



**Upper Tribunal
(Immigration and Asylum Chamber)
IA/30139/2015**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

Decision & Reasons

On 9th November 2017

Promulgated

On 28th November 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE GRIMES

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MRS ROHEENA ARIF
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr C Avery, Home Officer Presenting Officer
For the Respondent: Mr Z Raza, Counsel instructed by Bukhari Chambers

DECISION AND REASONS

1. Although this is an appeal by the Secretary of State I refer to the parties as they were in the First-tier Tribunal.
2. The Appellant, a citizen of Pakistan, appealed to the First-tier Tribunal against a decision of the Secretary of State to refuse her application for leave to remain in the United Kingdom. First-tier Tribunal Judge Majid allowed the Appellant's appeal in a decision promulgated on 10th March 2017. The Secretary of State now appeals with permission granted by First-tier Tribunal Judge Grant-Hutchison on 19th September 2017.

3. It appears from the papers before me that the background to this appeal is that the Appellant and her husband made an application for further leave to remain which was refused by the Secretary of State on 20th February 2014. The Appellant and her husband each had a separate right of appeal. The husband exercised his right of appeal in time and his appeal was heard by First-tier Tribunal Judge Hussain on 17th December 2014 who allowed the husband's appeal on the basis that removing him would amount to a disproportionate interference with his family life given his dependency upon his two sons. It appears that following that decision the Appellant wrote to the Secretary of State on 15th July 2015 requesting that she be granted leave to remain in line with that of her husband. However that was refused by the Secretary of State on the basis that the Appellant had not exercised her right of appeal and that the First-tier Tribunal Judge had not found the decision to remove her disproportionate. The Appellant again wrote to the Secretary of State on 11th August 2015 informing the Secretary of State that her husband had died. The Appellant lodged an out-of-time Notice of Appeal against the Secretary of State's decision of 20 August 2015. In a decision of 18th January 2016 First-tier Tribunal Judge Wolf decided to extend time. The appeal came before First-tier Tribunal Judge Majid and was allowed.
4. The Secretary of State challenges the decision of First-tier Tribunal Judge Majid on the grounds that the judge failed to identify any Immigration Rule applicable and failed to give any reasons for apparently allowing the appeal under the Immigration Rules. The judge appears to have relied upon the decision of First-tier Tribunal Judge Hussain in relation to the Appellant's husband's appeal, but it is contended by the Secretary of State that in his decision Judge Hussain did not make any independent findings specific to the Appellant. It is contended that the judge failed to identify or to give any reasons as to what in Judge Hussain's decision could form a starting point in relation to the Appellant's appeal in the absence of findings specific to her. It is further contended that the instant appeal was an Article 8 appeal and should have been considered at the date of the hearing but there appears to be no consideration of the changed circumstances particularly as the Appellant's husband is now deceased. It is further contended that Judge Majid did not conduct any consideration of Article 8 under the steps set out in the decision in **R v SSHD ex parte Razgar [2004] UKHL 27**. The Secretary of State contends the decision is therefore fatally undermined by a failure to have regard to any relevant law and a failure to give reasons.
5. At the hearing before me Mr Raza accepted that there are errors of law in the decision of First-tier Tribunal Judge Majid but contended that these errors are not material. He submitted that Judge Majid was right to have relied on the decision of First-tier Tribunal Judge Hussain as this was the correct starting point.

Error of law

6. I have taken into account the submissions made by Mr Raza. However I cannot accept his submission that any errors are not material. In my view

the decision of First-tier Tribunal Judge Majid is fatally undermined in a number of respects.

7. Firstly this was an appeal under Article 8 and Mr Raza has accepted that the Appellant cannot meet any of the requirements of the Immigration Rules. However at paragraph 28 Judge Majid decided “I am persuaded that the Appellant comes within the relevant Immigration Rules as amended and should have the benefit of discretion”. It is not clear here what Rules or discretion the judge was referring to. The judge undertook no analysis of Article 8 through the steps set out in **Razgar**. Accordingly the judge has failed to consider the very basis on which the appeal was brought.
8. Another fundamental error in the judge’s decision is that the basis of the appeal is not clear from the decision. The judge set out what he referred to as ‘the dispositive factors’ at paragraph 12. However this paragraph refers to the Appellant wanting to visit her husband’s grave and not requiring a visa to visit London for that purpose. However the background I have set out above indicates that this was a human rights appeal from an Appellant who wants to remain in the UK with her family. There is no analysis of the fundamental part of the appeal. There is no proper explanation of the background or of the facts or of the factors relevant to the judge’s decision.
9. A further issue is the apparent consideration of matters not relevant to the determination of this appeal. For example at paragraphs 21 to 28 the judge sets out a number of principles and issues which have no relevance to the determination of this appeal.
10. In considering the decision in this appeal I have taken account of the decision of the Upper Tribunal in the case of **MM and Others** (unreported appeal number AA/06906/2014) which levels criticisms in relation to a number of decisions made by First-tier Tribunal Judge Majid. I take into account particularly paragraph 47 where the Tribunal says

“We regard the body of his work that we have examined in the course of these appeals as wholly failing to meet the standards that are demanded by the office of a judge and expected by the parties. As a result, every one of the decisions under appeal shows errors of law, in most cases serious error, in most case multiple serious errors. Whether the decisions are looked at together or separately, they show that nobody should assume that Judge Majid has an adequate knowledge of the law of his task as a judge. If his decisions continue to have the features we have identified in the foregoing examination, they are clearly open to criticism”.
11. The decision in the instant appeal does contain a number of the paragraphs highlighted by the Tribunal in the case of **MM** and therefore does have a number of features identified in that case as demonstrating the wrong approach on the part of the judge.
12. Considering the decision in the instant appeal I find that the decision discloses the material errors of law identified above which are capable of

affecting the outcome of the appeal. In these circumstances and, as no findings of fact have been made, I set aside the decision of the First-tier Tribunal Judge. Given the fundamental nature of the errors of law found and the Appellant's entitlement to have the facts of her claim properly determined I consider it necessary for the appeal to be remitted to the First-tier Tribunal for a fresh hearing.

Notice of Decision

The decision of the First-tier Tribunal Judge contains material errors of law.

I set the decision of the First-tier Tribunal aside.

The appeal is remitted to the First-tier Tribunal for hearing afresh.

No anonymity direction is made.

Signed

Date: 27th November 2017

Deputy Upper Tribunal Judge Grimes