



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

Appeal Number: HU/13349/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 28 March 2019**

**Decision & Reasons Promulgated
On 02 April 2019**

Before

**LORD UIST
UPPER TRIBUNAL JUDGE KAMARA**

Between

**SSTZ
(ANONYMITY DIRECTION MADE)**

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

Respondent

Representation:

For the Appellant: In person

For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. This is an appeal against the decision of First-tier Tribunal Judge L Murray promulgated on 26 September 2017. Permission to appeal was granted by the Vice President of the Upper Tribunal on 15 February 2019.

Anonymity

2. An anonymity direction is made owing to the sensitive nature of concerns raised by the appellant.

Background

3. On 24 September 2010, the appellant entered the United Kingdom as a Tier 4 dependant. That leave was extended until 20 November 2015. The appellant made an in-time application for further leave to remain on human rights grounds, which was refused on 12 May 2016. In short, the reasons for refusal were that the appellant failed to meet the requirements of paragraph 276ADE (1), her parents and siblings had been refused further leave to remain and she could not have had a realistic expectation that she would be able to remain in the United Kingdom permanently.

The hearing before the First-tier Tribunal

4. At the hearing before the First-tier Tribunal the appellant gave evidence, as did her father and two of her friends. Her appeal was based on the private life she had developed in the United Kingdom since arriving here aged 13 and the difficulty she would have in adjusting to life in Pakistan after the comparative freedom of life here. The judge found that this did not amount to very significant obstacles to integration when considered with the privileged lifestyle the appellant would enjoy in Pakistan as a result of her father's wealth. The judge attached little weight to the appellant's private life which was established during precarious leave, concluded that the family could return to Pakistan as a unit and there were no compelling or exceptional circumstances.

The grounds of appeal

5. The grounds of appeal contended that the judge erred in reaching conclusions on whether there were "insurmountable obstacles" to the appellant re-establishing herself in Pakistan, in that her findings were based on assumptions and a failure to consider all the evidence.
6. The appellant sought judicial review of the Upper Tribunal's refusal to grant permission to appeal. In her grounds the appellant expressed concern that her family were seeking a husband for her in Pakistan. She enclosed evidence of a document which she described as a profile her parents had composed for a marriage website. The appellant explained that she had not raised this issue before because her solicitors were instructed by her parents.
7. Permission to appeal was granted on 12 December 2018 by HHJ Jarman QC on the basis that there were arguably good reasons why the evidence relating to the appellant's concerns was not previously adduced and there was a compelling reason why the claim should proceed.
8. On 24 January 2019 the decision of the Upper Tribunal to refuse permission to appeal was quashed without a substantive hearing.

9. On 25 February 2019 the Principal Resident Judge directed that the respondent must file a Rule 24 response no later than 14 days prior to the hearing and the appellant a skeleton argument, Rule 15(2A) notice and trial bundles no later than 7 days prior to the hearing
10. The respondent failed to comply with the above-mentioned directions. The appellant complied with directions and provided a skeleton argument, Rule 15(2A) notice and a bundle which was received on 19 March 2019. In her skeleton argument the appellant reiterated the grounds which were before the Administrative Court. In addition, she provided evidence that her parents and younger siblings were granted further leave to remain in the United Kingdom until 24 April 2021.

The hearing

11. The appellant was unrepresented and told our clerk that she was no longer represented by Orchid Solicitors. Mr Walker had not seen the material sent by the appellant to the Upper Tribunal. We informed Mr Walker that the appellant's parents and younger siblings appeared to have been granted further leave to remain, that there was a new issue she wanted to raise. The appellant confirmed that she continued to live with her parents at the address on the IAC case file. We allowed Mr Walker time to consider given the appellant's bundle as well as to take instructions as to whether the respondent intended to oppose the appeal.
12. When the hearing resumed, Mr Walker informed us that the Secretary of State's position was that there was an error of law in the judge's decision owing to subsequent events, those being the grant of leave to the appellant's family and the circumstances set out in the appellant's skeleton argument. Mr Walker clarified that the respondent was not resisting the appeal. He invited the panel to set aside the decision of the First-tier Tribunal and to allow the appeal, which would enable the appellant to be granted leave to remain in the United Kingdom in line with her family.
13. We announced that the decision of the First-tier Tribunal contained a material error of law, that the decision was set aside and remade, allowing the appeal.

Decision on error of law

14. In view of Mr Walker's concessions, we can be brief. The First-tier Tribunal made an unwitting error of law in concluding that the appellant's parents and siblings had no basis of stay in the United Kingdom [15] and at [23] that she would be returning to Pakistan with her family. Neither of those propositions are correct given the respondent's decision to grant further leave to remain to the appellant's family until April 2021.

Remaking

15. As indicated above, Mr Walker invited us to allow the appeal.
16. In refusing the appellant's human rights claim on 12 May 2016, the Secretary of State commented that none of her family members had leave to remain in the United Kingdom because her father and all his dependants were refused leave to remain on 17 February 2016. At the date of decision the appellant was aged 18 and had been dependent upon her father's claim since she arrived in the United Kingdom in 2010. The appellant continues to reside with her parents and siblings. The appellant's siblings, a brother aged 18 and a sister aged 14, were granted further leave to remain in the United Kingdom on 12 November 2018. There is no good reason why the appellant should be facing removal to Pakistan as a lone female when her parents and siblings are permitted to remain in the United Kingdom.
17. We have been guided by the decision of PD and Others (Article 8 – conjoined family claims) Sri Lanka [2016] UKUT 00108 (IAC), the headnote of which states as follows;

"In considering the conjoined Article 8 ECHR claims of multiple family members decision-makers should first apply the Immigration Rules to each individual applicant and, if appropriate, then consider Article 8 outside the Rules. This exercise will typically entail the consideration and determination of all claims jointly, so as to ensure that all material facts and considerations are taken into account in each case."
18. The Secretary of State's decision refusing the appellant further leave to remain does not take into consideration the current family circumstances. Furthermore, the appellant has since raised concerns that she is to be married off if removed to Pakistan. These issues amount to exceptional circumstances which were not considered by the respondent.
19. In conclusion, the appellant has established that she enjoys a private and family life in the United Kingdom and that the decision to remove her will amount to a substantial interference with that life. The Secretary of State's failure to grant the appellant leave to remain in line with her family in circumstances where her adult brother has been granted leave to remain, and to remove her from the United Kingdom amounts to a disproportionate outcome.

Conclusions

The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.

The decision of the First-tier Tribunal is set aside to be re-made.

A decision is substituted allowing the appeal, on human rights grounds, on the basis that the Secretary of State's decision is disproportionate.

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 their 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

Date: 28 March 2019

Upper Tribunal Judge Kamara

**TO THE RESPONDENT
FEE AWARD**

As we have allowed the appeal and because a fee has been paid or is payable, we have considered making a fee award and have decided to make no fee award for the following reason. The appeal has been allowed owing to a change of circumstances since the original decision was made.

Signed

Date: 28 March 2019

Upper Tribunal Judge Kamara