



UPPER TRIBUNAL

**(IMMIGRATION AND ASYLUM CHAMBER)
HU/12666/2018**

APPEAL NUMBER:

THE IMMIGRATION ACTS

Heard at: Field House

**Decision and Reasons
Promulgated**

On: 26 June 2019

On: 11 July 2019

Before

Deputy Upper Tribunal Judge Mailer

Between

**MRS ZARKA SHAHEEN
ANONYMITY DIRECTION NOT MADE**

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

Representation

For the Appellant: Ms S Iengar, counsel, instructed by Bushrah Siddique

For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Pakistan, born on 13 September 1989. She appeals with permission against the decision of the First-tier Tribunal, promulgated on 10 January 2019, dismissing her appeal against the respondent's decision to refuse to grant her entry clearance as the partner of Mr Muhammad Irfan.
2. The appellant's appeal was considered on the papers. The Judge noted that there was an absence of witness statements from either the appellant or her husband, providing details of their lives together or their future intentions. He was thus not satisfied that the marriage is subsisting and there was insufficient evidence that the parties had had family life together.
3. In granting the appellant permission to appeal, First-tier Tribunal Judge Andrew noted that a letter dated 4 January 2019 had been sent to the appellant by the respondent indicating that the original decision had been withdrawn and that a recommendation had been made that entry clearance be granted.
4. However, that letter was unfortunately not drawn to the attention of the First-tier Tribunal Judge prior to promulgation of the appeal ten days later.
5. The letter sent to the appellant from the respondent concluded that, on the balance of probabilities, her partner had resided in Pakistan for five years as stated in her application and it was therefore accepted that she met the relationship requirements under Appendix FM of the Immigration Rules.
6. It was further stated in the letter that it would only be under rare circumstances that the withdrawal of the decision will not result in the grant of entry clearance. It was submitted that there is therefore no good reason not to permit the withdrawal. It was requested that permission therefore be granted that this appeal be withdrawn.
7. Ms Iengar submitted at the hearing before the Upper Tribunal on 26 June 2019, that it is still not clear that the original application for entry clearance has been granted. There has been a lengthy delay since 4 January 2019.
8. She submitted that as it had been concluded that the relationship requirements under Appendix FM of the Rules had been met, the appellant's appeal before the Upper Tribunal should be allowed.
9. Mr Walker, on behalf of the respondent, accepted that in light of the concession that the relationship requirements had been met, the appeal should be allowed. He submitted that there would have been a different outcome had the First-tier Tribunal Judge been aware of the fact that the decision under appeal had been withdrawn as of 4 January 2019. He

stated that in the circumstances, the respondent did not oppose the appeal.

Assessment

10. It is accepted that as at the date of the decision, the requirements of Appendix FM were met. Accordingly, Article 8 is engaged and the public interest requirements no longer stand in the way of a successful appeal. It is accepted that in the circumstances the decision of the First-tier Tribunal cannot stand.
11. I accordingly set it aside and re-make the decision allowing the appellant's human rights appeal under Article 8 of the Human Rights Convention.
12. In a direction dated 10 April 2019, Upper Tribunal Judge Rintoul noted that given the fact that the decision under the appeal had been withdrawn on 4 January 2019, there appeared to be no reason to proceed to an oral hearing. The parties were reminded that they were under a duty to notify the Upper Tribunal if leave to enter has been granted. They were directed to notify the Tribunal within ten days of the issue of the directions whether leave has been granted or whether either of them wishes to withdraw their appeal. The parties were put on notice that if the matter proceeds to appeal, it is likely that a costs order will be made against the losing party.
13. Ms Lengar stated that the appellant is to consider whether to apply for a wasted costs order.

Notice of Decision

The decision of the First-tier Tribunal involved the making of an error on a point of law. Having set it aside, I re-make the decision allowing the appellant's appeal.

Anonymity direction not made.

Signed

Dated: 6 July 2019

Deputy Upper Tribunal Judge Mailer