



IAC-FH-AR-V1

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

Appeal Number: IA/23098/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 12 October 2015**

**Decision & Reasons Promulgated
On 13 November 2015**

Before

Upper Tribunal Judge Chalkley

Between

**BITTUBEN HASHUKBHAJ PATEL
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss A Vatis, Counsel

For the Respondent: Mr I Jarvis, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of India born on 6th August, 1984. She entered the United Kingdom on 1st July, 2009 as a Tier 4 Student with a visa valid from 22nd June, 2009 to 11th November, 2012. Further leave to remain was granted until 22nd July, 2012 as a Tier 1 General Student.
2. Malik Law Chambers Solicitors wrote to the Border Agency on 19th July, 2012. They made application for discretionary leave on her behalf, on what they described as being, her exceptional and compassionate

circumstances. She sought leave under Article 8 and it was said that at the time of that letter she was residing with her husband, Chintakumar Jayantibhai Patel, who was born on 2nd June, 1985 and who came to the United Kingdom on 7th December, 2006 on a six month visitor visa valid from 17th July, 2006. He remained in the United Kingdom following the expiry of his visa. The letter says that the appellant met her husband some three years ago and formed a relationship with him and that after a year they married religiously on 31st October, 2010. At the time of the letter she was stated to be nine months pregnant and she and her husband were expecting their first child together. The letter says that there are serious and compelling reasons why they should be granted discretionary leave.

3. The appellant was stated not to have any desire to return to India and to be extremely distressed by this prospect. She has now lost all connections with India. She and her husband live in the United Kingdom and they wish to remain in the United Kingdom. She promises to be law abiding and to continue to contribute positively to society. A maternity certificate was enclosed with the application along with what was said to be wedding photographs.
4. The Secretary of State refused that application in a letter dated 12th August, 2013 and it was against the refusal of leave that the appellant appealed to the First-tier Tribunal.
5. The grounds do not assist terribly much, simply asserting that the appellant feels that she has established her life in the United Kingdom that she is a helpful and kind human being; that she is law abiding; that she has a private life in the United Kingdom; that she has made friends during her stay in the United Kingdom and relies on their emotional support; that she will have difficulty in maintaining relationships with her friends, that the Secretary of State's decision is contrary to the Immigration Rules; that the Secretary of State has erred in law by concluding that the appellant was not qualified according to the criteria laid down by the Immigration Rules, that the decision is unlawful and incompatible with her rights under the Human Rights Act; that discretion under the Immigration Rules should have been exercised differently; that the appellant has a private life in the United Kingdom, she has friends which she has made during his stay in the United Kingdom and he relies on their emotional support.
6. The grounds then cite what the grounds refer to as being relevant law, namely paragraph 276ADE and Article 8. They then set out further grounds suggesting that the respondent should have exercised her discretion differently, that the decision is not in accordance with the Rules or law, that the appellant entered the United Kingdom and has been able to maintain and accommodate herself without recourse to public funds, that the appellant has established private and family life in the United Kingdom and it would be unreasonable and unfair to expect her and her partner to reside elsewhere. She has never claimed benefits, she has

strong family ties in the United Kingdom and it would not be in the best interests of the appellant to be sent back to India.

7. Those grounds are confusing and confused, because they refer in part to the appellant being male and then they refer to her being female and refer to her having a family life, but nowhere do they refer to her having any children.
8. She appealed to the First-tier Tribunal and notice giving the date, time and place fixed for the hearing of the appeal was sent to the appellant and to her then solicitors. Contrary to what I was told by Counsel this afternoon, the appellant was notified of the hearing and indeed she wrote to the Tribunal by letter dated 6th February, referring to the date of the Tribunal hearing and indicating that she would not be represented by her previous solicitors and that she would be representing her own case. She asked for a hearing date on a date other than 12th February, but does not say why she wanted a hearing on another day.
9. The judge noted that the appellant's previous solicitors had written indicating that they wanted to come off the record, since they were no longer acting and that the appellant wished to have her case decided on the papers. She did not attend the hearing on 12th February. The judge noted the Secretary of State's reasons for refusing the application and that the appellant could not bring herself within the requirements of the Immigration Rules.
10. The judge noted that the appellant's application was considered under Appendix FM and paragraph 276ADE and noted that the grounds merely asserted that the Secretary of State "did not allocate due weight to our client's established private life in the United Kingdom and that she never relied on public funds". In the absence of evidence suggesting that the Secretary of State's assessment under Appendix FM and paragraph 276ADE was wrong, he found that the decision made by the Secretary of State was in accordance with the Immigration Rules.
11. In respect of family life, he noted that there was a suggestion in the original application that the appellant lives in this country with an Indian national to whom she is married and was expecting to give birth, but no further evidence had been given as to whether or not the child has been born whether there are any exceptional circumstances that are required to be taken into account.
12. In the absence of such evidence, the judge said that the Tribunal was unable to make a finding to whether the appellant had a family life in the United Kingdom, but accepted that given the time she had been here, she may well have established a private life. He went on to consider the extent of the appellant's private life outside the Immigration Rules in accordance with FM, but he pointed out that he was unable to make any meaningful assessment as to the weight to be given to the factors in

Section 117B of the Nationality, Immigration and Asylum Act 2002 because no evidence had been provided to him.

13. I find that there was no error of law in the judge's decision. The appellant was married but had provided the judge with very little evidence. He did not know whether the appellant was still married. There was no evidence as to whether or not the child had been born. The fact of the matter is that the appellant could not bring herself within the requirements of the Immigration Rules and there was simply no evidence at all before the judge which could possibly have justified the granting of any period of leave outside the Immigration Rules. Even now, I am aware that she has married. I am told that she has a family life with her husband and I am told that she has a 3 year old child. There clearly will not be any breach of her family life, because she and her husband will be returned to India together with their child.
14. I uphold the First-tier Tribunal Judge's decision. This appeal is dismissed.

Notice of Decision

The appeal is dismissed.

No anonymity direction is made.

Richard Chalkley

Upper Tribunal Judge Chalkley