



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/02848/2018

THE IMMIGRATION ACTS

Heard at Field House
On 11 July 2018

Decision & Reasons Promulgated
On 22 August 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

MRS Y G
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Parkin, Counsel instructed by Eagles Solicitors
For the Respondent: Mr P Duffy, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Pakistan who was born on 31 October 1980. She claims to have arrived in the United Kingdom in 1997 and subsequently applied for a certificate of approval for marriage, which was granted on 5 January 2011. The Appellant then married in a civil ceremony on 18 February 2011, albeit she claims to have lived with her partner since 1997. She made a number of applications for leave

to remain in the United Kingdom, most recently on 16 August 2007. She claimed asylum in respect of the fact she feared her family if she were to be returned to Pakistan because they did not approve of her marriage and had threatened her husband. This application was refused by the Secretary of State on 11 August 2017. The Appellant appealed and her appeal came before First-tier Tribunal Judge Manyarara for hearing on 4 April 2018.

2. In a decision and reasons promulgated on 30 April 2018, the judge dismissed the appeal. Permission to appeal was sought on the basis that the judge had erred:-
 - (1) in failing to make a finding in respect of the Appellant's claim that she came to the UK in 1997;
 - (2) in the manner in which she determined the asylum claim, given that the Appellant's husband was British born and had lived in the UK all his life, thus the reason for the threats he received when he went to Pakistan can only have been for one reason, and that is that the Appellant's parents took exception to their marriage; and
 - (3) in failing to find in the Appellant's favour in light of the judgment of the House of Lords in Chikwamba [2008] UKHL 40, given the evidence of the Appellant's husband that he earns £21,000 a year as a chauffeur.
3. Permission to appeal was granted by First-tier Tribunal Judge Grant-Hutchison in a decision dated 25 May 2018 in the following terms:-

"However it is arguable that the judge had misdirected herself in (a) omitting to consider the Appellant's private life in terms of paragraph 276ADE of the Immigration Rules when the Appellant claimed to have entered the UK in 1997 over 20 years ago and (b) in relation to the Chikwamba point by failing to make any findings re the Appellant's husband's unchallenged evidence that his income was £21,000 per annum."

Hearing

4. At the hearing before me, Mr Parkin very fairly submitted at the outset that he would struggle to make out the second of the two grounds, i.e. the Chikwamba point in the absence of any English language certificate to show that the Appellant spoke the requisite level of English in order to qualify for entry clearance. He also accepted that the evidence that will be required by Appendix FM-SE was not before the First-tier Tribunal Judge. Mr Duffy submitted that in light of the Court of Appeal judgment in Kaur [2018] EWCA Civ 1423 it was necessary for the court or Tribunal to be certain that the requirements of the Rules for entry clearance would be met. Mr Duffy also helpfully accepted the assertion in the first ground of appeal that the judge had failed to make a finding as to when the Appellant had entered the United Kingdom and had thus failed to engage with whether or not she met the requirements of paragraph 276ADE(1)(iv) of the Immigration Rules.

Notice of Decision

5. In light of Mr Duffy's helpful concession that ground 1 of the grounds of appeal is made out, I find that this was a material error of law by the judge in an otherwise conspicuously detailed and thorough decision and reasons. However, the decision cannot stand in light of the failure by the First tier Tribunal Judge to make any finding as to whether or not the Appellant arrived in the United Kingdom in 1997 and whether the Appellant met the requirements of paragraph 276ADE(iv) of the Rules. I remit the appeal for a hearing *de novo* before the First-tier Tribunal.

DIRECTIONS

- (1) The judge's findings the facts are preserved, albeit they can be built on in light of further evidence.
- (2) The appeal should be listed for two hours with an Urdu interpreter.
- (3) There having been no successful challenge to the findings in respect of the asylum claim, the appeal is confined to a human rights appeal pertaining to Article 8 of ECHR with reference to the Immigration Rules.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed *Rebecca Chapman*

Date 12 August 2018

Deputy Upper Tribunal Judge Chapman