



**The Upper Tribunal
(Immigration and Asylum Chamber)
IA/10963/2014**

Appeal number:

THE IMMIGRATION ACTS

**Heard at Field House
On November 19, 2014**

**Determination Promulgated
On November 24, 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

**MRS MANSOOR BEGUM
(NO ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Blundell, Counsel, instructed by Maliks and Khan Solicitors

For the Respondent: Mr Avery (Home Office Presenting Officer)

DETERMINATION AND REASONS

1. The appellant, born January 1, 1990, is a citizen of Pakistan. She entered the United Kingdom as a visitor on May 27, 2013 with entry clearance as a multi entry visitor valid until March 28, 2015. On November 23, 2013 she applied for leave to

remain on the grounds of family and private life. The respondent refused her application on February 10, 2014.

2. The appellant appealed to the First-tier Tribunal under Section 82(1) of the Nationality, Immigration and Asylum Act 2002 on February 26, 2014. On July 10, 2014 Judge of the First Tier Tribunal Graham (hereinafter referred to as the "FtTJ") heard her appeal. She refused her appeal under the Immigration Rules and human rights in a determination promulgated on August 13, 2014.
3. The appellant lodged grounds of appeal on August 29, 2014 and on September 30, 2014 Judge of the First-tier Tribunal McDade granted permission to appeal. He found it arguable the FtTJ had not followed the step-by-step approach required of her assessment under article 8.
4. The respondent filed a Rule 24 response dated October 21, 2014 in which she stated there was no error in law and the FtTJ applied the law correctly and her findings were open to her.
5. The appellant attended the hearing with her family and was represented by Mr Blundell.

PRELIMINARY ISSUE

6. The appellant received the FtTJ's determination on August 14, 2014. Permission to appeal was not lodged with the First-tier Tribunal until August 29, 2014. The appeal should have been lodged by August 19, 2014 and was therefore ten days late.
7. Judge of the First-tier Tribunal McDade did not consider the fact the application was out of time although an application to appeal out of time was included.
8. Both representatives agreed that the "time" issue needed to be addressed at the hearing and both parties agreed that I was able to consider this as a First-tier Tribunal Judge.
9. I had regard to Mohammed (late application-First-tier Tribunal) [2013] UKUT 00467 (IAC) and Samir (FtT Permission to appeal:time) [2013] UKUT 2 (IAC).
10. Mr Blundell relied in the grounds of appeal that explained the appeal had been dictated by the solicitor with conduct but due to illness a secretary had not typed the appeal. He submitted time should be extended because:
 - a. The delay was limited.

- b. The appellant was blameless for the delay.
 - c. First-tier Tribunal Judge McDade had found an arguable error in law.
 - d. There was no prejudice to the respondent.
11. Mr Avery argued that the application was late and there was no evidence to support what was contained in the grounds of appeal. Procedures should be in place so that this situation did not happen and the grounds themselves were weak.
12. The points made by Mr Blundell were all relevant to my consideration and having considered the case law and the submissions I extended time finding there were special circumstances.

SUBMISSIONS

13. Mr Blundell adopted his grounds of appeal and submitted:
- a. The issue with the determination is paragraph [21] of the FtTJ's determination. The FtTJ found there were no compelling circumstances and this was an error in law.
 - b. The FtTJ did not consider the appellant's health problems in sufficient detail. The High Court in Ganesabalan [2014] EWHC 2712 made it clear that in any adult dependency case the focus should be on whether long term personal care is needed and whether care can be obtained in their country of origin as well having regard to their length of stay. Whilst the FtTJ considered these issues she did not begin to dispose of the appellant's article 8 claim. She should have followed the approach set out in Razgar [2004] UKHL 00027 and having found there was family life then as the Immigration Rules were not a complete code the FtTJ should then have had regard to the proportionality test. If she had considered proportionality and dismissed her obligations the claim then she would have complied with Razgar. By failing to do so she erred.
14. Mr Avery responded to the appellant's grounds of appeal and submitted there was no error in law. He submitted:
- a. The FtTJ properly considered the appeal and found there was nothing exceptional that merited consideration outside of the Rules. She had considered the evidence and made a number of adverse findings and concluded that in light of those findings there was nothing further that needed considering outside of the Rules.

