



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/03419/2017

THE IMMIGRATION ACTS

Heard at Field House
15 October 2018

Decision & Reasons Promulgated
28 November 2018

Before

**MR C M G OCKELTON, VICE PRESIDENT
DEPUTY UPPER TRIBUNAL JUDGE LEVER**

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

BALWINDER KAUR

Respondent

Representation:

For the Appellant: Mr C. Howells, Senior Home Office Presenting Officer.
For the Respondent: Mr S. Jussab, instructed by Charles Simmons Solicitors.

DETERMINATION AND REASONS

1. The appellant in this case is the Secretary of State. The respondent, whom we shall call 'the claimant', is a national of India. She came to the United Kingdom as a spouse in December 2011 and subsequently was granted an extension of her leave until 3 November 2016. Just before the expiry of that leave she attempted to make an application for further leave, but her application was returned on 16 December as invalid because she had not accompanied it with the correct documents. She made a

valid application on 23 December 2016 (by which time her leave had expired), which was refused on 9 February 2017.

2. She appealed against that decision. Her appeal was heard by Judge Loughridge in the First-tier Tribunal and allowed. The judge's reasoning was as follows. There is no real difference between an application being rejected and one being refused. The claimant's application leading to the refusal against which she appealed, which was made within 14 days of the rejection of her previous attempted application, should therefore be regarded as having been made within 14 days of a refusal and as meeting the requirement that any application for further leave be made at a time when the applicant had been in the UK without leave for no more than 14 days. The judge went on to look at the other requirements of the rules and determined that the applicant met them. The appeal was allowed on human rights grounds largely because the judge considered that the fact that the applicant met the requirements of the rules was a weighty consideration in her favour.
3. The Secretary of State applied for and was granted permission to appeal on the ground that the judge took a mistaken view of the rejection of an application. The rejection of an invalid application is wholly different from the refusal of a valid application. The rejected application was invalid. The claimant's leave was therefore not extended by s 3C of the Immigration Act 1971, and expired on 5 December. The notice of rejection was not a refusal. The claimant's application was made when she had been remaining without leave for over 14 days. She did not meet the requirements of the rules and the basis on which the Judge allowed her appeal was flawed.
4. At the beginning of the hearing before us Mr Jussab conceded that the Secretary of State's grounds were made out, that the judge had erred, and that the claimant's case had to be put wholly outside the rules. We asked him to identify the basis upon which it could be said that the claimant ought to be regarded as having a right to remain in the United Kingdom despite not meeting the requirements of the rules. He drew our attention to the fact that she has been in the United Kingdom for some years and that both she and her husband are working here: he has spent all his life here and she is said to have no family in India. Mr Jussab said that the claimant's husband 'cannot leave the United Kingdom', but that turned out to be simply an expression of the husband's present preference.
5. Mr Howells pointed out that the claimant's husband has chosen to marry a person who is not a British citizen and that does not of itself give the claimant any right to remain if she does not meet the requirements of the rules. It may be that he will have to leave his relatives in order to go to India and it may be that she has no relatives in India, but they will have each other.
6. We agree. The position is that this couple are no doubt content with the life they have together here but there is not a shadow of a good reason for saying that the claimant has a right to remain that transcends the fact that she does not meet the

requirements of the rules. There is no perceptible reason why the appellant should not return to India, the country of which she is a national, accompanied by her husband if he wishes to be with her, and there is no evidence that they would find the slightest difficulty in settling there and pursuing their life together there.

7. We set aside the First-tier Tribunal's judgment for error of law. We substitute a decision dismissing the claimant's appeal.

C. M. G. OCKELTON
VICE PRESIDENT OF THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER
Date: 22 November 2018.