Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/10195/2013

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 19 November 2013	**On 16 December 2013**
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Before

UPPER TRIBUNAL JUDGE LATTER
UPPER TRIBUNAL JUDGE DEANS

Between

Miss SADAF AFZAL
(Anonymity order not made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Appeared in person
For the Respondent: Mr G Saunders, Home Office Presenting Officer

DETERMINATION AND REASONS

1) This is an appeal with permission against a decision by Judge of the First-tier Tribunal McIntosh dismissing this appeal against refusal of indefinite leave to remain on the grounds of 14 years continuous residence.

The hearing

2) The appellant was not represented before us. An interpreter had been requested for the hearing but was not present. The appellant stated that

she was willing to proceed without an interpreter. As far as representation was concerned, she explained that she was not able to pay for representation but might be able to do so if she was given more time to raise funds. She explains that she had a friend who might be able to help her.

3) For the respondent Mr Saunders sought to proceed. It was questionable whether the appellant would be able to raise the required funds to pay for representation. The respondent would be arguing that there was no error of law in the decision of the First-tier Tribunal.

4) In the circumstances we decided to proceed with the hearing. The prospect of the appellant raising sufficient funds to pay for representation seemed remote, as she had not succeeded in doing so prior to the hearing.

5) The application for permission to appeal had been prepared on the appellant's behalf by a solicitor. As the appellant's case was set out in this application, we heard first from Mr Saunders on behalf of the respondent, after explaining to the appellant that she would have the opportunity to respond.

6) For the respondent, Mr Saunders submitted that there was no error of law in the determination. Although a different judge might have decided the appeal differently, the judge was entitled to dismiss the appeal. The appellant could not succeed under the Immigration Rules on the basis of chronology. The appellant had not been in the UK for the 14 years required in terms of paragraph 276B of the Immigration Rules. At the time of the application the old rules applied and 14 years was the requirement. It was not necessary for the judge to refer to paragraph 276ADE, although she had done so. The judge had considered Article 8 in the broader sense and looked at evidence of family or private life. In this regard there was a dearth of evidence and the appellant was not able to make out a case. It was the appellant's claim that she had given her documentary evidence to a previous representative but this evidence had not been served on the Tribunal.

7) The appellant confirmed that prior to the hearing before the First-tier Tribunal she had provided documentary evidence to her then solicitors, M-R Solicitors, including payslips and letters. The originals had been returned to her. Her subsequent solicitors, Shahzads, had not asked her for these documents.

8) The appellant had not attended the hearing before the First-tier Tribunal. She had applied for an adjournment on medical grounds. She lodged a doctor's letter stating that she attended surgery with a pain in her foot with a mild degree of swelling. The doctor recorded that she was meant to attend the hearing the following day but was not in a position to do so due to her discomfort and asked for the hearing to be rescheduled. The First-tier

Tribunal refused an adjournment and this was challenged in the application for permission to appeal.

9) The appellant confirmed that she had visited her doctor with a pain in her foot and swelling. The doctor had advised her to take painkillers. The appellant was asked how she would have travelled from her home to Taylor House, where the hearing took place. She said she would have travelled by underground as her home was on the Central Line.

10) The appellant was asked about her family and friends in the UK. She said she had friends but they were not really close ones. It was pointed out that in the original grounds of appeal the appellant was said to have a long term partner. The appellant explained that this relationship had broken down. The appellant further said that she had spent half her life in the UK and wanted to remain here.

Discussion

11) The First-tier Tribunal noted that the appellant was born on 13 December 1982 and is a national of Pakistan. She entered the UK on 15 July 2000 and had remained here since then. Her application for leave to remain was made on 5 July 2012 and refused on 13 March 2013. The First-tier Tribunal noted at paragraph 1 of the determination that the application for leave to remain was made on the grounds of 14 years continuous residence. Clearly the appellant did not have 14 years residence either at the time of the application or the date of the decision.

12) One of the grounds of the application for permission to appeal was that the First-tier Tribunal had wrongly considered the appeal under the new Immigration Rules (ie post 8 July 2012) and had applied a rule requiring 20 years residence under paragraph 276ADE. As Mr Saunders submitted, however, the consideration by the Tribunal of the appeal under paragraph 276ADE was not relevant. The Tribunal was clearly aware of the 14 year rule, as noted in the first paragraph of the determination, and found as a fact at paragraph 11 of the determination that the length of residence was 12 years - two years below the required length. Accordingly we are satisfied that the Tribunal did not make any error of law in its application of the 14 year rule under paragraph 276B.

