



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/16327/2016

THE IMMIGRATION ACTS

Heard at Field House
On 30th May 2018

Decision & Reasons Promulgated
On 1st June 2018

Before

UPPER TRIBUNAL JUDGE COKER

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

TOA

Respondent

Representation:

For the Appellant: Mr S Walker, Senior Home Office Presenting Officer
For the Respondent: Mr R Singer instructed by Paul John & Co, solicitors

DECISION AND REASONS

1. In a decision promulgated on 20th December 2017, First-tier Judge NMK Lawrence allowed TOA's appeal against the refusal of her human rights claim. She had made an application on Form FLR(O) for further leave to remain. The covering letter from her solicitors referred to her having suffered domestic violence from her husband. Judge Lawrence concluded

“on the evidence before me, I find, on balance of probability, the appellant had been subjected to domestic violence as defined by the respondent's own Guidance.

Notice of decision

The appeal under the domestic violence provisions, is allowed.”

2. The Secretary of State sought and was granted permission on the grounds that it was arguable that the judge erred in allowing the appeal on domestic

violence grounds when the appellant had not sought indefinite leave to remain on the grounds of domestic violence.

3. The grounds relied upon by the Secretary of State do not take issue with the findings of the judge that TOA has been the victim of domestic violence but rely on the fact that she did not apply for indefinite leave to remain as a victim of domestic violence. The grounds as pleaded do not recognise that TOA made a human rights claim; that claim was refused and it was that which was before the First Tier Tribunal – not an appeal against a decision made under the Immigration Rules.
4. Whether a person meets the criteria in the Immigration Rules are factors that are taken into account in determining whether a decision on a human rights claim is proportionate. In this case there is no challenge to the finding that TOA meets the criteria set out in the Secretary of State's guidance as to what constitutes domestic violence to decide whether she meets the Rules. TOA made an application for further leave to remain. It is not suggested that the application was not valid but rather that she did not complete the correct form. The failure to complete the correct form cannot reasonably be said to render a decision to refuse a human rights claim proportionate when all the other criteria are met; it cannot render proportionate a decision that in all other respects is disproportionate.
5. The First tier Tribunal judge phrased his Notice of Decision inaccurately but the findings were clear. The appeal against the adverse human rights claim decision was plainly allowed on the basis that the decision was disproportionate because she meets the relevant domestic criteria.
6. There is no material error of law by the First tier Tribunal Judge.
7. I dismiss the Secretary of State's appeal. The decision of the First tier Tribunal stands.

Date 30th May 2018



Upper Tribunal Judge Coker