



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: IA/09752/2014

THE IMMIGRATION ACTS

Heard at FIELD HOUSE

On 1st October 2014

**Determination
Promulgated**

On 2nd October 2014

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL MS GA BLACK

Between

**MRS MEENAKSHI BANSHI
(NO ANONYMITY ORDER MADE)**

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: In person

For the Respondent: Mr P Deller (Senior Home Office Presenting Officer)

DETERMINATION AND REASONS

- 1.** This matter comes before me for consideration as to whether or not there was a material error of law in the First-tier Tribunal (Judge McDade) determination promulgated on 15th July 2014 in which the Tribunal

dismissed the appeal on immigration and human rights grounds, for indefinite leave to remain outside of the Rules.

2. The appellant is a citizen of Mauritius and her date of birth is 18.11.1979. She has two children and her partner is a citizen of India.

Background

3. The appellant entered the UK in 2004 as a visitor and was granted periods of leave as a student until 2008. She left the UK in 2009 voluntarily and re entered in 2009 with leave as a post study migrant. On 25.7.2011 she applied for indefinite leave outside of the Rules. There ensued proceedings before the First-tier Tribunal (Judge Martins) and application for permission to appeal to the Upper Tribunal was refused. An application for reconsideration was made and refused. The appellant made a further application for ILR outside the rules on 27th March 2013.

Reasons for refusal

4. The respondent refused the application under paragraph 322(1) of the Immigration Rules HC 395 as amended. The application was for a purpose not covered by the Rules.
5. Consideration was given to exceptional circumstances. The appellant was 34 years of age and lived in the UK for 9 years. Her husband was an Indian national who had no status in the UK, although there was some suggestion that he was awaiting a decision on a legacy claim.
6. Reliance was placed on the first determination before Judge Martins [28] on 1st March 2012 in which she found that family life could be enjoyed outside of the UK.
7. There was no evidence of insurmountable obstacles and nothing to indicate that the removal would be contrary to the best interests of the children.

Determination

8. The appeal was determined on the papers by First-tier Judge McDade at the request of the appellant. Although he stated that he did not have the respondent's bundle [5] he proceeded to determine the appeal relying on the evidence in the appellant's bundle and dismissed the appeal.

Appeal grounds

9. The appellant submitted grounds of appeal in which she maintained that the Tribunal failed to consider Article 8 family life and the risks/ insurmountable obstacles on return faced by the family in the event of removal to either Mauritius or India and/or the best interests of the children.

Permission

10. Judge Hollingworth granted an extension of time and permission to appeal. There were arguable grounds that the appellant was entitled to assume that the Judge determined her appeal having taken into account all of the material in the bundles including the Respondent's. It was now clear that the Judge did not have the respondent's bundle before him. The error arose in terms of the scope of the findings of fact by the Judge in relation to the extent of the material available to him.

Hearing

11. Mr Deller helpfully indicated that there was correspondence in the respondent's file to show that the respondent had made attempts to serve a bundle but that it was clear from the directions that no bundle had reached the Tribunal. The determination makes clear that the Tribunal did not have it before him. Mr Deller conceded that this amounted to a procedural error leading to possible unfairness.

12. Mrs Banshi submitted that the Judge failed to take into account all the material.

Discussion

13. I find an error of law in the determination by way of a procedural irregularity. The Tribunal did not have a bundle from the Respondent before it when determining the appeal on the papers. The respondent had provided a bundle but for some unknown reason it did not reach the Tribunal. That the appellant is not represented is a factor that I take into account. As I did not have the respondent's bundle before me it was not possible to identify the impact of the lack of information included in the bundle on the Tribunal's findings of fact.

14. Accordingly the practical and fair approach in my view is for the matter to be remitted to the First-tier Tribunal for a fresh hearing.

Decision

15. There was a procedural error which amounts to a material error of law.

16. The determination is set aside.

17. The appeal is to be heard at the First tier Tribunal at Taylor house on 20th February 2015 (excluding Judges McDade and Martins).

Signed

Date 1/10/2014

GA Black
Deputy Judge of the Upper Tribunal