13) The second issue before us was whether the First-tier Tribunal should have proceeded in the absence of the appellant, having regard to the medical evidence submitted by her. In this regard the Tribunal quoted the doctor's letter at the second paragraph of the determination. As already noted, the letter recorded the appellant's attendance at the surgery with a pain in her foot. The doctor stated that the appellant was not in a position to attend due to her discomfort and asked for the hearing to be rescheduled.

14) The Judge of the First-tier Tribunal considered the significance of the doctor's letter at paragraph 7 of the determination. The judge noted that

the letter did not describe the cause of the swelling or outline any treatment. It appeared that the appellant was able to attend the surgery to obtain the letter. In the circumstances the judge was not satisfied that the appellant was genuinely unable to attend the hearing and therefore decided to proceed. We consider that having regard to the medical evidence this was a decision the judge was entitled to make.

15) The third ground of the application was the absence of documentary evidence. The Judge of the First-tier Tribunal noted at the third paragraph of the determination that the appellant's solicitors at that time, M-R Solicitors, wrote to the Tribunal the day before the hearing to state that they were without instructions and were withdrawing from acting. The judge recorded that the hearing notice had been sent to the appellant at her solicitor's address and that directions were issued for witness statements and bundles to be submitted no later than five days before the hearing. The judge further noted, at paragraph 11, the absence of any supporting documents, although these were referred to by the Secretary of State in the refusal decision. Before us the appellant was unable to cast any light on why her solicitors had withdrawn from acting prior to the hearing before the First-tier Tribunal. According to the application for permission to appeal, prepared by a different firm of solicitors, the appellant had given her documentary evidence to her solicitors at that time. It was submitted that it was the error of the previous solicitors not to submit documents as directed to do so. It was further submitted that had the documents been submitted the appellant would have been in a better position to succeed with her appeal.

16) Whatever was in the appellant's documents, however, they would not have provided her with the possibility of succeeding under the Immigration Rules on the basis of 14 years continuous residence because she did not meet this requirement. When asked about the documents at the hearing before us, the appellant referred to the documents as including payslips and letters. This shows little more than that the appellant has been working in the UK. We were not referred to any particular documentary evidence which would have been likely to have affected the outcome of the decision under Article 8.

17) In the application for permission to appeal it is submitted that the judge's findings under Article 8 were factually incorrect and unsound. The appellant was under the age of 18 when she arrived in the UK and had spent a considerable period of her youth here. She had established close ties and adapted herself to the life and conditions here.

18) The Judge of the First-tier Tribunal accepted that the refusal decision was an interference with the appellant's right to private life. There was no evidence of having established a family life in the UK. The judge referred to a list of correspondence attached to the refusal decision as evidence of the appellant's private life but the judge added that this evidence was not specific and not detailed in any way. The interference with the appellant's private life was lawful and proportionate.

19) At the hearing before us the appellant talked in a straightforward way about her private life in the UK. She said that she had friends but not really close ones and that her relationship with her former partner had ended. The appellant referred to having sought to lodge payslips and letters, which would have shown that she had been working and provide evidence of contact with friends or relatives. Although the application for permission to appeal states that the appellant was under 18 when she arrived in the UK, this was only 5 months before her 18th birthday. It appears from the refusal letter that the appellant entered with a visit visa.

20) Although the judge's reasoning in respect of Article 8 is very brief, the judge was entitled to find that the refusal decision was not a disproportionate interference with the appellant's right to private or family life. It is contended in the application for permission to appeal that had the judge had the benefit of seeing the appellant's documentary evidence then the outcome would have been different. The judge did, however, refer to the list of evidence attached to the respondent's reasons for refusal letter of 13 December 1982 and saw nothing there which would have weighted the assessment of proportionality in the appellant's favour. The appellant told us nothing in her submission at the hearing before us that would have similarly weighted the assessment in her favour. Accordingly, it cannot be said that the Judge of the First-tier Tribunal was not entitled to find as she did in relation to the refusal decision not being disproportionate under Article 8.

21) Having considered the application for permission to appeal and the further submissions made at the hearing before us, we are satisfied that there is no error of law in the decision by the Judge of the First-tier Tribunal, which accordingly shall stand.

Conclusions

22) The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

23) We do not set aside the decision.

Anonymity

24) The First-tier Tribunal did not make a direction for anonymity and we see no reason for an order to this effect to be made by the Upper Tribunal.

Signed Date

Upper Tribunal Judge Deans