- b. The appellant's family chose to settle in the United Kingdom and in light of the FtTJ's findings it is submitted that the result would have been the same in any event.
15. In response to Mrs Mr Avery's submissions and questions posed by me, Mr Blundell further submitted:
 - a. The respondent and FtTJ should consider a proportionality test when considering exceptional circumstances or unjustifiable hardship and asking whether removal would be disproportionate.
 - b. The FtTJ should have followed the approach set out in paragraphs [37] to [44] of Ganesabalan.
16. I reserved my decision on all issues having confirmed that no further evidence would be called in the event there was an error in law.

MY FINDINGS ON ERROR IN LAW

17. The appellant came to the United Kingdom as a visitor and whilst here submitted an application to remain. As her application was submitted after July 9, 2014 the respondent and later the FtTJ considered her application under the Immigration Rules.
18. The respondent considered the appeal having regard to paragraph 276ADE but did not consider the application under Appendix FM because the appellant did not have a partner or dependant child living in the United Kingdom. Her application under paragraph 276ADE was refused because she did not meet the requirements. The respondent then considered whether there were any exceptional circumstances consistent with the right to respect family and private life contained in article 8 ECHR but she concluded there was not. The respondent had regard to the following factors:
 - a. She claimed to be separated from her husband.
 - b. There was no one in Pakistan to care for her.
 - c. She had come here for the purpose of a three-month visit only.
 - d. She claimed to be fragile and her health was deteriorating.
 - e. She was living with her son who provided care for her and she had regular contact with her daughters.
 - f. She had no property in Pakistan and no job.

19. The respondent rejected her claims that she would be unable to maintain herself and that she had a serious medical condition, which would prevent her from living in Pakistan.
20. The matter came before the FtTJ who took oral evidence from the appellant, her son and daughter-in-law and considered that evidence alongside the written evidence that had been submitted. She made findings on the evidence that were open to her and which have not been challenged in the grounds of appeal.
21. The FtTJ found none of the witnesses to be credible and at paragraphs [15] to [19] of her determination she gave detailed reasons.
22. The FtTJ then considered the evidence available to her and in particular she had regard to the medical claims of this seventy-three year old appellant. She noted there was a lack of medical evidence and found that any problems she did have pre-existed her trip to the United Kingdom and she concluded that she was able to access medical treatment for them in Pakistan.
23. Mr Blundell's submission is that the FtTJ erred by not setting out the five stage approach in Razgar. She had already found in paragraph [12] of her determination that the Rules were not met-a fact conceded by her representative in the First-tier Tribunal. She found that because she came as a visitor she could not switch to a dependant adult status under Appendix FM and this finding has not been challenged.
24. At paragraph [13] of her determination she considered whether there were any additional compelling circumstances and she concluded in paragraphs [14] to [21] that there were none.
25. Mr Blundell brought to my attention the case of Ganesabalan but this case is effectively a summary of what the law is. He argues that because she has some financial dependency on her son that this amounts to either family or private life and I am invited to ignore the fact she is an adult as are her children. If the FtTJ had made positive findings about her claim then a failure to consider those factors in article 8 claim would be an error.
26. However, as Mr Avery submitted, this application has to be considered in light of the unchallenged credibility findings. The FtTJ rejected all of her claims and did not accept that family or private life existed. She found that whilst she had close family they had chosen to come and live in the United Kingdom many years ago and there was nothing to prevent them visiting her in

Pakistan or her visiting them in the United Kingdom in the way she had been doing for many years. If she wished to stay as an adult dependant she should make the correct application and not seek to circumvent the Rules.

27. The FtTJ only needed to consider this appeal outside of the Rules if she concluded there were exceptional and compelling circumstances that would make removal unjustifiably harsh. She concluded there were none and as the appellant failed to satisfy the Rules she refused the application.
28. Having considered Mr Blundell's submissions I am satisfied the FtTJ did not err in law and having decided there was no article 8 claim to consider, she was not required to consider the application outside of the Rules. There is therefore no error in law.

DECISION

29. There was no material error of law and the original decision shall stand.
30. Under Rule 14(1) The Tribunal Procedure (Upper Tribunal) Rules 2008 (as amended) the appellant can be granted anonymity throughout these proceedings, unless and until a tribunal or court directs otherwise. No order has been made and no request for an order was submitted to me.

Signed:
2014

Dated: **November 24,**

Deputy Upper Tribunal Judge Alis

TO THE RESPONDENT

I do not alter the fee award decision.

Signed:
2014

Dated: **November 24,**

Deputy Upper Tribunal Judge Alis