



**Upper Tribunal
(Immigration and Asylum Chamber)
HU/12811/2018**

Appeal Numbers:

HU/12

813/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 27 August 2019**

**Decision & Reasons Promulgated
On 06 September 2019**

Before

UPPER TRIBUNAL JUDGE PICKUP

Between

**ARPANA KUMARI (FIRST APPELLANT)
SALAHUDDIN MOHAMMED (SECOND APPELLANT)
(ANONYMITY DIRECTION NOT MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr S Akhtar
For the Respondent: Mr T Lindsay

DECISION AND REASONS

1. At the outset of the hearing Mr Akhtar informed me that the second appellant, Mr Mohammed, has withdrawn his appeal against the decision of the First-tier Tribunal because he has now made a new application for leave to remain on the basis of long residence. However, the first appellant's appeal continues and I have considered Mr Akhtar's submissions in relation to the first appellant.
2. This is the first appellant's appeal against the decision of First-tier Tribunal Judge Lucas promulgated on 17 January 2019 dismissing both appeals against the decision of the Secretary of State dated 24 April 2018 to refuse

their applications for leave to remain in the UK. First-tier Tribunal Judge Grant-Hutchison refused permission, however in the Upper Tribunal, Deputy Upper Tribunal Judge Chana granted permission on 22 May 2019 on the basis that it was arguable the First-tier Tribunal Judge failed to consider Article 8 making no findings under Article 8.

3. In the first instance I have to determine whether or not there was an error of law in the making of that decision, such that it should be set aside and remade.
4. The history is this: the first appellant came to the UK as a student in 2013. Her leave was curtailed to expire in 2014, however she was later granted leave but it appears she had not had leave since 2015. The position is that her partner with whom she remains is also a citizen of India with no leave to remain in the UK.
5. The grounds of appeal are that there were very significant obstacles to the first appellant's integration in India on the basis that her family had rejected her relationship with her partner and had threatened her. As the judge pointed out very clearly, in essence the factual claim was an asylum claim, however despite the invitation to do so, the first appellant has never made a proper asylum application. She claims that she is integrated into life in the UK and that relocating back to India would be a great hindrance to the family, so reliance is placed upon the opposition of her family in India, on the level of integration in the UK and also in a psychiatric report indicating that she has some form of depressive disorder. It is suggested that all those factors, either individually or cumulatively, amounted to very significant obstacles within the meaning of paragraph 276ADE(1)(vi).
6. The judge went to great lengths to point out that the application should have been made for asylum and at paragraph 21 stated that the appeal put the Tribunal in a somewhat difficult situation. It was clear, the judge said, that apart from this issue of a mixed religion marriage giving rise to opposition in India, it was clear that the claim had little other prospect of success under any aspect of the Immigration Rules. They have had no valid leave for some time and they were overstayers and the judge concluded that other than that issue the claim did not in fact engage the Immigration Rules.
7. Complaint is made that the judge did not go on to consider the matter under Article 8, either on the basis of paragraph 276ADE facing very significant obstacles to integration or outside the Rules on the basis of Article 8 ECHR family and private life. However, having looked more carefully at the decision I find that whilst the judge did not go on to make any detailed Article 8 assessment, I am satisfied the judge has adequately dealt with all the issues put before the Tribunal in the way which they were. As the judge pointed out it appeared to be an attempt to circumvent the asylum procedure by making a human rights claim and refusing to apply for asylum.

8. Mr Lindsay directs my attention to paragraph 30 of the decision. The judge reached a conclusion that the appeal was without significance or plausibility. It was pointed out that the first appellant is well-educated and it was not indicated why the couple could not relocate to a major city in India to avoid the alleged problems that they may face. The availability of relocation would, of course, would be a complete answer to an asylum claim. On that finding the basis of the claim fell away in relation to the opposition from their families, as they could simply live elsewhere and it appears that both of them could work in India, where there are many Muslims living within mixed marriages. For those reasons the judge concluded that they would not face significant difficulty in one of the major cosmopolitan cities of India. That would be a complete answer to the claim under paragraph 276ADE. The judge also pointed out in paragraph 30 that the mental health problems of the first appellant did not amount to an exceptional circumstance under the Rules and certainly come nowhere near the threshold set out in the case of N in relation to Article 3 and that conclusion cannot be reasonably challenged.
9. If there are no very significant obstacles to integration then one would struggle to understand on what basis the first appellant could succeed on Article 8 outside the Rules. As Mr Lindsay has pointed out, because the first appellant applied for leave to remain on human rights grounds, she faces proving her case on the balance of probabilities, whereas if she had applied for asylum the claim about the family opposition would only have to be proved to the lower standard of a real risk.
10. The grounds refer to the case in the Court of Appeal of Kamara [2016] EWCA Civ 813 in which the Court of Appeal considered the question of integration and very significant obstacles to integration and stated it is not confined to the mere ability to find a job or sustain life whilst living in another country. It is not appropriate to treat the statutory language as subject to some gloss and it will usually be sufficient for a court or Tribunal simply to direct itself in the terms that Parliament has chosen to use. The idea of integration calls for a broad evaluative judgment to be made as to whether the individual would be enough of an insider in terms of understanding how life in the society in that other country is carried on and the capacity to participate in it so as to have a reasonable opportunity to be accepted there, to be able to operate on a day-to-day basis in that society and to build up within a reasonable time a right of human relationships to give substance to the individual, private or family life.
11. On the facts of this case the judge was satisfied that both appellants could relocate to avoid any claim of opposition from the family, which the judge did not find in any event to be plausible. They were both able to work and the first appellant was well-educated. The judge concluded there would be no significant difficulty.
12. Although the judge probably ought to have gone on to formally address Article 8 in more detail, when one considers the facts of the case and the findings of the judge in relation to the claimed very significant obstacles, there are no compelling circumstances which exceptionally would make

the decision refusing leave to remain unjustifiably harsh. There was in reality no basis for the judge to go on to consider Article 8 outside the Rules. The appellants had no leave to remain in the UK, they should have both returned to India, they can continue their family life in India even if they have to relocate to do so. They have no legitimate entitlement to settle in the UK just because that is what they want to do, or because they married here. In all the circumstances, even if the judge went on to consider Article 8 in detail outside the Rules, it is clear that the outcome would have been exactly the same, that the appeal would have been dismissed on the basis that the decision was not disproportionate to the appellants' family and private life rights when again, in the balancing exercise, the public interest in enforcing immigration control is considered. The judge would also have had to consider Section 117B, that little weight was to be accorded to a private life in which immigration status was precarious and latterly unlawful. The family relationship was established in precarious circumstances. In all the circumstances this is an appeal that could not possibly have succeeded on an Article 8 basis, either within or without the Rules.

13. In the circumstances I find that even if there is an error of law in the judge failing to go on to consider Article 8, I am satisfied that had the judge done so the appeal would still have been dismissed and therefore the error, if there is one, is not material.

Decision

14. In making the decision the First-tier Tribunal did not involve the making of a material error of law such that the decision needs to be set aside.

I do not set aside the decision.

The appeal remains dismissed on all grounds.

No anonymity direction is made.



Signed
Upper Tribunal Judge Pickup

Dated

2 September 2019

To the Respondent
Fee Award

The appeal is dismissed therefore there can be no fee award.

A handwritten signature in black ink, consisting of a stylized 'A' followed by a vertical stroke and a loop.

Signed
Upper Tribunal Judge Pickup

Dated

2 September 2019