



IAC-AH-KRL-V2

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

Appeal Number: IA/21888/2013

THE IMMIGRATION ACTS

**Heard at Manchester
On 30th September 2014**

**Decision & Reasons
Promulgated
On 22nd October 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

**MRS JUHENA CHOWDHURY
(NO ANONYMITY ORDER MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mrs Hussein, Solicitor

For the Respondent: Mr G Harrison, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Bangladesh, born on 1st September 1989. The Appellant entered the United Kingdom on 27th June 2012 with a family visitor's visa, valid until 13th December 2012. She had previously entered

the United Kingdom in 2009 on a six month visit visa and in 2011 she had applied for a student visa and that had been refused.

2. On 12th December 2012 the Appellant's instructed solicitors applied on her behalf for leave to remain on the basis of her relationship with Faikul Chowdhury and Tahsin Chowdhury, who are respectively her partner and child. That application was refused by Notice of Refusal dated 23rd May 2013.
3. The Appellant appealed and the appeal came before First-tier Tribunal Judge Devlin, sitting at Manchester on 19th February 2014. In a very detailed determination promulgated on 28th March 2014 the Appellant's appeal was dismissed on all grounds.
4. On 4th April 2014 the Appellant lodged Grounds of Appeal to the Upper Tribunal. The grounds submitted that the First-tier Tribunal Judge erred in law by:-
 - (i) failing to give adequate reasons why he did not accept that the Appellant and Mr Chowdhury were living together;
 - (ii) erred in law in finding that the Sponsor used his witness statement to deflect any suggestion he lied about his marital status when the evidence before the judge was of the Sponsor's ongoing divorce proceedings;
 - (iii) erred in law in finding that the Appellant's child is outside the UK when she is inside the UK residing with the Appellant and Sponsor;
 - (iv) that the Sponsor cannot easily care for the child if the Appellant is refused leave to remain because she is being breastfed;
 - (v) the Appellant is pregnant with her second child by the Sponsor;
 - (vi) that the Appellant was suffering from severe morning sickness at the appeal hearing and it had to be stood down for several hours to enable her to give evidence; and
 - (vii) the judge failed to take into account *Chikwamba [2008] 1 WLR 1420*, *Beoku-Betts [2008] UKHL 39* and Section 55 of the Borders, Citizenship and Immigration Act 2009 in his Article 8 assessment.
5. On 8th May 2014 First-tier Tribunal Judge Grant granted permission to appeal. Judge Grant considered that it may well be arguable that the First-tier Tribunal Judge erred in law by finding that the Appellant's child was not in the United Kingdom and accordingly erred in law in his findings in relation thereto and on that basis considered that all grounds could be argued.
6. On 22nd May 2014 the Secretary of State responded to the Grounds of Appeal under Rule 24. Those grounds oppose the appeal, stating that the

Judge of the First-tier Tribunal had considered with admirable thoroughness in a 168 paragraph determination every possible appeal ground that is alleged not to have been considered.

7. It is on that basis that the appeal comes before me. The Appellant appears by her instructed solicitor Mrs Hussein. The Secretary of State appears by her Home Office Presenting Officer Mr Harrison.
8. Mrs Hussein wishes to address the Tribunal. She advises that there has been a change of circumstances for the Appellant, in that she has had another British citizen child and that the Sponsor's divorce proceedings have now been completed. She advises that due to this change of circumstances it would be the intention of the Appellant to reapply for discretionary leave based on her relationship with the Sponsor and under Appendix FM of the Immigration Rules.
9. Mr Harrison indicates that he had no objection to the appeal being withdrawn.

Finding and Determination

10. This is an appeal to the Upper Tribunal. The procedure is governed by the Asylum and Immigration Tribunal (Procedure) Rules 2005 and this being an appeal to the Upper Tribunal it is not merely sufficient to indicate that an Appellant wishes to withdraw but that the Tribunal has to consent to it. Having heard Mrs Hussein's submissions and having heard the consent of the Secretary of State I too am prepared to agree that the Appellant has permission to withdraw this appeal.

Decision

11. On confirming to the Appellant's legal representative that permission is granted to withdraw the appeal to the Upper Tribunal the appeal is marked withdrawn and the decision of the First-tier Tribunal is maintained.
12. The First-tier Tribunal did not make an order pursuant to Rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005. No application is made to vary that order and none is made.

Signed

Date

Deputy Upper Tribunal Judge D N Harris

30th September 2014