



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

Appeal Number: HU/11067/2016

THE IMMIGRATION ACTS

Heard at Field House

On 27 April 2018

**Decision & Reasons
Promulgated
On 10 May 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE APPLEYARD

Between

**MRS KULJINDER KAUR
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr E Raw, Counsel.

For the Respondent: Mr T Melvin, Home Office Presenting Officer.

DECISION AND REASONS

1. The Appellant in this appeal made application for leave to remain in the United Kingdom based on her family and private life. That application was refused and she appealed and following a hearing, and in a decision promulgated on 31 August 2017, Judge of the First-tier Tribunal C J Woolley, dismissed her appeal on human rights grounds.
2. The Appellant sought permission to appeal which was granted by Judge of the First-tier Tribunal Birrell in a decision dated 21 March 2018. Judge Birrell's reasons for so granting were: -

- “1. The Appellant seeks permission to appeal, (in time), against a decision of the First-tier Tribunal (Judge Woolley) who, in a decision and reasons promulgated on 31 August 2017 dismissed an appeal against the Secretary of State’s decision to leave to remain on the basis of family and private life in the UK.
 2. The grounds assert that the Judge erred in that he failed to take into account material considerations that the Appellant’s partner, the Sponsor, had two children from a previous relationship which would impact on the decision he made as to whether to remain in the UK or to go with his wife and child to India: there was no reference to this in the decision.
 3. In what is otherwise a detailed and well-reasoned decision the Judge makes no reference to the Sponsor’s other children and the impact they had on the proportionality exercise.
 4. The ground is arguable.”
3. Thus, the appeal came before me today.
 4. In a Rule 24 Response to this application dated 10 April 2018 the Respondent stated at paragraph 2 thereof that she did not oppose the Appellant’s application for permission to appeal and at paragraph 4 thereof accepted that the Judge had failed to consider the relationship between the Appellant’s partner and his children. Further that the Presenting Officer’s hearing minute indicated that there was evidence about these children at the hearing.
 5. Today Mr Melvin sought to withdraw the Respondent’s concession contained within the Rule 24 Reply arguing that having now considered the file the Respondent’s position was that there was little to no actual evidence relating to the Sponsor’s two adult children in the United Kingdom who apparently have resided with their mother since their parents’ divorce some years ago. I refused that application and proceeded to hear from both representatives. Mr Raw’s position was that the Judge should have dealt with this issue as it had been raised by the Appellant in her witness statement. Both representatives accepted that it was not resolved in the Judge’s decision or considered when looking at the balancing exercise that was required. Mr Melvin emphasised that there was no fresh evidence in relation to these relationships and that it was speculative to rely simply on this one point.
 6. Neither representative had any other criticism of the Judge’s decision and in the circumstances, were content that, if I found that the Judge had materially erred, the appeal be remitted back to Judge Woolley so that he could deal with this singular issue which he would have to hear evidence upon and put into the required balancing exercise.
 7. I gave consideration as to if I could remake the decision today. I also considered whether the judge’s failure to deal with it, in any event, amounted to a material error.

8. However, I was persuaded that it is an outstanding issue. I concluded that there was no reason why Judge Woolley should not resolve it and that it was in the interests of justice for this singular issue to be considered by him to see if it impacted upon his balancing exercise and proportionality.
9. The appeal is therefore remitted on that basis to the First-tier Tribunal to be heard by Judge Woolley. Beyond considering the omitted issue and its impact on the balancing exercise the totality of the Judge's findings is preserved.

Decision

The making of the decision of the First-tier Tribunal involved the making of an error on a point of law. The appeal is remitted to the First-tier Tribunal on the above basis pursuant to Section 12(2)(b)(i) of the Tribunals, Courts and Enforcement Act 2007 and Practice Direction 7(b) and in the circumstances it is to be listed once more before Judge Woolley.

No anonymity direction is made.

Signed

Date 4 May 2018.

Deputy Upper Tribunal Judge Appleyard