



IAC-AH-KRL-V1

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

Appeal Number: IA/39417/2014

**THE IMMIGRATION ACTS**

**Heard at Manchester  
On 11 February 2016**

**Decision & Reasons  
Promulgated  
On 10 March 2016**

**Before**

**UPPER TRIBUNAL JUDGE CLIVE LANE**

**Between**

**WINT PA PA THEIN  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Pratt, WTB Solicitors

For the Respondent: Mr McVeety, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant, Wint Pa Pa Thein, was born on 15 May 1985 and is a female citizen of Myanmar (Burma). The appellant had applied to the respondent for a variation of her leave to remain following her marriage to a British citizen (Mr Andrew Clough). Her application was refused by the

respondent on 4 August 2014. The appellant appealed to the First-tier Tribunal (Judge N P Dickson) which, in a decision promulgated on 14 January 2015 dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. Granting permission, Upper Tribunal Judge Reeds wrote:

It was conceded on behalf of the appellant that she could not meet the requirements of Appendix FM at [26] as she could not meet the income requirements at the time of the application or provide the specified documents. However, the case was expressly advanced on Article 8 grounds outside the Rules and the judge was aware of that (see [5]) it is arguable that the judge's approach by stating that it is "premature to consider Article 8" at [30] failed adequately to resolve the issue that was before him. Whilst it could be said that he did at [31] consider proportionality that assessment was arguably flawed as he had not taken into account the Section 117 factors either in substance or informed despite a self-direction [11] nor did he take into account [the appellant's] ability to meet the Rules (see *SS Congo* [2015] EWCA Civ 387 at [56]) or make any findings on the issue of insurmountable obstacles although raised by the Secretary of State in the refusal letter.

3. Judge Reeds has summarised what is problematic in this decision and there is little more to say. Mr McVeety did not seek to defend the decision. Judge Dickson has, on the one hand, stated that it was "premature" for him to consider Article 8 [30] but has then (a little half-heartedly) dismissed the appeal on Article 8 grounds, finding that the appellant's removal would be proportionate [31]. There has been no proper engagement at all with the appeal on Article 8 grounds. The appeal is remitted to the First-tier Tribunal for a further fact-finding exercise and further determination of the appeal on all grounds.

**Notice of Decision**

4. The decision of the First-tier Tribunal which was promulgated on 14 January 2015 is set aside. None of the findings of fact shall stand. The appeal is returned to the First-tier Tribunal (not Judge N P Dickson) for that Tribunal to remake the decision.

5. No anonymity direction is made.

Signed

Date 20 February 2016

Upper Tribunal Judge Clive Lane