



**Upper Tribunal  
(Immigration and Asylum Chamber)  
IA/18119/2015**

**Appeal Number:**

**Extempore judgement**

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 3 July 2017**

**Decision  
Promulgated  
On 7 July 2017**

**& Reasons**

**Before**

**UPPER TRIBUNAL JUDGE McWILLIAM**

**Between**

**ZS  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Ms M Malhotra of Counsel, instructed by Britain Solicitors  
For the Respondent: Ms A Holmes, Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant is a citizen of Pakistan and her date of birth is 13 February 1969. Her daughter, SF, is a dependant and her date of birth is 10 December 1996.
2. The Appellant made an application on human rights grounds on 4 July 2014 and this application was refused by the Secretary of State on 24 April 2015. The Appellant appealed the decision and her appeal was dismissed by First-tier Tribunal Judge M A Khan, in a decision that was promulgated on 12 August 2016 following a hearing on 26 July 2016. Permission to

appeal was granted to the Appellant by Upper Tribunal Judge Rintoul on 14 February 2017. Judge Rintoul in the grant of permission referred to the case of SB and ABD v Secretary of State for the Home Department [2016] EWCA Civ 400.

3. Ms Holmes conceded that the judge made a material error of law and in these consequently it is not necessary for set out the judge's decision in in any detail or the grounds of appeal. The judge did not make any findings in relation to the Appellant's mental health and therefore the proportionality assessment is flawed. The judge simply recorded the Appellant's oral evidence on the issue. She was diagnosed as having schizophrenia and there are medical reports dating back to 2009 which confirm the diagnosis (although these do not appear to have been before the judge, there was a medical report before him dated 2013).
4. Discretionary leave (DL) was granted to the Appellant in 2011, on the basis of family life, contrary to the judge's finding. The decision letter granting DL does not explain the reasons for the grant other than stating that it was granted on family life grounds. Neither party was of assistance on the issue. However, from the papers before me, it seems that the Appellant's daughter was, at some stage in 2011, in care here in the UK, perhaps during a period when the Appellant was suffering mental ill health. It is likely that this was, at least, one reason for the grant of DL. In terms of the transitional arrangements referred to in the grant of permission, Ms Malhotra conceded that there had been a significant change in circumstances since 2011 insofar that the Appellant's daughter is now an adult and she is no longer in care. In fact, there was a letter before the judge from a social worker indicating that she has not been in care since December 2011. It is likely that, if leave was granted on this basis, any argument under the transitional arrangements would be hopeless in the light of Ms Malhotra's concession. However, it is not clear whether the Appellant's mental health was a factor in the grant of DL. It is expected that the parties are both in a position at the next hearing to explain to the Tribunal the full reasons for the grant of DL in 2011. There is a more recent supplementary decision on which the Respondent relies, of 7 April 2017, but this does not explain the full reasons for the grant of discretionary leave in 2011.
5. The decision of the First-tier Tribunal is set aside. As I communicated to the parties at the hearing, the matter is remitted to the First-tier Tribunal. The Tribunal will determine the appeal under Article 8 after making full findings of fact. There may be an issue in respect of the transitional arrangements (see above). I do not intend to tie the hands of the First-tier Tribunal. It is uncertain what findings will be made in respect of the Appellant's mental health and whether or not the judge considers it to impact on the evidence given by her. However, the judge may consider it appropriate to have full regard to the evidence given by the Appellant and witnesses at the hearing before Judge Khan. The only challenge to the evidence, as recorded by Judge Khan, related to the Appellant's mental health and her ability to give evidence.

**Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed            Joanna McWilliam

Date 5 July 2017

Upper Tribunal Judge McWilliam