



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/00690/2020 (V)

THE IMMIGRATION ACTS

Heard at George House, Edinburgh  
by *Skype for Business*  
on 16 December 2020

Decision & Reasons Promulgated  
On 7 January 2021

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

**SIDRA [A]**

Appellant

and

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

Respondent

*For the Appellant:* Mr M Moksud, instructed by International Immigration Advisers, Manchester  
*For the Respondent:* Mr A McVeety, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. This determination is to be read with:
  - (i) The respondent's decision dated 15 January 2020.
  - (ii) The decision of FtT Judge Kempton, promulgated on 17 March 2020.
  - (iii) The appellant's grounds of appeal to the UT, stated in the application for permission to appeal dated 30 March 2020.
  - (iv) The grant of permission by FtT Judge Bulpitt, dated 1 May 2020.
2. I conducted the hearing from George House. Representatives attended remotely. The technology enabled an effective hearing.
3. The grounds are directed firstly against the adverse credibility finding, and secondly allege that the judge made no finding, or no clear finding, on the human rights case.

4. The grant of permission is on the view that it was arguable that the findings did not include an adequate assessment of the proportionality of the interference with the appellant's private and family life in the UK.
5. Mr Moksud submitted thus:
  - (i) The FtT noted that this was an appeal on ECHR grounds, and at [9] specified the 5 *Razgar* tests, but did not subsequently engage with those necessary stages of decision.
  - (ii) At [18] the FtT referred to section 8 of the 2004 Act as mandatory, but delay is not necessarily damaging, and in this case there were sufficient reasons.
  - (iii) The decision at [24] was incomplete, ending in "however", and leaving the matter in the air.
  - (iv) At [26] and at [30] the FtT said that the determination in the case of the appellant's partner was "not appealed", but that was unclear. She might have meant that permission was not sought, but no information was recorded.
  - (v) At [26] there was error in saying "no real new evidence". The evidence from the appellant's partner's brother was new evidence and was due consideration on its own merits.
  - (vi) At [31-37] the decision failed to mention human rights, the 5 stage test, paragraph 276ADE(vi) of the immigration rules, the appellant's 9 years in the UK, her 3 ½ year old child, or her partner's 16 years in the UK, and was unlawful in terms of section 6 of the Human Rights Act [the duty on public authorities to act in a manner compatible with Convention rights].
  - (vii) It would be no answer to say that the human rights claim was bound to fail, in or put of the rules. The point was entitled to a reasoned resolution of her case.
  - (viii) The decision should be set aside and reheard in the FtT.
6. Mr McVeety submitted thus:
  - (i) The submissions on the credibility findings went beyond the grounds.
  - (ii) The grant of permission did not include the challenge on credibility.
  - (iii) There was nothing wrong with the credibility findings.
  - (iv) The point based on delay was damning, as the case was essentially a re-run of the husband's case, which had failed badly on credibility.
  - (v) Mr McVeety had not seen any skeleton argument from the FtT, but the absence of mention of paragraph 276 ADE, and of insurmountable obstacles, might reflect that no such case had been put.
  - (vi) Similarly, it was accepted that the 5 stages of *Razgar* were not specifically resolved, but it was questionable whether any case in terms of those stages was seriously advanced.

- (vii) If there was any error, there was no basis for revisiting the factual findings, so the decision could be remade in the UT, at this hearing, or by way of a further hearing.

7. Mr Moksud replied:

- (i) The grant of permission is not restricted, but on all grounds.
- (ii) The further points he advanced came within the scope of the grounds on credibility.
- (iii) The case for the appellant on human rights was plain from the matters rehearsed in her statement and in her husband's statement, setting out her private and family life in the UK. There had been no direction, and no need, for a skeleton argument.
- (iv) As the respondent accepted a failure to consider the *Razgar* tests, and that human rights issues were omitted from the decision, the outcome should be a further hearing, either in the UT or in the FtT.

8. I reserved my decision.

9. The grant of permission says that the grounds about credibility have "little merit"; there was no arguable misapplication of *Devaseelan*; and the remaining criticisms are no more than disagreement, not identifying an arguable error of law. I consider that the grant was only on ground 2.

10. Taking a generous view, if permission had been granted on ground 1, I would have permitted Mr Moksud to particularise the points he did, under the heading of credibility.

11. In any event, I do not find any of the credibility points to be substantiated.

12. Judge Kempton attached no more significance to delay than she was entitled to do.

13. There is nothing left hanging in the air at [24]. It is to be read together with [23], and the word "however" might equally have appeared at the beginning of the sentence. The judge's point is that the imam explained the issue of an unmarried Muslim couple living together, but he did not say that he could not marry them. There is not said to be any error in that observation, or in giving it some adverse significance.

14. There are different stages of applying to appeal a decision, and of success or failure after permission is granted, but the judge's point is sound, based simply on the fact that the determination in the case of the appellant's husband stood as a final outcome. The procedural stage at which that occurred was irrelevant.

15. The evidence from the appellant's husband's brother appears to have been another source for the same story, subject to the same flaws. I was not referred to anything specific he said which might have called for separate consideration. No error is shown in placing this under the heading of "no real new evidence".

16. Judge Kempton found that, much more likely than not, the appellant and her husband are married. No error is shown in that. She and her husband are both liable to return to Pakistan. She established nothing which might have entitled either of them to remain in the UK, in or out of the immigration rules, based on private life. The case involved no issue of separation of family members. Judge Kempton said at [36] that the best interests of the child

(born in 2014) were to remain with both parents. Realistically, the case came to *Razgar* stage 5, at which there was no more to be said. No matter how much more structure and detail had been added, the appellant has referred to nothing by which the outcome might rationally have been different.

17. Mr Moksud made all that could be made of the grounds, and drilled astutely into the decision for points to dispute, but having considered all the submissions, I conclude that:
  - (i) The decision read fairly and as a whole, does not err on any point of law.
  - (ii) If anything in the decision might be construed as legal error, it is not of a nature to require it to be set aside.
  - (iii) If the decision were to be set aside, a decision would fall to be substituted, based on the evidence before the FtT, and the facts as found by the FtT.
  - (iv) On those facts, the human rights appeal was hopeless, and would fall to be dismissed.
18. The decision of the FtT shall stand.
19. No anonymity direction has been requested or made.



16 December 2020  
UT Judge Macleman

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#### NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.
3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.
4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.
5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.
6. The date when the decision is "sent" is that appearing on the covering letter or covering email.