



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

**Appeal number: IA/48551/2014**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On January 18, 2016**

**Decision & Reasons Promulgated  
On February 9, 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE ALIS**

**Between**

**MS JASTINDER PAL KAUR  
(NO ANONYMITY DIRECTION)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

Representation:

Appellant

Ms Charlton (Legal Representative)

Respondent

Mr Stanton (Home Office Presenting Officer)

**DECISION AND REASONS**

1. The Appellant is a citizen of India. The appellant came to the United Kingdom as a Tier 4 General student on January 19, 2010 and was given leave to remain until March 2, 2011. She was subsequently allowed to extend her leave as a Tier 4 student until June 7, 2014. On June 6, 2014 she applied for indefinite leave to remain outside of the Immigration Rules. The respondent considered her application and on November 9, 2014 refused her application.
2. The appellant appealed this decision on December 1, 2014, under section 82(1) of the Nationality, Immigration and Asylum Act 2002.

3. The appeal came before Judge of the First-tier Tribunal Swinnerton on June 19 2015 and in a decision promulgated on July 9, 2015 the Judge refused the appeal under the Immigration Rules and Article 8 ECHR.
4. The appellant lodged grounds of appeal on July 24, 2015 submitting:
  - a. The Judge's approach to credibility was flawed.
  - b. The Judge had erred in the approach to Article 3 ECHR.
  - c. The Judge failed in proportionality assessment under Article 8 ECHR.
5. Judge of the First-tier Tribunal Landes gave permission to appeal on basis the Judge's approach to credibility may have undermined the approach to Article 3 ECHR. Permission was also given in relation to Article 8 ECHR although this was qualified with appellant's representative's signed note of the evidence to be provided.
6. The matter came before me on the above date and I heard submissions from both representatives.

### **PRELIMINARY ISSUE**

7. Ms Charlton had not provided a signed copy of her record of proceedings and when challenged to submit it at the hearing she did not have it to produce. I handed down to both parties a copy of the court record and indicated that there was no record of the appellant raising in her evidence that she had become increasingly depressed and planned to return to her sisters. Whilst I did not prevent Ms Charlton from pursuing an Article 8 appeal I made it clear that the court record did not support the one area where Judge of the First-tier Tribunal Landes felt there could be an arguable error in the Article 8 assessment.

### **SUBMISSIONS**

8. Ms Charlton relied on the grounds of appeal and submitted the Judge, in considering the appellant's account, had failed to have regard to the content of the medical reports and the objective evidence when assessing credibility. The findings on credibility and the effect on her Article 3 claim meant there was an error in law. With regard to Article 8 she submitted that if the credibility findings were defective then this must impact on the proportionality approach on the Article 8 claim. She invited me to find there had been a material error in law.
9. Mr Stanton adopted the rule 24 response dated November 12, 2015. He submitted the Judge had considered the appellant's evidence and found she lacked credibility. The assessment of credibility was contained in paragraphs [39] to [44] of the decision. The Judge was not obliged to comment on each piece of evidence and was entitled to attach little weight to the expert reports. Nether sister attended the First-tier hearing and the Judge carefully assessed the claim on the evidence before him. The application was nothing more than a disagreement with the Judge's decision.

### **DISCUSSION AND FINDINGS**

10. Permission to appeal has been granted both in respect of the Article 3 and 8 claims. However, in granting permission Judge of the First-tier Tribunal Landes made it clear that the appellant faced significant difficulties succeeding under Article 3 ECHR even if her full account were accepted and in granting permission on the Article 8 claim this was on the basis Ms Charlton's record of the earlier proceedings would support the appellant's claims.
11. Dealing with the record of proceedings I am satisfied that the issues raised about her becoming increasingly depressed and intending to go and live with her sisters was not raised at the hearing. The court record is detailed and no challenge is made to it. Ms Charlton did not produce her record of proceedings and in the circumstances I will deal with this appeal on the basis of the court record.
12. Ms Charlton has argued that the Judge did not deal with credibility properly and I am referred to paragraph [41] of the decision.
13. The decision must be read as a whole and individual passages should not be taken out of context. It is clear that in assessing credibility the Judge had regard to the two reports. The judge says as much in paragraph [37] before considering the account. At paragraphs [35] and [36] the Judge set out the account and then at paragraphs [38] and [39] the Judge considers the report of Dr Ballard. Whilst the finding at paragraph [41] is made before reference is made to Dr Persaud's report the Judge attaches little or no weight to this report for the reasons given in paragraph [43] of the decision. Those findings were clearly open to the Judge.
14. The objective evidence does not state that this appellant would suffer but merely confirms problems exist. The Judge considered the evidence and disbelieved her and gave reasons for those findings.
15. The permission suggested that the Judge was not aware that the appellant's sister was married before she left to come to the United Kingdom but it is clear from paragraphs [39] and [40] the Judge was aware of this fact.
16. Ms Charlton's submission on credibility amount to nothing more than a mere disagreement and the findings under Article 3 were clearly open to the Judge. Relocation was not an issue for the Judge because he rejected her account.
17. As regards Article 8 I am satisfied that there is no error. The Judge carefully considered the evidence given and the findings made were open to the Judge.

## **DECISION**

18. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law. I uphold the First-tier decision.

Signed:

Dated: **14 November y**



Deputy Upper Tribunal Judge Alis

**FEE AWARD**

I make no fee award as I have dismissed the appeal.

Signed:

Dated:



Deputy Upper Tribunal Judge Alis