



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

Appeal Number: OA/10547/2012

THE IMMIGRATION ACTS

**Heard at Field House
On 12 November 2013**

**Determination
Promulgated
On 29 November 2013**

Before

UPPER TRIBUNAL JUDGE MOULDEN

Between

ENTRY CLEARANCE OFFICER - ISLAMABAD

Appellant

and

**MRS SAMIA OSAMANKHIL
(Anonymity Direction Not Made)**

Respondent

Representation:

For the Appellant: Mr P Nath a Senior Home Office Presenting Officer
For the Respondent: Mr Z Malik of counsel instructed by Malik Law
Chambers

DETERMINATION AND REASONS

1. The appellant is the Entry Clearance Officer in Islamabad. I will refer to him or her as the Entry Clearance Officer. The respondent is a citizen of Afghanistan who was born on 10 April 1975. I will refer to her as the claimant. Her husband is her sponsor and their five children are her dependants for the purpose of this application and appeal. The claimant and the children are living in Pakistan.

2. The Entry Clearance Officer has been given permission to appeal the determination of First-Tier Tribunal Judge Morgan ("the FTTJ") who allowed, on human rights grounds, the claimant's appeal against the decision of 16 April 2012 to refuse her leave to enter the United Kingdom with her children for settlement as the spouse and children of the sponsor under the provisions of paragraph 281 of the Immigration Rules. The Entry Clearance Officer was not satisfied or that the couple were in a subsisting relationship or that the family could be adequately maintained by the sponsor. The application was also refused under the provisions of paragraph 320 (7A) of the Immigration Rules because it was concluded that the appellant had submitted and relied on a false document namely an English-language test certificate. Subsequently, the Entry Clearance Manager reviewed the decision and conceded the issue of maintenance.
3. The claimant appealed and the FTTJ heard her appeal on 5 September 2013. Both parties were represented and the sponsor gave evidence. The FTTJ found him to be a credible witness, the claimant and the sponsor were in a subsisting relationship and the claimant met all the requirements of paragraph 281 apart from the lack of a genuine English-language test certificate either at the date of application or decision. However, in relation to the allegation that the claimant had made a false statement or a false representation in relation to the English-language test certificate the FTTJ found that the claimant had been an innocent victim of a scam perpetrated in Pakistan and was not aware that the test certificate was not genuine. She had taken the test and obtained what she thought was a genuine qualification in good faith.
4. The FTTJ found that the claimant could not succeed under the Immigration Rules for the lack of a genuine English-language test certificate at the relevant date. However, soon after she took and passed another and genuine English-language test which, he found, showed that she had the required ability. Taking into account these factors, the best interests of the children, the delay of nearly a year on the part of the Entry Clearance Officer, the need to maintain immigration control and the prolonged separation between the sponsor his wife and children, the FTTJ concluded that the refusal of entry clearance was a disproportionate interference with their Article 8 human rights. He allowed the appeal on human rights grounds.
5. The Entry Clearance Officer applied for and was granted permission to appeal by a judge in the First-Tier Tribunal. The claimant has submitted a Rule 24 response.
6. I suggested to Mr Nath that in more than one respect the grounds were misconceived. The grounds submit that the FTTJ erred in law by failing to apply the Immigration Rules relating to Article 8 grounds. It is clear that this is a reference to the Immigration Rules which came

into force in July 2012. The decision in this case was made on 16 April 2012 and as a result the Article 8 grounds had to be assessed in the light of the jurisprudence before the new Rules came into force. Mr Nath accepted that this was correct. Secondly, the grounds submit that the FTTJ failed to consider the income threshold requirements under the Immigration Rules. This is a reference to the income threshold requirements under the new Immigration Rules which were not in force at the date of the decision and do not apply in this case. Mr Nath accepted that this was correct. In the circumstances he said that he relied on what was left of the grounds of appeal and did not wish to make any further submissions. I heard brief submissions from Mr Malik.

7. I find that the first ground of appeal is misconceived. The ground submits that the FTTJ erred in law by failing to apply the Immigration Rules relating to Article 8 grounds. It is clear that this is a reference to the Immigration Rules which came into force in July 2012. The decision in this case was made on 16 April 2012 and as a result the Article 8 grounds had to be assessed in the light of the jurisprudence which applied before the new Rules came into force. There was no income threshold requirement in the previous Article 8 jurisprudence. Furthermore, in relation to the submission that those who choose to establish a family life in the UK should have the required financial ability to support themselves it is relevant that the FTTJ found that the claimant met the maintenance requirements of paragraph 281 of the Immigration Rules. The whole of the first ground of appeal is flawed by inappropriate reliance on Immigration Rules which were not in force.
8. As to the second ground of appeal this is substantially if not entirely flawed by the same reliance on Immigration Rules which were not in force. Insofar as it is alleged that the FTTJ erred in law by relying on a finding that the claimant's case was "exceptional" I can find no reference in the determination to "exceptional", "exceptionality" or anything to indicate that the FTTJ applied such a test. This part of the ground of appeal is based on a false premise. I cannot see that any further explanation is required for the conclusion that it would be in the children's best interests to live with their father and mother. The ground is also flawed by continued reliance on the incorrect statement that the claimant failed to meet the maintenance requirements of the new Immigration Rules. The FTTJ set out the appropriate jurisprudence and reached conclusions open to him on all the evidence.
9. There is no error of law and I uphold the FTTJ's determination.

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Signed
Upper Tribunal Judge Moulden

Date 13 November 2013