



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

Appeal Number: IA/06109/2014

THE IMMIGRATION ACTS

Heard at Bennett House, Stoke-on-Trent

On 23rd January 2015

Determination

Promulgated

On 29th January 2015

Before

UPPER TRIBUNAL JUDGE MARTIN

Between

**MRS MARIAM AKTHER
(Anonymity Direction Not Made)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Hussain (Trent Chambers)

For the Respondent: Mr A McVeety (Senior Home Office Presenting Officer)

DETERMINATION AND REASONS

1. This is an appeal to the Upper Tribunal by the Appellant, with permission, against the determination of First-tier Tribunal Judge Parker promulgated on 18th July 2014 by which he dismissed the Appellant's appeal against the Secretary of State's decision to refuse her leave to remain. Permission was granted by an Upper Tribunal Judge on the basis that the Judge may have made an error of law in that he may have failed to take into account

the fact that the other members of the family unit had been granted Indefinite Leave to Remain and the youngest child was only 2 years of age. He had concluded that the Appellant mother could return to Bangladesh until she qualified under the Rules.

2. Judge Parker considered the appeal on the basis that the Appellant had applied for Indefinite Leave to Remain, which she could not obtain as she had failed to pass the "Life in the UK" test. However before me, on closer examination it became clear that he had considered the application on entirely the wrong basis and indeed the Secretary of State's decision was unclear and appeared to have also failed to engage with the nature of the application.
3. The Appellant had leave as the spouse of a work permit holder when she made her application to remain. Her husband had entered the UK in December 2012 on his own. His wife, the Appellant and the eldest child, now aged 7 entered as his dependants in September 2011. The youngest child was born in the UK and is a British citizen as her father now has Indefinite Leave to Remain.
4. The Appellant could not qualify for Indefinite Leave to Remain without the "Life in the UK" test but her application should have been considered on the basis that it was an application for further leave to remain as a spouse. She had passed, and submitted to the Secretary of State, a certificate that she had passed an English language test to the required level for leave to remain on that basis. That was the only issue in the case. All of the other requirements were met.
5. Mr McVeety asked for time to check the situation and then conceded that the Appellant met all of the requirements of Appendix FM for leave to remain as a partner and was thus entitled to succeed under the Rules.
6. Accordingly I find that the First-tier Tribunal Judge made an error of law in deciding the appeal on the wrong basis and in failing to consider whether the Appellant met the requirements of the Rules. He may also have erred in his consideration of Article 8 but given that the Appellant succeeds under the Rules I need not consider that.
7. The First-tier Tribunal having made a material error of law I set aside the decision and in re-deciding the appeal I allow it under the Immigration Rules.
8. The appeal to the Upper Tribunal is allowed.

Signed

Dated 27th January 2015

Upper Tribunal Judge Martin