



IAC-FH-NL-V1

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

Appeal Number: OA/13398/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 4 February 2016**

**Decision & Reasons Promulgated
On 25 February 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MRS SAJIDA NASREEN
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr E Tufan, Home Office Presenting Officer

For the Respondent: Mr D Coleman, Counsel instructed by Eden Solicitors

DECISION AND REASONS

1. This is an appeal by the Secretary of State against a decision by Judge of the First-tier Tribunal Atreya heard on 1 July 2015. In a decision promulgated on 20 August 2015, she allowed the appeal. The Respondent, to whom I shall refer as the Claimant, is a national of Pakistan, born on 1 January 1968. She made an application for entry clearance in order to join her spouse in the United Kingdom, her spouse being originally a national of Pakistan but now British, born on 11 February 1938. This application was refused by an Entry Clearance Officer on 10 September 2014 both in

respect of Appendix FM of the Immigration Rules and Article 8 of the European Convention on Human Rights. Grounds of appeal were submitted to the Entry Clearance Officer on 17 October 2014 and an Entry Clearance Manager conducted a review on 29 January 2015 but upheld the decision of the Entry Clearance Officer.

2. At the hearing before the First-tier Tribunal Judge, the Sponsor Mr Bashir gave evidence as to his relationship with his wife and the reasons why he said it was not possible for him to live in Pakistan with her. The judge heard submissions by both parties and made findings of fact from [29] through to [51] of her decision. She found at [30] that the Sponsor was a credible and truthful witness, that he was 77 years of age and she accepted his evidence as to why he had married his wife and why he wanted her to come to the United Kingdom. She accepted at [31] that there was a genuine and subsisting relationship between the two and their communication was mainly by telephone on a regular basis. She also accepted that the Sponsor remitted money to his wife, in Pakistan, that the Sponsor was westernised from the way he dressed and the fact he gave evidence in fluent English. She noted also and found that he had only spent two months in Pakistan since he came to the United Kingdom in 1963.
3. She also accepted at [32] based on the medical evidence, that the Sponsor has some serious health issues, in particular he has chronic obstructive pulmonary disease, type 2 diabetes and he needs to take bronchodilators for relief daily, he has chronic lumbar spinal spondylosis, chronic eczema, TIA and is at risk of a possible stroke and also has chronic kidney disease, stage 3 and she referred to the medical report by Dr Lamba who is the Sponsor's long-term GP.
4. She noted that the Sponsor receives £12,740 per year by way of a state pension and found that the application did not meet the requirements of the Immigration Rules. However the judge noted at [37] that the Claimant is a seamstress and that she has the skills and ability to integrate into UK society including the ability to work as well as care for her husband were she to be admitted.
5. The judge considered Article 8 of the European Convention on Human Rights from [39] onwards and correctly directed herself in respect of the relevant case law at [39] and [40] where she made express reference to the Court of Appeal decision in SS (Congo), concluding at [102] that Article 8 was fact sensitive and it was disproportionate not to admit the Claimant. She also referred at [48] to the public interest pursuant to Section 117B of the Nationality, Immigration and Asylum Act 2002 and concluded overall that the Entry Clearance Officer's decision was disproportionate.
6. The Entry Clearance Officer sought permission to appeal on 3 September 2015. There were essentially three grounds of appeal. The first ground was that the First-tier Tribunal Judge's decision was inadequately reasoned and irrational on the basis that it was not clear what disruption would result to family life between the Sponsor and the Claimant given that they do not currently live together.

7. The second ground was with reference to the judge's finding at [49] where she held, "*there is no sufficient public interest to justify the interference with the Appellant's family life that would result from her removal. Consequently I find her removal to be unjustified and disproportionate*", the point being that the appeal was a refusal of entry clearance and there was never any question of removal.
8. The third ground was that it was an error of law to find there was no sufficient public interest as the public interest is clearly defined in Section 117 of the aforementioned NIAA 2002.
9. Permission to appeal was granted by Judge of the First-tier Tribunal Frankish on 22 December 2015. At paragraph 3 of the grant of permission he stated, "*the grounds as confirmed in the determination, demonstrate that it is arguable that this appeal has been treated as a removal case when it is an entry clearance case*". That was the only ground in respect of which permission to appeal was granted.

Hearing

10. At the hearing before me the Sponsor attended and the Claimant was represented by Mr Coleman. I heard submissions from Mr Tufan as well as Mr Coleman. Mr Tufan sought to expand or extend the grounds of appeal. However whilst I heard his submission I declined to give him permission to do that because the issues he sought to raise had not been raised in respect of the grounds of appeal of 3 September 2015 nor had permission been granted in respect of them by First-tier Tribunal Judge Frankish. There had not been any prior application before today's date to extend the grounds of appeal either and in those circumstances I did not consider that it would be fair or just, in light of the overriding objective, to permit further grounds to be raised. Consequently Mr Tufan essentially relied on the grounds of appeal as drafted.
11. I heard helpful submissions from Mr Coleman in support of the decision of the First-tier Tribunal Judge.

Decision

12. I find there was no material error of law in the decision of First-tier Tribunal Judge Atreya. It is clear from the decision as a whole that the judge had well in mind the fact that she was hearing an appeal against the refusal of entry clearance. She expressly states that at [4] and [7] of the decision and in respect of her findings reference is expressly made to the refusal of entry clearance at [44] and [46]. Paragraph 46 provides:

"I find that the entry clearance refusal did amount to a disproportionate interference with the Appellant's right to respect for family life. It therefore amounted to an Article 8 ECHR breach. Without entry clearance the Appellant's right to enjoy her family life with her husband will be disrupted. It is in my judgment a disproportionate interference taking into account and balancing the Respondent's interest in maintaining the entry clearance refusal and the Appellant's circumstances."

13. Consequently I accept the submission by Mr Coleman that essentially the reference to removal at [49] is simply a typographical error given the paragraphs that preceded that final paragraph. I also accept his submission that the judge's direction and analysis is detailed, sound and legally correct.
14. For the avoidance of doubt although permission was not given in respect of the other grounds, I do not consider that there is any merit in them, in particular as indicated earlier, the judge had express regard to the public interest at [48] of her decision and she clearly gave detailed reasons for her decision, which are not irrational. Therefore, for the reasons set out above, I uphold the decision of First-tier Tribunal Atreya.
15. The appeal by the Entry Clearance Officer is dismissed. I uphold the decision of First-tier Tribunal Judge Atreya.

No anonymity direction is made.

Signed

Date 22 February 2016

Deputy Upper Tribunal Judge Chapman