



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

Appeal Number: IA/11563/2014

THE IMMIGRATION ACTS

**Heard at Field House
Oral determination given following
hearing
On 11 May 2015**

**Determination Promulgated
On 29 May 2015**

Before

UPPER TRIBUNAL JUDGE CRAIG

Between

MRS FARHAT ASAD

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Qureshi, Sponsor (Appellant's Husband)

For the Respondent: Mr E Tufan, Home Office Presenting Officer

DETERMINATION AND REASONS

1. This is an appeal brought by Mrs Farhat Asad, who is the wife of Mr Qureshi whose appeal succeeded in front of First-tier Tribunal Judge Murray following a hearing at Columbus House, Newport on 10 September 2014.
2. The history behind this application can be summarised briefly. Mr Qureshi is a Pakistan national who was born on 29 March 1959 and he has been in this country lawfully since sometime in 2004. There is no

suggestion that his presence in this country has been anything other than lawful or that he has behaved other than impeccably during his stay in this country. Mr Qureshi married this appellant on 4 April 2012 and she was granted leave to come to this country as his dependant. Her presence in this country has also always been lawful. Just before Mr Qureshi had completed ten years' lawful residence in this country he was advised to make an application for indefinite leave to remain on the basis of ten years' lawful residence. It was presumably anticipated that by the time that application was considered by the respondent he would have acquired ten years' lawful residence, and this appellant sought leave to remain as his dependant.

3. Possibly contrary to the expectations of Mr Qureshi and his wife, the appellant, the respondent considered the application before he had acquired ten years' lawful residence and the applications were consequently refused. Mr Qureshi (and the appellant) appealed against this decision (and accordingly their presence in this country remained lawful pending determination of their appeals) and by the time of the hearing before Judge Murray the ten year period had passed and so Mr Qureshi at that time was entitled to remain under the Rules. It is settled law, and the respondent did not seek to contest this, that time continues to run for the purpose of whether or not an applicant has acquired ten years' lawful residence while an appeal is pending and his or her presence continues to be lawful under Section 3C of the Immigration Act 1971. Accordingly Judge Murray allowed Mr Qureshi's appeal. However, it appears that the appellant just assumed that her appeal would stand or fall with that of her husband and no separate arguments were made in relation to her application to be allowed to remain as a dependant of her husband. Judge Murray noted at paragraph 16 that she had "heard no separate arguments in relation to her application which was as a dependant of the first appellant [that was Mr Qureshi]". The judge noted that the appellant had not put in a witness statement and she found that "in the absence of any evidence or arguments that she satisfies the requirements of the Immigration Rules I find that she does not do so". The judge also noted that she had not heard any arguments in relation to Article 8.
4. The appellant has appealed against this decision and was initially refused permission to appeal by First-tier Tribunal Judge Mark Davies, who, when giving reasons for his decision, stated as follows:
 1. The appellant seeks permission to appeal against the decision of the First-tier Tribunal (Judge) who, in a determination promulgated on 24 September 2014 dismissed the appellant's appeal against the decision to refuse her leave to remain as the dependant of her husband whose appeal succeeded and upon whom she claimed to be dependent.
 2. The judge made a clear finding based on the evidence that the appellant could not meet the requirements of the Immigration Rules.
 3. No submissions were made to the judge on the basis of Article 8.

4. No evidence was put before the judge to indicate that the appellant was not able to return to Pakistan and make an application for entry clearance from there.
 5. The grounds are simply a disagreement with the findings made by the judge.
 6. The judge considered all the evidence and made findings on that evidence applying the correct burden and standard of proof.
 7. The grounds and the determination do not disclose an arguable error of law.”
5. The appellant renewed her application for permission to appeal to the Upper Tribunal and permission was eventually granted by an Upper Tribunal Judge on 19 February 2015, but notwithstanding that the judge granted permission he noted as follows:
- “I find the handwritten Record of Proceedings illegible. However, it looks as if all concerned, including the appellants’ representative, assumed that if one appeal succeeded then so would the other, and nothing at all was said separately about this case. The different outcome seems to have come as a surprise on receipt of the determination by Judge L Murray.
- A straightforward answer is that it was up to the appellant to put her case and she failed to do so, as Judge Mark Davies thought when refusing permission. It may also be that she has no case, or that her redress, if any, is by way of some further application. However, I grant permission just in case there has been procedural unfairness because there was something useful to be said if she had been alert to the possibility of different outcomes.”
6. The Upper Tribunal Judge who granted permission also advised within his reasons that the appellant “might be well-advised to seek legal advice again” because “if she did not know previously that success for her husband did not automatically mean success for her, she must realise that now.”
 7. Before me and notwithstanding the advice given within the reasons of the Upper Tribunal Judge, the appellant was not represented, but I allowed her husband, Mr Qureshi, to speak on her behalf. It is right that I set out the change in circumstances which has occurred since Judge Murray reached her decision. While both parties were in this country lawfully, after the appeal had been determined, they had a daughter who was born on 11 October 2014. Subsequently on 5 February 2015 Mr Qureshi was granted indefinite leave to remain. I am told he is in the process of seeking naturalisation as a British citizen. Because the child was born before ILR was granted to her father, she is not automatically a British citizen which she would have been otherwise, but because the appellant is currently still in this country lawfully and will be until such time as her appeal rights are exhausted she will be able to make a further application to remain in light of her changed circumstances should she choose to do so.

8. Certainly it would be difficult to argue that the appellant's circumstances now are not different from what they were both at the time her original application was made along with her husband and also when her appeal was heard. The changes are obvious. First her husband has now been granted ILR and secondly they have a very young child. No doubt the respondent will give careful and anxious consideration to any application which might follow from this determination but it will be important for the appellant to ensure that this application is made properly in accordance with the Rules so that to the extent that she does have a right to make such an application in country she does not lose it by failing to do so properly.
9. However, none of this strictly bears upon the issue which I have to determine which is whether or not there was any error of law in Judge Murray's determination. In my judgment, notwithstanding that one might have considerable sympathy for the position of the appellant and her husband, the judge could not really on the evidence which had been put before her and the arguments which had been advanced have come to any other decision. As at the time of the appeal before her Mr Qureshi, the appellant's husband, did not have ILR. The most that could be said was that it could have been anticipated that he would very shortly be granted ILR as indeed he was. In order for her application to succeed under the Rules she would have needed to apply as the spouse of a settled migrant which at this time her husband was not. Even if he had been, and this might have been relevant were her appeal to have been argued under Article 8, she would have had to show that the requirements under the Rules were satisfied. These include that she has the appropriate English language qualification and also that there is sufficient income as required now within the Rules. I do not know even today whether or not the English language requirement is satisfied although I have been told that Mr Qureshi's income is now sufficient to satisfy the current financial requirements within the Rules. The judge was undoubtedly right in my judgement to find that in the absence of evidence she could not find either that the appellant was entitled to succeed under the Rules (which clearly as at the date of decision she was not) or even that she could succeed under Article 8. There may now be an argument which could be mounted under Article 8 given the change in circumstances as set out above but no such argument was advanced before the judge and in order for such an argument to have had any chance of success then further information would have had to be put before the court which it was not.
10. There having been no error of law in Judge Murray's determination this appeal cannot succeed although, as I have noted, that does not mean that the appellant should not now make a further application which if she does will doubtless be considered properly by the respondent.

Decision

There being no error of law in Judge Murray's determination this appeal is dismissed.

Signed:

A handwritten signature in black ink on a light blue background. The signature is written in a cursive style and reads "Ken Craig".

Upper Tribunal Judge Craig

Date: 26 May 2015