



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

Appeal Number: IA/43493/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 25 February 2015**

**Determination
Promulgated
On 10 March 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE J M HOLMES

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MRS ANJULEE TAKUN
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Ms S Vidyadharan, Home Office Presenting Officer

For the Respondent: Mr S Gokhool, Solicitor of Siddick Gokhool

DECISION AND REASONS

1. The Appellant is a citizen of Mauritius who applied within the UK for indefinite leave to remain as the dependant upon her husband's application. The application was refused and the Appellant duly appealed to the First-tier Tribunal and her appeal came before Judge Shamash at Taylor House on 29 August 2014.
2. By way of a decision promulgated on 24 September 2014 the judge allowed the appeal under Article 8. However, it is plain from the text of

the decision that he spent the majority of his time considering whether or not the decision made by the Respondent was in accordance with the law, and plainly concluded that it was not.

3. The Respondent duly applied to the First-tier Tribunal for permission to appeal to the Upper Tribunal against this decision, essentially stating in simple terms that once the judge had decided that the underlying decision was not in accordance with the law, then he should have done no more than allow the appeal on that limited basis. In short he should have stopped at that point. The Respondent relied upon the decision of Lord Justice Sedley in Mirza [2011] EWCA Civ 159 to that effect.
4. Permission was granted on 9 January 2015 by Judge Hollingworth on that limited ground. There is no Rule 24 response from the Appellant and so the matter comes before me today.
5. Upon the appeal being called up for hearing I am told by both parties that they are content to accept that the judge did err in law on this narrow basis; having found that the decision was not in accordance with the law he should have simply allowed the appeal on that limited basis and no more. On that basis they are both agreed that I can dispose of the matter by way of a brief extempore decision, which is what I now do. It seems to me quite a simple and straightforward point and I accept the concession that is made.
6. I go on in passing to comment that it does appear to me from a reading of the decision as a whole that at points the judge appears to have treated this matter as an appeal against a refusal of entry clearance. This was a decision that did not prolong, or cause, any separation of the family members. It was an in-country application, and the decision in relation to this family member by the Respondent was for whatever reason inconsistent with the course taken in relation to the other family members; as the judge found. In the circumstances there is no profit in me going back over the Article 8 appeal, and no purpose to doing so, as Sedley LJ pointed out in Mirza.
7. I am therefore satisfied that there was an error of law in the judge's approach that requires me to set aside his decision and remake it. I do so with the consent of both parties so as to allow the appeal on the limited ground that the underlying immigration decision under appeal was not made in accordance with the law. That leaves the application outstanding and awaiting a lawful decision upon it.

No anonymity direction is made.

Signed

Date **5 March 2015**

Deputy Upper Tribunal Judge J M Holmes