



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

Appeal Number: IA/19167/2013

THE IMMIGRATION ACTS

Heard at Bradford

On 20th May 2014

Determination

Promulgated

On 04th June 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE HEMINGWAY

Between

MS NAZISH SHAHEEN

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Shah

For the Respondent: Mr Diwnycz, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellant, a national of Pakistan who was born on 4th February 1962, has appealed to the Upper Tribunal, with permission, against a decision of the First-tier Tribunal (Judge Grimshow) promulgated on 7th March 2014,

dismissing her appeal against the Respondent's decision of 15th May 2013 refusing to vary leave to remain and deciding to remove her from the UK.

2. The Appellant had entered the UK, on 16th March 2011, as a spouse. She was given leave to enter on that basis. She is married to one Ghulshan Jahangir who is a British citizen. On 13th April 2013 she made an in time application for further leave as a spouse but this was refused. The basis of the refusal appears to have been that she had not completed 27 months in the UK having returned to Pakistan for several months in 2011 and 2012.
3. There was an oral hearing before Judge Grimshow. Having heard the evidence the judge accepted that the Appellant and her husband had a genuine and subsisting relationship. However, she considered the provisions set out in Appendix FM of the Immigration Rules and concluded that the Appellant did not meet them. The judge concluded, further, that there were no exceptional or compassionate circumstances such as to justify allowing the appeal under Article 8 of the ECHR outside the Rules.
4. The Appellant's application for permission to appeal to the Upper Tribunal takes a number of points. One of those points is that the judge erred in considering the application under Appendix FM rather than under other Immigration Rules which relate to the situation of spouses. It was also contended that the Article 8 assessment was flawed. On 26th March 2014 Designated Judge Woodcraft granted permission to appeal because he thought it arguable that matters should have been considered under the Immigration Rules relating to spouses other than those to be found in Appendix FM.
5. The parties were notified of the grant of permission. The Respondent, in a "Rule 24 response" indicated that the application made by the Appellant would not be opposed. The Respondent observed;

"It appears that the Appellant application ought to have been considered under part 8 of the Immigration Rules rather than Appendix FM. The provision is set out in A280(c)(b)(ii) of the Rules."
6. Mr Diwnycz, for the Respondent, indicated that he would stand by the order 24 reply. In the circumstances it was effectively agreed between the parties that the judge had erred such that the determination fell to be set aside. That is, therefore, the course of action which I have taken.
7. There was then further discussion as to whether the decision could be re-made before me. That was certainly my preferred option but there were difficulties. Mr Shah explained that he had not appreciated matters would proceed to re-making today. He had not received any directions indicating that re-making might be undertaken today. Mr Diwnycz had not received any such directions either. There was no evidence on file that the standard directions regarding such matters had been issued in this case. Even if they had I would have accepted Mr Shah's assurances that he had not received them. Mr Shah, in these circumstances, invited the Upper

Tribunal to simply set aside the decision of the First-tier Tribunal and to hold another hearing, in due course, when the decision might be re-made. In this context, said Mr Shah, he did wish to obtain further evidence to seek to show that the requirements of the Immigration Rules were, at least, substantially complied with. This would be relevant because, even if the Rules could not be met in whole, the degree to which they were met could potentially impact on any future Article 8 assessment. Mr Diwnycz did not oppose Mr Shah's application and, indeed, pointed out that the Appellant should not be disadvantaged.

8. In these circumstances I conclude that the determination of the First-tier Tribunal is to be set aside, with nothing preserved, and that there shall be a further hearing before the Upper Tribunal, on a date to be fixed, when the decision shall be re-made.

Decision

The Appellant's appeal is allowed.

The decision of the First-tier Tribunal is set aside.

Signed

Date

Deputy Upper Tribunal Judge Hemingway