



**Upper Tribunal
(Immigration and Asylum Chamber)
HU/10047/2015**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

On 29 June 2017

Decision &

Promulgated

On 07 July 2017

Reasons

Before

**DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL**

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MS PREMALATHA PANCHADCHARAM
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr P Nath, Home Office Presenting Officer

For the Respondent: Mr S Muquit, Counsel, instructed by David Benson
Solicitors

DECISION AND REASONS

1. In a decision sent on 29 December 2016 First-tier Tribunal (FtT) Judge Aujla allowed the appeal of the respondent (hereafter the claimant) against the decision of the appellant (hereafter the Secretary of State or SSHD) dated 21 October 2015 concluding that the claimant did not meet the requirements of paragraph 352A of the Immigration Rules. At paragraphs 29 – 31 the judge said:

- “29. On the limited information available to me from the court file, I find that the sponsor was granted refugee status as a sur place asylum seeker. Whilst the Appellant did not satisfy the requirements of paragraph 352A of the Immigration Rules, it is clear that she comes within the policy referred to by counsel in his advice to the, part of which are set out about.
30. If remittal to the Respondent for her to reconsider the matter in the light of the policy was open to me, I would have remitted the matter back the Respondent. However, as I can no longer remit the matter and must either allow the appeal on dismiss it, I have no option but to allow the appeal in the circumstances. The Appellant clearly comes within the policy as the spouse of a sur place refugee and she should be treated in the same way as a pre-flight spouse, in accordance with the policy.
31. I allow the Appellant’s appeal and direct the Respondent to grant the Appellant leave to remain in the United Kingdom as the spouse of a refugee”.
2. The SSHD’s written grounds of appeal cited firstly that having concluded that the claimant did not meet the requirements of paragraph 352A(2) the judge should have gone no further and dismissed the appeal as the judge incorrectly relied on the claimant’s Counsel’s advice regarding the existence of a Home Office policy equating the situation of post-flight spouses with pre-flight spouses where the spouse’s refugee claim was based on a sur place claim. The SSHD’s grounds also took issue with the judge’s directions that the claimant be granted leave to remain as the spouse of a refugee.
3. I can be brief in deciding this appeal because Mr Nath confirmed that the policy referred to by the judge did exist and was correctly described by Counsel. Mr Nath also accepted that where a claimant benefits from such a policy it cannot be in accordance with the law or proportionate within the meaning of Article 8 of the ECHR for the respondent to refuse a person’s application simply because she did not fall under paragraph 352A(2).
4. Accordingly the challenge to the judge’s decision to allow the appeal falls away. The claimant had raised Article 8 as a ground of appeal. Although he did not state so expressly, the only possible basis for the judge allowing the appeal was on Article 8 grounds. Not only was that the only possible ground it was entirely correct of the judge to allow the appeal on that basis.
5. That is not to say the judge’s decision is entirely free of legal error. As both parties agreed, his direction that the SSHD grant the claimant leave to remain was ultra vires. That error, however, was not material to the judge’s decision to allow the appeal and even if it had been, I would not have regarded it as an error justifying a setting aside of FtT Judge Aujla’s decision.

6. For the above reasons:

The FtT did not err in allowing the appeal on Article 8 grounds.

The subsequent direction that the SSHD grant leave to remain as the spouse of a refugee is to be treated as a nullity. The grant of leave to a person who is a beneficiary of a Home Office policy is a matter for the SSHD.

No anonymity direction is made.

Signed

Date: 6 July 2017

A handwritten signature in black ink that reads "H H Storey". The signature is written in a cursive style with a large, looped 'S' at the end.

Dr H H Storey
Judge of the Upper Tribunal