



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/06093/2018 (P)**

THE IMMIGRATION ACTS

**Decided under rule 34
On 20 July 2020**

**Decision & Reasons Promulgated
On 29 July 2020**

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

HARPREET [M]

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS

1. This decision has been made on the papers, under Rule 34 of The Tribunal Procedure (Upper Tribunal) Rules 2008, further to directions issued by the Upper Tribunal on 11 May 2020.
2. The appellant is a national of India born on 17 May 1985. She arrived in the United Kingdom on 26 January 2008 on a student visa valid until 28 February 2008 and was granted subsequent extensions of leave until 7 June 2014. She made an application for an EEA residence card on 6 June 2014, which was refused on 7 November 2014. An appeal against that decision was dismissed on 26 June 2015.
3. On 26 January 2017 the appellant made an application for indefinite leave to remain on the grounds of long residence, relying upon her length of residence in the UK as well as her Article 8 family and private life, in particular her family life with her son [M] (born on 21 October 2015) and her brother upon whom she claimed to be dependent. She claimed that she could not return to

India as a single mother who had had a child out of wedlock. She was no longer in contact with the child's father. The appellant's application was refused on 20 February 2018.

4. The appellant appealed against that decision. Her appeal was heard on 4 October 2018 and was dismissed in the First-tier Tribunal by Judge Hussain, on 22 November 2018. Judge Hussein's decision was subsequently set aside in the Upper Tribunal in a decision promulgated on 18 March 2019 and was remitted to the First-tier Tribunal to be reheard.

5. The appeal then came before First-tier Tribunal Judge Mailer on 4 October 2019. Judge Mailer noted that the relevant issue was whether there would be very significant obstacles to the appellant's integration in India as a single mother with a child born out of wedlock. Indeed the reasons for the appeal being remitted was because the previous judge had not addressed that issue fully. Judge Mailer rejected the appellant's claim to have had no contact with her mother since telling her she was pregnant, as that was not the evidence she had given before Judge Hussein at her last hearing. Judge Mailer found that the appellant was in regular contact with her mother and did not accept her claim that she would suffer abuse from her mother and family in India. He considered that the appellant could return to India where she would not be ostracised by her family or others in the village, that her mother would accommodate her or assist her in finding accommodation and that her brother in the UK would continue to support her financially until she became self-sufficient. Judge Mailer found that the appellant had not shown that there would be very significant obstacles to integration in India and that she could not meet the requirements in paragraph 276ADE(1) of the immigration rules. He considered that the best interests of the appellant's child were to reside with his mother wherever she was and that their removal would not be disproportionate in breach of Article 8. He accordingly dismissed the appeal.

6. Permission to appeal was sought by the appellant on the grounds that the judge had materially erred in law by relying on the findings of Judge Hussein, in regard to the appellant's contact with her mother in India, when Judge Hussein's decision had been set aside in its entirety by the Upper Tribunal. It was asserted that that error infected the remainder of Judge Mailer's decision.

7. Permission was granted on 26 March 2020.

8. The case was then reviewed by the Upper Tribunal due to the circumstances relating to Covid 19. In a Note and Directions sent out on 11 May 2020, Upper Tribunal Judge Smith indicated that she had reached the provisional view that the question of whether the First-tier Tribunal's decision involved the making of error of law and, if so, whether the decision should be set aside, could be made without a hearing. Submissions were invited from the parties.

9. Written submissions have been received from both parties. In a response dated 3 June 2020, Mr S Kotas for the respondent responded to the grounds of appeal and made no objection to the matter being decided on the papers. The appellant's representatives made written submissions on 4 June 2020, which

included an objection to the matter being dealt with on the papers under rule 34.

10. I have had careful regard to the objection made by the appellant's solicitors to the matter being decided without an oral hearing and have considered Rule 5A as inserted into the Tribunal Procedure (Upper Tribunal) Rules 2008, as well as Rule 34. Rule 5A(3) makes it clear that a decision to determine a matter without a hearing is not restricted to the conditions in 5A(2). The appellant's objection to a determination without a hearing, at [3] of the submissions, is simply that "it is unfair that she be deprived of an oral hearing", but no details are given as to why it would be unfair or how she would be prejudiced by such. I have the benefit of submissions from both parties as well as the detailed grounds of appeal and take note of the very limited nature of the challenge in the grounds. I can find no reason why a consideration of those grounds and submissions, as opposed to hearing from counsel in person, would prejudice the appellant in this particular case. I do not accept that deciding the matter without a hearing would give rise to any unfairness and I consider that I am able, fully and fairly, to consider the error of law issue on the basis of the papers before me in accordance with rule 34 of the Procedure Rules.

11. I have therefore proceeded to consider whether or not Judge Mailer's decision contains errors of law such that it should be set aside. I conclude that there are no errors of law in his decision. I do so for the following reasons.

12. The only issue raised in the grounds is Judge Mailer's reliance upon previous findings made by Judge Hussein, despite the fact that the decision of the latter had been set aside in its entirety by the Upper Tribunal and remitted to the First-tier Tribunal for a de novo hearing. However, as properly stated by Mr Kotas in his submissions, Judge Mailer did not rely upon the *findings* made by Judge Hussein, but rather on the *evidence* which was before him, which was an entirely different matter. The appellant's evidence before Judge Hussein, as recorded at [13] of his decision, was that she had ongoing contact with her mother after the birth of her child, and that her mother called her regularly to check on the baby's health. That was a matter of record. Judge Mailer was fully and properly entitled to consider all of the evidence, including the evidence previously on record, as found in the case of EN (abandonment - first decision nullity- Devaseelan applied) Cameroon [2005] UKAIT 00146. Indeed he gave specific consideration to his ability to rely on that evidence, at [90] to [93] and [[99] to [102], noting that the evidence before Judge Hussein formed part of the Upper Tribunal's consideration and that there had been no challenge to the evidence itself, only to the findings arising out of the evidence. As such, it seems to me that it was entirely appropriate for Judge Mailer to note the inconsistency between that evidence given before Judge Hussein, and the evidence given before himself that the appellant's mother had cut off all contact with the appellant after learning of the birth of her child, and to draw the adverse conclusions that he did as a result.

13. For all these reasons it seems to me that the judge was perfectly entitled to conclude that the appellant had not provided a credible account before him.

He was entitled to conclude that she had a support network on return to India and that she had not shown that there were very significant obstacles to her return to that country, nor any other reason why her removal would breach her Article 8 rights. The grounds do not disclose any errors of law in the judge's decision.

DECISION

14. The making of the decision of the First-tier Tribunal did not involve an error on a point of law. I do not set aside the decision. The decision to dismiss the appeal stands.

Signed: S Kebede
Upper Tribunal Judge Kebede
2020

Dated: 20 July