



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/36836/2014**

THE IMMIGRATION ACTS

**Heard at Field House
On 6 October 2015**

**Decision and Reasons
Promulgated
On 8 October 2015**

Before

Deputy Upper Tribunal Judge MANUELL

Between

**Mrs S M
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Khalid, Solicitor (Lords Solicitors LLP)
For the Respondent: Mr S Walker, Home Office Presenting Officer

DETERMINATION AND REASONS

Introduction

1. The Appellant appealed to the Upper Tribunal with permission granted by First-tier Tribunal Judge PJM Hollingworth on 23 July 2015 against the decision and reasons of First-tier Tribunal Judge Shiner who had dismissed the Appellant's appeal against the refusal on 4 September 2014 of her application for further leave to remain outside the

Immigration Rules on human rights grounds. The decision and reasons was promulgated on 29 October 2014.

2. The Appellant is a national of Pakistan, born on 27 October 1986. She has a dependant son Master M H, also a national of Pakistan, who was born on 4 January 2014. The Appellant had last entered the United Kingdom as a visitor on 8 April 2009. She had been granted limited leave to remain on 29 October 2013, until 15 April 2014. The judge found in effect that the Appellant had not lost her ties to Pakistan and could not meet Appendix FM of the Immigration Rules. There were no exceptional circumstances. Any interference with the respect due to her private and family life pursuant to Article 8 ECHR was proportionate. The appeal was determined on the papers as the Appellant had requested.
3. Permission to appeal was granted by Judge Hollingworth because he considered that it was arguable that the Appellant had not had the opportunity to adduce evidence at the hearing. By implication, it was arguable that there may have been a procedural error of law leading to an unfair and thus unsustainable decision.
4. Standard directions were made by the tribunal.

Submissions

5. Mr Khalid for the Appellant relied on the grounds of onwards appeal and the grant of permission to appeal. He submitted that it was relevant that the Appellant had been granted DLR and that nothing had changed since that grant was made. The Appellant had indeed requested that her oral hearing be converted to a paper hearing, but she had expected that a new date would be given to her and so she would have the opportunity to submit evidence.
6. Mr Walker for the Respondent relied on the rule 24 notice. He submitted that there was no error of law and the determination should stand. The onwards appeal should be dismissed.
7. There was no reply.
8. The tribunal indicated at the conclusion of submissions that it found that there was no error of law and reserved its determination, which now follows.

No error of law finding

9. The tribunal is bound to say that it has had some difficulty in understanding why permission to appeal was granted. The Appellant's hearing had been fixed for hearing at the Taylor House hearing centre on 15 April 2015. On 14 April 2015 the Appellant wrote to the tribunal by fax requesting "you to decide my immigration appeal on papers rather than on oral hearing. Therefore kindly delist

my immigration appeal for an oral hearing and send an amended hearing of Notice” (sic). This fax was transmitted from the office of the solicitors now acting for her, which firm was not on the tribunal record at that stage, but rather another firm.

10. The tribunal complied with the Appellant’s request and the appeal was determined on the papers as she requested. Her letter said nothing about any wish for an adjournment so that she could submit further evidence. Since her hearing had been fixed for 15 April 2015, she had been obliged to lodge all evidence on which she sought to rely at latest 3 weeks before that hearing: see the notice of hearing dated 20 October 2014, which had given her fully 6 months to prepare. Whether or not the tribunal sent out an “amended hearing of Notice” following the change to the papers hearing was up to the tribunal. It was in fact obvious that no such notice was needed, as the notice of oral hearing had already fixed the deadline for the filing of evidence, and there was in any event no new hearing date as the appeal was to be determined without a hearing.
11. Mr Khalid was unable to identify any part of the 2014 Tribunal Procedure Rules which had been breached by the judge or by the tribunal staff. Rule 26 had self evidently been complied with when the original notice of hearing had been sent to the Appellant. Rule 25(a) had been complied with, because it was the Appellant herself who had specifically requested that her appeal be determined without a hearing. There was no dispute of fact nor any special legal difficulty which might have prompted the tribunal to consider whether an oral hearing was needed. Even then the tribunal cannot compel either party to appear. The Appellant (who plainly had access to legal advice) took the last minute chance of not attending her hearing and she can hardly complain about the compliance with her request.
12. There was accordingly no procedural unfairness of any kind by the judge and the application for permission to appeal had no foundation.
13. There was no attempt to challenge the substance of the judge’s decision, rightly in the tribunal’s view as it was a fully and carefully reasoned determination.
14. The tribunal accordingly holds that there was no error of law in the decision and reasons and there is no basis for interfering with the judge’s decision.

DECISION

The making of the previous decision did not involve the making of an error on a point of law and stands unchanged

Signed

Dated

Deputy Upper Tribunal Judge Manuell