



IAC-FH-AR-V1

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

Appeal Number: IA/38513/2014

THE IMMIGRATION ACTS

Heard at Field House

On 8 March 2016

**Decision & Reasons
Promulgated
On 8 April 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

**SHABANA NAUREEN
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr N Mohammad, Counsel, instructed by Legis Chambers
For the Respondent: Miss J Isherwood, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by the Appellant against a decision of First-tier Tribunal Judge J W H Law (the judge), promulgated on 3 March 2015, in which he dismissed the appeal on all grounds. That appeal was in turn against the Respondent's decision dated 28 September 2014 to remove the Appellant

from the United Kingdom by way of directions under section 10 of the Immigration and Asylum Act 1999.

2. On 17 February 2014 the Appellant had made an application to the Respondent based upon Article 8. That application was initially refused without an accompanying right of appeal. A judicial review claim was made and eventually proceedings were compromised by way of consent. The Respondent agreed to reconsider the Appellant's application, which she duly did and the appealable decision referred to previously was made. It was said by the Respondent that the Appellant could not meet any of the Rules relating to Article 8 and that there were no other exceptional circumstances in her case. The Respondent had relied upon a conviction of the Appellant in respect of shoplifting. It was said that this had a bearing on the suitability requirements under the relevant provisions of the Immigration Rules.

The judge's decision

3. At paragraph 10 the judge records a concession made by the Presenting Officer, namely that the suitability issue was not relevant because the Appellant had not in fact made an application under Appendix FM to the Rules but rather an application outside of the Rules. The judge himself went on to find that in any event a conditional discharge (that being the sentence for the shoplifting) was not a conviction for an offence, and he relied on the Tribunal decision in Omenna [2014] UKUT 314 (IAC).
4. The judge considers the Article 8 case within the scope of the Rules at paragraphs 26 and 27, concluding that the Appellant could not satisfy Appendix FM or paragraph 276ADE. There is a specific and clear finding that there were no "very significant obstacles" to the Appellant reintegrating into Pakistani society.
5. The judge then goes on to consider the claim outside of the Rules. At paragraph 29 he finds that the Appellant had a private life in the United Kingdom, albeit to a somewhat limited extent. A number of findings of fact are made at paragraph 35 relating to the Appellant's situation here and also in Pakistan (both in terms of her life previously and if she were to return to that country).
6. Progressing through the well-known Razgar methodology the judge arrives at the proportionality issue. Whilst not specifically mentioning the provisions of Part 5A of the Nationality, Immigration and Asylum Act 2002, he goes through a number of relevant factors and ultimately concludes that the Appellant's Article 8 claim outside of the Rules failed.

The grounds of appeal and grant of permission

7. The Appellant's grounds are limited to two points. Firstly, it is said that the judge in fact relied upon the Appellant's conviction when making his decision, and this was an error given the Respondent's concession on the point. Secondly, it is said that the judge misdirected himself in respect of

section 117B of the 2002 Act because the Appellant had not been in the United Kingdom unlawfully. It is said in the grounds that there was section 3C leave in the United Kingdom and that this had been “restored” because of judicial review proceedings.

8. Permission to appeal was granted by First-tier Tribunal Judge McDade on 20 May 2015.

The hearing before me

9. Mr Mohammad relied on the two grounds of appeal. He suggested that whilst not explicitly referred to by the judge, the conviction had been implicitly relied upon when making the assessment of the Article 8 claim outside of the Rules. Mr Mohammad made the additional points that the Appellant had worked in this country, was well integrated into United Kingdom society and that the application should succeed.
10. I did not call on Miss Isherwood for submissions.

Decision on error of law

11. In my view there are clearly no material errors of law in the judge’s decision.
12. The first ground is entirely misconceived. All the judge was doing in paragraph 4 of his decision was to set out the Respondent's case as expressed in the Reasons for Refusal Letter. At paragraph 10 the judge rightly notes the Presenting Officer’s concession and concludes that the criminality point had been erroneously relied on all along in any event. There is absolutely no indication thereafter (express or otherwise) that the judge has in any way relied on the conviction when assessing the Appellant's Article 8 claim.
13. Paragraph 4 the grounds of appeal is equally misconceived. The last period of leave of the Appellant expired on 2 March 2012. She had at that point made an in-time application for an extension (this having occurred on 22 February 2012). However, this application was refused by the Respondent and her subsequent appeal to the First-tier Tribunal dismissed by Judge Bagral in 2013. In light of this the Appellant was in fact an overstayer as of 2 March 2012. She has never been granted any leave thereafter. in paragraph 14 the judge correctly states that the Appellant had not had leave since March 2012. He took into account the precarious nature of her status even when she did have leave in this country.
14. In all other respects the judge’s decision is entirely sound. He makes relevant findings of fact supported by reasons, none of which are challenged in the grounds. He directs himself correctly in law, reaching sustainable conclusions on the Article 8 claim, both within the Rules and without. No other errors of law have been identified in any way either in

the grounds or in the hearing before me and in light of this the judge's decision stands.

Notice of Decision

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

The decision of the First-tier Tribunal stands.

No anonymity direction is made.

Signed

Date: 23 March 2016

Deputy Upper Tribunal Judge Norton-Taylor