



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

Appeal Number: IA/27865/2014
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THE IMMIGRATION ACTS

**Heard at Birmingham Employment Centre
On 3 March 2015**

**Decision Promulgated
On 11 March 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE MCCARTHY

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**SUKANYA LAHIRI (1)
AMRITASH LAHIRI (2)**

Respondent

Representation:

For the Appellant: Mr D Mills, Senior Home Office Presenting Officer
For the Respondent: Mr S Vokes, instructed by Malik Law Solicitors

DECISION AND REASONS

1. The Secretary of State appeals to the Upper Tribunal against the decision and reasons statement of First-tier Tribunal Judges Cheales and Butler that was promulgated on 28 November 2014. The panel allowed the appeals of the above named mother and son, who are now the respondents, on the basis that the first succeeded under article 8 ECHR applied directly and the second succeeded under the immigration rules when properly applied.
2. The Secretary of State's grounds of appeal are not entirely coherent. They challenge the panel's approach to the first respondent, submitting that the panel could not have allowed her appeal under the immigration rules

because she did not meet the suitability requirements. This ground falls away, as Mr Mills conceded, because it is clear from paragraph 20 that the panel found the first respondent could not succeed under the immigration rules. The panel went on to consider article 8 ECHR applied directly.

3. The grounds take issue with that approach. However, as Mr Mills confirmed, on the facts of this case it was necessary for the panel to consider article 8 directly. The first respondent's husband had been granted indefinite leave to remain after completing five years residence as a tier 2 (general) migrant. The impact on him that would arise from the negative immigration decision had to be considered and could not be considered within the immigration rules.
4. Turning to the second respondent, Mr Mills conceded that the provisions of s.3C of the Immigration Act 1971 applied to the first respondent because she had made her application to vary her leave before her previous leave expired. Therefore, as found by the panel, she was lawfully present in the UK and the provisions of paragraph 319J(e)(iv) relating to her son, the second respondent, were met. As such, the panel's decision, expressed at paragraphs 17 and 18 of its statement, was correct in law.
5. Mr Mills added that the fact that the second respondent qualified for indefinite leave to remain merely strengthened the position in relation to article 8. He confirmed that even if there were technical errors in the statement, they could have no bearing on the outcome because the balancing exercise clearly came down in favour of the first respondent. Mr Mills acknowledged that the offence (failure to report a car accident) that led to the adverse immigration decision was outweighed by the factors of private and family life of all three members of the family group.
6. In light of the comments and concessions made by Mr Mills, there was no need for me to hear from Mr Vokes. It is clear that there is no material legal error in the decision and reasons statement and therefore it stands.

Decision

The Secretary of State's appeal to the Upper Tribunal is dismissed because there is no error on a point of law in the First-tier Tribunal's decision and reasons statement and its decision stands.

Signed

Date

Deputy Judge of the Upper Tribunal