



**Upper Tribunal
(Immigration and Asylum Chamber)
Number: IA/49404/2014**

Appeal

**IA/00130/2015
IA/00123/2015**

THE IMMIGRATION ACTS

**Heard at Field House
On 9 May 2016**

**Decision Promulgated
On 19 May 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE DOYLE

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

KHURRAM IFTIKHAR

First Respondent

AMNA IFTIKHAR

Second Respondent

[Y I]

Third Respondent

(Anonymity Direction Not Made)

Representation:

For the Appellant: Mr P Duffy, Senior Home Office Presenting Officer
For the Respondent: Mr A Brurrett (counsel) Instructed by Nasim & Co,
solicitors

DECISION AND REASONS

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.

2. The Secretary of State for the Home Department brings this appeal but in order to avoid confusion the parties are referred to as they were in the First-tier Tribunal. This is an appeal by the Secretary of State against a decision of First-tier Tribunal Judge Maka, promulgated on 28 September 2015 which allowed the Appellant's appeal under the Immigration rules (para 276ADE(1)) and on article 8 ECHR grounds.

Background

3. The first and second appellants are husband and wife. The third appellant is their daughter. The first appellant was born on 5 April 1973. The second appellant was born on 19 June 1986. The third appellant was born on [] 2014. All three appellants are nationals of Pakistan.

4. On 17 November 2014 the Secretary of State refused the Appellants' applications for leave to remain in the UK and served removal directions on the appellants.

The Judge's Decision

5. The Appellants appealed to the First-tier Tribunal. First-tier Tribunal Judge Maka ("the Judge") allowed the appeals against the Respondent's decision.

6. The respondent applied to the First-tier for permission to appeal to the Upper Tribunal. Designated First-tier Tribunal Judge Zucker refused permission to appeal, stating

"This application is out of time by two days. The respondent gives no reasons and no explanation for the delay but simply asserts that because other cases, which turn on a similar point of law, have been granted permission I should grant permission in this case. I do not know whether other applications were made in time. If I am to grant permission some explanation is required. The rules are not arbitrary."

7. On 23rd of March 2016, the respondent applied to the Upper Tribunal for permission to appeal against the decision of Judge Maka. There were two grounds of appeal argued. On 4 April 2016 Upper Tribunal Judge Grubb granted permission to appeal stating inter alia

"4. Ground 2 is arguable. The basis of the decision under the Rules and Art 8 was the impact upon the third appellant on return to India as a result of the absence/inadequacy of treatment for her

hydrocephalus. It is arguable that, not only could that not properly found a claim under Art 8 (see GS & EO & others v SSHD) but also could not, in itself, satisfy the requirement in para 276ADE(1)(vi) that there be “very significant obstacles” to integration into their country of return....”

8. In granting permission to appeal (on ground 2 only) Upper Tribunal Judge Grubb did not consider the late application to the First tier for leave to appeal.

The Hearing

9. Mr Brurrett, counsel for all three appellants, raised a preliminary issue. He drew my attention to the refusal of leave to appeal by the First-tier, and argued that because the grant of permission to appeal made by the Upper Tribunal on 4 April 2016 did not consider the reasons for a late application to the First-tier, then I must now consider whether or not time should be extended to allow consideration of this appeal.

10. Mr Duffy had not had prior notice of this preliminary point. After discussion, I continued this hearing until 2pm to enable Mr Duffy to take instructions and to enable both parties to focus on rule 21(7) of The Tribunal Procedure (Upper Tribunal) Rules 2008

11. Rule 21 of the Tribunal Procedure (Upper Tribunal) Rules 2008 says

“(7) If the appellant makes an application to the Upper Tribunal for permission to appeal against the decision of another tribunal, and that other tribunal refused to admit the appellant’s application for permission to appeal because the application for permission or for a written statement of reasons was not made in time—

(a) the application to the Upper Tribunal for permission to appeal must include the reason why the application to the other tribunal for permission to appeal or for a written statement of reasons, as the case may be, was not made in time; and

(b) the Upper Tribunal must only admit the application if the Upper Tribunal considers that it is in the interests of justice for it to do so.”

12. I drew parties agents attention to [Boktor and Wanis \(late application for permission\) Egypt \[2011\] UKUT 00442 \(IAC\)](#) in which the Tribunal held that where permission to appeal to the Upper Tribunal has been granted, but in circumstances where the application is out of time, an explanation is provided, but that explanation is not considered by the judge granting permission, in the light of [AK \(Tribunal appeal - out of time\) Bulgaria \[2004\] UKIAT 00201](#) (starred) and the clear wording of rule 24(4) of the

Asylum and Immigration (Procedure) Rules 2005, the grant of permission to appeal is conditional, and the question of whether there are special circumstances making it unjust not to extend time has to be considered.

13. I am aware that in Samir (FtT Permission to appeal: time) [2013] UKUT 00003 (IAC) it was held that the Upper Tribunal may extend time on an application for permission to appeal, even if the application was out of time and an application for permission made to a Judge of the First-tier Tribunal had not been admitted.

14. Mr Duffy candidly conceded that he was in some difficulty. He explained that permission to extend time had been sought entirely on the basis of ground 1 of the grounds of appeal, which has effectively been dismissed by Upper Tribunal Judge Grubbs decision on 4 April 2016. He suggested that as the permission to appeal identifies an arguable ground of appeal, then it would be unjust not to extend time. He was not able to explain why there had been a delay in submitting the application for permission to appeal to the First-tier.

15. Mr Brurrett drew my attention to [13] of Boktor and Wanis and argued that the strength of the grounds alone is not a ground for extending time.

Analysis

16. It is beyond dispute that the delay in submission to the First-tier of the application for leave to appeal was not considered when the Upper Tier granted leave to appeal on 4 April 2016. In line with Boktor and Wanis, the grant of leave to appeal made on 4 April 2016 is only a conditional grant of leave to appeal. The question of extension of time must be decided.

17. Despite allowing Mr Duffy time to seek instructions and prepare to address me on extension of time, no reason is given for the delay nor is an argument properly directed at rule 21(7) of the Tribunal Procedure (Upper Tribunal) Rules 2008 placed before me. Rule 21(7)(b) is in mandatory terms. I have no material before me to indicate that it is in the interests of justice to admit the application. The application coyly refers to the delay by saying

“The application to the First Tier was regrettably slightly late owing to an administrative error.”

18. I still do not know what that administrative error was, nor do I know what caused the administrative error. I cannot say that it is in the interests of justice to admit the application. On the information placed before me, the only finding I can make is that the application to the First-tier was late. I do not know why, so I cannot say that the interests of justice require an extension of time.

19. I therefore refuse to extend time in this case. It follows that as the appeals of the appellants were allowed by the Judge, those decisions stand.

Signed

Date 12 May 2016

Deputy Upper Tribunal Judge Doyle