Archer noted that the grounds contended that the judge's analysis was fatally undermined by a flawed analysis of the appellant's rights under Article 8 particularly in relation to the issue of the parties returning together to Iran in the light of the appellant's husband's medical difficulties.
3. Judge Archer thought that the judge had failed to give proper consideration to Section 117B(3) when taking into account the future costs and duration of the husband's treatment and care when the husband had actually been granted indefinite leave to remain in 2009. The judge's consideration of the economic wellbeing of the United Kingdom should have been limited to the appellant's financial independence or otherwise.
4. At the hearing before me Mr Gayle confirmed that the appellant relied on the grounds. He then pointed out that the appellant had applied to remain as a spouse and so could have been entitled to settlement with her husband who had been granted indefinite leave to remain. However, the leave application was refused under paragraph 284(ix) of the Rules in view of the appellant's failure to produce an English language qualification approved by the respondent. The judge's consideration of the claim on Article 8 grounds was, he contended, wholly inadequate because of the failure to recognise that it was economically to the advantage of the parties and the country for the appellant to remain as a carer. He also indicated that the appellant's daughters, who are independent, had been granted further leave to remain so it was only the appellant who might be required to leave.
5. Mr McVeety questioned why the appellant had not applied for another test and made a further application with the right test result if that was the only issue. He thought that the judge had properly considered the medical evidence which was of limited value as it was three years' old. The treatment available in Iran for the husband's condition had also been considered. He believed that the judge's findings were open to him.
6. In conclusion Mr Gayle contended that such medical evidence as was available had been provided and there was no prospect of any dramatic improvement in the husband's condition. Thus, the medical evidence was relevant. The judge had also been aware of the prospect of further leave for the daughters. He added that if an error was found then he believed a full re-hearing of the appeal was required.

Conclusions

7. I have little difficulty in reaching the conclusion that the judge's consideration of the proportionality of the respondent's decision by applying Section 117B of the 2002 Act (as amended) is flawed. That is because the appellant's husband, a holder of indefinite leave to remain, was entitled to medical treatment and care at public expense and, indeed, the cost of such might well have been reduced by the presence of the appellant who is his carer. In paragraph 59 of the decision the judge states that it is not inappropriate for the future costs and duration of the sponsor's treatment and care in the United Kingdom to play a part in the balancing exercise. However, that conclusion appears to be based on the judge's conclusion that the parties could live together in Iran despite the fact that the appellant's husband had the right to remain in the United Kingdom with an entitlement to relevant treatment. The judge's conclusion in this respect forms a material part of his decision but is tainted by the

error. It is also arguable that the judge's conclusion about Article 8 family life is flawed because of his failure to give any consideration to the existence of family life or to give reasons for his conclusion that the daughters are "effectively leading independent lives".

8. Although not raised in the grounds it appears to me to be *Robinson* obvious that the judge may also have been in error in failing to consider the appeal under the Immigration Rules. That is because of the terms of the respondent's refusal decision of 11th March 2014 which, although dismissing the application under paragraph 284 of the Rules, indicates that the respondent was satisfied that the appellant meets all the requirements of R-LTRP.1.1(a), (b) and (d) so that paragraph EX1 applies. The respondent then considered the issue of whether the husband, who was settled in UK, would be faced with insurmountable obstacles to family life continuing outside the UK. The judge gave no consideration to that issue.
9. For all the above reasons, I am satisfied that the decision shows errors on points of law such that it should be set aside and re-made. Having regard to the provisions of paragraph 7.2 of the Practice Statements for the First-tier and Upper Tribunal by the Senior President of Tribunals dated 25th September 2012, I am satisfied that the nature and extent of fact-finding necessary in order for the decision to be re-made is such, having regard to the overriding objective in Rule 2, that it is appropriate to remit the case to the First-tier Tribunal.

Anonymity

Anonymity was not requested nor do I consider it appropriate.

DIRECTIONS

1. The decision of the First-tier Tribunal shows an error on a point of law such that it should be set aside and re-made afresh by the First-tier Tribunal.
2. The re-hearing of the appeal will take place at the Nottingham Hearing Centre on a date to be specified by the Resident Judge.
3. The time estimate is two hours.
4. A Farsi interpreter will be required for the hearing.

Signed

Date

Deputy Upper Tribunal Judge Garratt