



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/08469/2015

THE IMMIGRATION ACTS

Heard at Field House
On 10th May 2018

Decision & Reasons Promulgated
On 31st May 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE SAINI

Between

ENTRY CLEARANCE OFFICER - NEW DELHI

Appellant

and

MRS HAFIZA MAHBUB NILA
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Mr S Kandola, Senior Presenting Officer

For the Respondent: Mr D Chuckooa, solicitor, Bridgewater Solicitors

DECISION AND REASONS

1. The Entry Clearance Officer appeals against the decision of First-tier Tribunal Judge Majid promulgated on 21st August 2017 allowing the appeal of the Appellant on the basis of her refused application for leave to enter the UK as the partner of a settled person. The Entry Clearance Officer was granted permission to appeal by First-tier Tribunal Judge Alis. The reasons given for granting permission may be summarised as follows:

“The Grounds of Appeal argue the judge erred by failing to deal with evidence and identify why the appeal, with reference to the evidence, was allowed. The decision consists of 25 paragraphs but of those paragraphs it is arguable that only paragraphs 1 to 2 and 10 to 12 have any relevance to this appeal. At paragraph 12 the judge made findings but failed to identify which evidence supported the findings. It is arguable that anyone reading the judge’s decision would be left wondering why the appeal was allowed. The grounds are all arguable.”

2. I was not provided with a Rule 24 reply from Mrs Nila’s representative but was addressed by her solicitor in submissions whom indicated that the appeal was resisted.

Error of Law

3. At the close of hearing I indicated I found that there was an error of law but that my reasons for so finding would follow, which I shall now give.
4. The grounds argue that the decision of Judge Majid fails to record the reasons given for refusal of entry clearance to Mrs Nila which required resolution by the judge. This observation is indeed correct. Judge Alis is right to observe that Judge Majid does make findings, however, these findings at paragraph 12 of the decision are not made with reference to specific pieces of specified evidence alongside the Immigration Rules in respect of specified evidentiary evidence (Appendix FM-SE) under which the refusal of entry clearance was partly made. Thus, the complaint that the Entry Clearance Officer would be unable to know the reasons why the appeal has succeeded is a valid one. For Mrs Nila, Mr Chuckooa was only able to point to paragraph 18 of the decision where Judge Majid said that the evidence adduced on the Appellant’s behalf was credible. However, he had to accept that that one sentence paragraph contained no analysis of the evidence. Mr Chuckooa was also further unable to demonstrate any analysis of the evidence that was sent by reference to the application as opposed to being sent on appeal (although such evidence is admissible and may be considered pursuant to the Immigration Rules: see paragraph 276ADE(A0)).
5. When I asked Mr Chuckooa where the basis upon which the appeal would have succeeded was evident he could only point to paragraph 24, which stated in summary that Judge Majid could not “ignore the ‘legal requirements’ stipulated by immigration law”, and that the Appellant could “benefit from the relevant Rules as indicated in paragraph 12 above”. That wording is extremely similar if not identical to the wording referred to by the Upper Tribunal in the unreported judgment of *MM and Others* (AA/06906/2014) wherein the Upper Tribunal panel at paragraphs 18 to 20 of their decision stated as follows in respect of other decisions of Judge Majid:

“Many of the cases depend on the application of the Immigration Rules. Taken as a whole, those Rules are notoriously complex, but an individual case usually raises a specific issue on the application of one or more provisions of the Rules to the facts. Judge Majid refers in general terms to the Rules, but in none of the decisions under appeal does he set out the part of the Rules that is in issue, and to be frank, in none of the decisions under appeal does he give the least reason to suppose that he is aware what the relevant requirements of the Rules are. The conclusions cited above indicate that; and we give details in our decisions on the individual appeals.

As a result, whoever wins the case can have no confidence that ‘the ‘legal requirements’ stipulated by immigration law’ have been followed at all. It is not surprising that in a number of the appeals before us, the Grounds of Appeal focus on the inadequacy of reasons given. Parties to an appeal are entitled to know why they have won or lost.”

6. As the above excerpt shows, the criticism made of Judge Majid’s decision here is strikingly similar to that made in previous appeals which was robustly criticised by the Upper Tribunal in that unreported decision of 30th August 2017.
7. It is indeed correct that the parties to an appeal are entitled to know why they have won or lost. In that respect, the judge’s decision also is flawed in that it is inconsistent with the head note of *Budhathoki (reasons for decisions)* [2014] UKUT 00341 (IAC), which states that: “It is, however, necessary for judges to identify and resolve key conflicts in the evidence and explain in clear and brief terms their reasons, so that the parties can understand why they have won or lost.” Furthermore the judge’s decision lacks clear reasons for why the judge concluded in one direction rather than the other, and is furthermore inconsistent with the Upper Tribunal’s decision in *MK (duty to give reasons) Pakistan* [2013] UKUT 641 (IAC), which makes clear that it is axiomatic that a determination discloses clearly the reasons for a Tribunal’s decision.
8. Therefore, in light of the above findings, the Entry Clearance Officer’s appeal against the findings of the First-tier Tribunal Judge does reveal material errors of law such that the decision should be set aside.

Notice of Decision

9. The appeal to the Upper Tribunal is allowed.
10. The decision of the First-tier Tribunal is hereby set aside and the appeal is remitted to be heard by a differently constituted bench of the First-tier Tribunal *de novo*.
11. No anonymity direction is made.

Directions

- (1) The appeal is remitted to be heard at IAC Taylor House by a differently constituted bench.
- (2) No interpreter is required.
- (3) The appeal is to be listed for two hours.
- (4) Mrs Nila’s solicitor has indicated that there will be two witnesses giving oral evidence.
- (5) If any further directions are required by the parties they are encouraged to make such a request in writing to the Resident Judge at Taylor House.

Signed

Date 27 May 2018

Deputy Upper Tribunal Judge Saini