



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/17179/2016

THE IMMIGRATION ACTS

Heard at Field House
On 7th June 2018

Decision & Reasons Promulgated
On 13th June 2018

Before

UPPER TRIBUNAL JUDGE MARTIN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

ERIN [G]

(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Mr S Walker (Senior Home Office Presenting Officer)

For the Respondent: Ms T Jaber (instructed by Baker & McKenzie LLP)

DECISION AND REASONS

1. This is an appeal to the Upper Tribunal by the Secretary of State in relation to a Canadian Appellant, who was successful before Judge Haria in the First-tier Tribunal, after a hearing on 15th November 2017, in a Decision promulgated on 29th January 2018. The Appellant had made an application under the human rights provisions of the Immigration Rules to remain in the UK.
2. The background to the case is that the Appellant came to the UK in September 2010 with a visa to study at St Andrews University, Scotland from where she graduated

with a Masters degree in Art History and Modern History. She was then granted entry clearance again from 12th August 2014 until January 2016 and returned to the UK in September 2014. On that occasion she studied at Southeby's Institute of Art for a Masters degree in Art Business, graduating in September 2015. She then was given a place to study for a Graduate Diploma in Law at the City University and applied for further leave to remain for that purpose. That application was refused on the basis that it did not constitute academic progress.

3. On 22nd September 2015 she made an application to remain outside the Rules which was refused without a right of appeal and then in March 2016 made the application currently under appeal. That was an application for leave to remain on human rights grounds, in particular on the basis of her private life and right to psychological integrity. The background to that is that the Appellant has developed a mental disorder, an anxiety based disorder which has caused her difficulties in using public transport, in being in confined places and in particular flying.
4. The judge had a lot of evidence in front of her, including evidence from the Appellant's treating Consultant Psychiatrist. None of the evidence was challenged and indeed the Appellant was not required to give evidence. The judge noted that the Appellant's mental health would suffer if she was required to fly and he also noted that the sole reason the Secretary of State refused the application was on the basis that she should go to Canada and make an application for entry clearance from there. The judge referred herself to various relevant cases and found it disproportionate to expect this Appellant, with her mental disorder, to have to travel to Canada, purely to make an application to come back. She also noted that the Appellant is clearly a very intelligent young woman who has had a very successful academic career thus far and if she continues to obtain qualifications in the legal profession, will make a valuable contribution to society.
5. The Secretary of State's grounds are two. The first is that the judge made contradictory findings about the Appellant's ability to fly given that she had previously flown. The ground actually displays a misunderstanding of what this case was about because the ground refers to medical treatment being available in Canada, whereas what the Appellant was actually claiming was that the flight itself would have a serious and significant adverse effect on her mental health. It was never argued that medical treatment was not available in Canada.
6. The second ground refers to the fact that Article 8 is not a general dispensing power and that the right to an education is not a protected right under Article 8. That of course is correct. However, that was not the reasoning of the judge in this case. What the judge said was that to expect this young lady to go to Canada, given her mental disorder, purely to make an application was disproportionate and that was the only reason that the application had been refused.

Notice of Decision

7. I find therefore that the Secretary of State's grounds are not made out and that the judge was entitled, for the detailed reasons given, to allow this appeal for the reason

that she did and therefore the Secretary of State's appeal to the Upper Tribunal is dismissed.

8. I can see no justification for anonymity in this case and so no anonymity direction is made.

Signed

Date 12th June 2018

Upper Tribunal Judge Martin

TO THE RESPONDENT
FEE AWARD

I will make a fee award in the full amount of £140 on the basis that the evidence before the Secretary of State was as it was before the First-tier Tribunal, which met with success.

Signed

Date 12th June 2018

Upper Tribunal Judge Martin