



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/06907/2015**

THE IMMIGRATION ACTS

**Heard at Field House
On 19th November 2015**

Promulgated

**Decision & Reasons
On 18th January 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE I A M MURRAY

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

R F F

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr Kotas, Home Office Presenting Officer

For the Respondent: No representative

DECISION AND REASONS

1. The Appellant in these proceedings is the Secretary of State however for convenience I shall now refer to the parties as they were before the First-tier Tribunal.
2. The Appellant is a citizen of India born on 1st November 1982. She appealed against the decision of the Respondent dated 5th February 2015 refusing her application for an extension of discretionary leave to remain in the United Kingdom. Her appeal was heard by Judge of the First-tier

Tribunal R Handley on 9th June 2015. The appeal was allowed under the Immigration Rules and under Article 8 of ECHR.

3. An application for permission to appeal was lodged and permission was granted by Judge of the First-tier Tribunal Grimmatt on 28th September 2015. The permission states that it is arguable that the judge erred in failing to consider the requirements of paragraph S-LTR.1.7 of Appendix FM. There is no reference to this paragraph in the decision and so the judge failed to make a finding on a material matter. The grounds go on to state that the judge made a material misdirection of law by allowing the appeal under Article 8 of ECHR stating that he did not consider the fourth and fifth questions in the case of **Razgar 2004 UKHL 27**. The grounds state that the judge simply found that the existence of a family life was sufficient to render the decision of the Respondent unlawful.

The Hearing

4. The Appellant was at the hearing centre with her husband. They arrived together.
5. The Appellant stated that she did not receive the letter from the Home Office requesting additional documents and he then received the letter refusing the application on the basis that more evidence was required. She said she had always stayed at the same address. She said that when she got the refusal she did not know what documents were missing and by then it was too late for her to do anything. Her husband had brought a lot of documents to the hearing centre. I allowed him to speak on behalf of his wife as his wife's English was not good and there was no interpreter. The appellant and her husband have four children together.
6. I asked why a paper hearing had been requested and he said that his wife has to look after the children and he works full-time in medical research and it is difficult for him to get time off. The children are aged 2, 5, 8 and 16. He said his wife has to take them to school and pick them up and look after the baby.
7. The Presenting Officer asked to see the evidence the Appellant's husband had brought with her to the hearing. There were two letters from her dentist, one to the Appellant and one to her husband, both sent to the same address.
8. The Presenting Officer questioned the Appellant and asked her where her husband works. She said in halting English that he works in Horsham and she has been to his work three times. He asked her who her husband banks with and she said Lloyds TSB. He asked what they had for dinner the previous day and she said rice and she was asked who is looking after the children and she said that they are at school and the youngest one is with a friend.
9. The Presenting Officer submitted that most of the documents which the Secretary of State had said she was looking for were already in the possession of the Respondent. He submitted that based on the

documents now produced by the Appellant and her husband he finds that the relationship is genuine and is satisfied with all the documentation provided. The Presenting Officer submitted that he accepts that this is a genuine relationship and accepts that the Appellant did not receive the letter from the Home Office requesting additional documents and that is why they were not supplied.

Decision and Reasons

10. I have considered the Appellant's and her husband's oral evidence and I have noted that there was a deadline given to her for producing documents and because of this the Respondent found that paragraph S-LTR.1.7 of Appendix FM applies as these documents were not produced.
11. I found that the Appellant and her husband were credible witnesses. There is evidence that they live at the same address. They have four children. I accept that they have family life together and I find that all the terms of paragraph S-LTR.1.7 have been satisfied as I believe that the Appellant did not receive the letter requesting the additional documents. These have now been provided.
12. The Appellant and her husband came together to the hearing centre. From the answers given to the questions asked by the Presenting Officer it is clear that they are living together with their children. The Presenting Officer has stated that he is satisfied that the relationship is genuine.
13. As I found the Appellant and her husband to be credible and having noted the additional evidence now produced, I find that there is an error of law in the First Tier Judge's decision as documents were requested but not produced but I find that this was not a material error of law.

Notice of Decision

14. The First-tier Judge allowed this appeal under the Immigration Rules and I am upholding that decision.
15. Anonymity has been directed.

Signed

Date

Deputy Upper Tribunal Judge I A M Murray

TO THE RESPONDENT FEE AWARD

As I have allowed the appeal I have considered making a fee award and have decided to make no fee award for the following reason.
The error of law hearing was required for a fair decision to be reached as documents were not provided originally when requested by the Home Office.

Signed

Date

Deputy Upper Tribunal Judge I A M Murray