Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/37791/2013

THE IMMIGRATION ACTS

Heard at Birmingham, Sheldon Court	**Determination Promulgated**
On 13th June 2014	**On 21st July 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

MRS ZAHIDA PARVEEN
(ANONYMITY ORDER NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Tariq Mahmood (Counsel)
For the Respondent: Mr Neville Smart (HOPO)

DETERMINATION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Rose, promulgated on 7th March 2014, following a hearing at Birmingham, Sheldon Court on 27th February 2014. In the determination, the judge dismissed the appeal of Zahida Parveen. The Appellant applied for, and

was granted, permission to appeal to the Upper Tribunal and thus the matter comes before me.

The Appellant

2. The Appellant is a citizen of Pakistan who was born on 17th February 1979. She appeals against the refusal of the Respondent Secretary of State to refuse to vary her leave to remain in the UK to be allowed to remain in this country on a permanent basis. The basis of the application is her Article 8 rights.

The Appellant's Claim

3. The basis of the Appellant's claim is that she is in a loving relationship with a Mr Suleman, with whom she is married, although he too is not a British citizen but a national of Pakistan, and that the two of them have been living together since she came to the UK, when she arrived in July 2001 as a domestic worker. The Appellant's case is also that she has a relationship with two of her sisters, a cousin, and children of one of those sisters in the UK that go to her Article 8 rights.

The Judge's Findings

4. The judge observed how the Appellant had been granted discretionary leave to remain in 2010, when she was unmarried. The judge noted the facts that the Appellant maintained that she came to the UK as a domestic worker and that her employer had simply abandoned her. She had nowhere to return to back in Pakistan. Her family had approached a firm of solicitors to make an application for leave to remain. The solicitor had assured her and the family that he would do so, and over the years they have chased the solicitor, and had been assured that the matter was in hand and that this took quite a bit of time.

5. The Appellant then only discovered that no application had been made when she was caught up in a raid at a restaurant by the Midlands Enforcement Unit in May 2008. She was detained, but was not caught working, as she had no family in Pakistan, such that she could not return there, because returning there would be a return to poverty. The judge had noted these facts (at paragraph 11).

6. However in making his findings, the judge went on to note (see specially paragraphs 14 to 16) that both the Appellant and Mr Suleman were "evasive" as witnesses, and the judge did not accept that the Appellant was not aware of Mr Suleman's immigration status if their relationship was as loving as it was claimed. The Appellant was also equivocal in saying whether or not she would return back with Mr Suleman were he to be removed. The judge did not believe the Appellant when she said she had no relatives left in Pakistan. This was inconsistent with what had been maintained before (see paragraph 19).

7. Although the judge believed that the Appellant had a relationship with her sisters and other close family members in the UK, "none of the Appellant's family members were called to give evidence at the hearing" and the judge attached "limited weight to the information provided in their letters" (paragraph 18). Following these findings, the judge went on to apply the jurisprudence on Article 8 rights, referring to the leading cases, and the two step approach that has to be adopted in such cases (see paragraphs 23 to 25) before dismissing the appeal.

Grounds of Application

8. The grounds of application state that the judge made contradictory findings in relation to paragraphs 9 and 26, and that he failed to follow the relevant case law.

9. On 15th April 2014 permission to appeal was granted. It was noted that many of the grounds are simply disagreements with the judge's reasoning and conclusions. However, given that the judge had found (at paragraph 9) that the Appellant enjoys a family life, in the context of Article 8, with two of her sisters in the United Kingdom, he should have addressed the effects upon that family, were the Appellant to be removed.

10. On 29th April 2014, a Rule 24 response was entered by the Respondent Secretary of State to the effect that the judge at paragraph 9 had recorded that there is family life between the Appellant and her sibling sisters. However, given that the judge had attached little weight to the information provided in the sister's letters (see paragraph 18) the finding of family life could not necessarily be sustained. There was no family life engaged. The judge was wrong to conclude that there was family life. But in any event the judge held that the Appellant could not meet the requirements of paragraph 276ADE and Appendix FM. Given that this was the case there were no compelling circumstances to consider a freestanding Article 8 consideration.

The Hearing

11. At the hearing before me on 13th June 2014 Mr Tariq Mahmood, appearing for the Appellant submitted that the judge had erred at paragraph 9 of the determination in finding that there was a family life between the Appellant and her siblings, and then not taking this conclusion forwards to its logical conclusion. The judge also erred in disbelieving Mr Suleman when he said that his family had disowned him because he had married an older woman. Finally, the judge erred (at paragraphs 14 to 17) in not attaching sufficient weight to the interests of the two sisters.

12. For his part, Mr Smart relied upon the Rule 24 response. He submitted that the judge may well have been right in concluding as he did at paragraph 9. He referred to the **Razgar** principles. But the main question was the impact that the Appellant's relationship had on her two sisters.

The sisters did not give evidence. The judge made his findings at paragraph 18.

13. He decided that "none of the Appellant's family members was called to give evidence at the hearing, and I attach limited weight to the information provided in their letters" (paragraph 18). He was entitled to come to this conclusion. Thereafter, there was the judge's concluding paragraph where he stated that,

> "I have given careful consideration to the evidence of both in relation to the Appellant's circumstances in the UK, including her relationship with family members here, and in relation to the circumstances in Pakistan for the Appellant and for Mr Suleman" (paragraph 26).

It was clear from this that he had left nothing out of his consideration. This was a comprehensive determination. It could not be faulted.

No Error of Law

14. I am satisfied that the making of the decision of the judge did not involve the making of an error on a point of law. This is a comprehensive and clear determination by the judge. It is well-established that the jurisdiction of the Upper Tribunal is a supervisory jurisdiction enabling the Upper Tribunal to intervene only where a case can be made for "perversity" or "irrationality" on the part of the judge below. This is a "very high hurdle" (see **R (Iran) [2005] EWCA Civ 982** at paragraph 11).

15. The judge was entitled to make findings of fact on the question whether the Appellant had family ties still remaining in Pakistan, on whether the Appellant knew of Mr Suleman's immigration status, on whether both she and Mr Suleman were "evasive" in giving their evidence. These are all matters that fall for the judge's decision at a fact finding Tribunal.

16. In the same way, however, the judge was entitled to conclude that the Appellant had a claimed relationship with her sisters and other family members as evidenced in the documentation before him (see paragraph 18). However, neither of the sisters had attended to give evidence. The judge did not reject the evidence in the documentation.

17. What the judge said was that he would "attach limited weight to the information provided in their letters" (paragraph 18). This was a finding that was entirely open to the judge. In the same way, although Mr Mahmood criticises paragraph 9 of the determination, the **Razgar** steps that the judge sets out there are meticulously applied and followed and no criticism can be made of the step by step approach taken by the judge in this regard. There is no error of law.

Decision

18. There is no material error of law in the original judge's decision. The determination shall stand.

19. No anonymity order is made.

Signed Date

Deputy Upper Tribunal Judge Juss 21st July 2014