



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

Appeal Number: IA/11833/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 23rd January 2015**

**Determination
Promulgated
On 29th January 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

**MS KASHAF KHALIQUE
(NO ANONYMITY ORDER MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Layoo, Solicitor

For the Respondent: Mr S Kandola, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Pakistan born on 22nd November 1989. The Appellant had arrived in the United Kingdom on 30th January 2011 with leave to remain until 2nd November 2011. She was subsequently granted an extension of stay until 31st January 2014, such extension being granted on 6th September 2012. The Appellant's original leave was as a Tier 4 Student and her application for further leave to remain was to enable her to complete her current course of study, fashion design at Williams College, Holborn. On 24th December 2013 the Appellant applied for

variation of her leave. Her leave previously had been discretionary to allow her to remain to complete an educational course which was due to end on 31st January.

2. On 24th February 2014 the Appellant's application for an extension of leave was refused and in refusing the application the Secretary of State gave consideration to the Appellant's family life under Article 8 which it was noted from 9th July 2012 fell under Appendix FM of the Immigration Rules.
3. The Appellant appealed and the appeal came before Judge of the First-tier Tribunal Wellesley-Cole sitting at Taylor House on 15th October 2014. In a determination promulgated on 27th October 2014 the Appellant's appeal was dismissed.
4. On 4th November 2014 Grounds of Appeal were lodged to the Upper Tribunal. On 12th December 2014 First-tier Tribunal Judge J M Holmes granted permission to appeal. Judge Holmes noted that international protection had been raised before the Immigration Judge and that it was arguable that the judge's approach to this issue was flawed. He noted that the only reference to be found to the applicable burden and standard of proof was to be found in paragraph 3 of the determination and again in paragraph 13 where the judge had directed herself to apply the balance of probabilities. Moreover the judge considered that it was not entirely clear from paragraph 12 whether the First-tier Tribunal Judge was accepting the obligation to engage with that Ground of Appeal or reject it. He considered that arguably the whole approach to this ground was flawed. In such circumstances he considered the other grounds could also be argued although the Appellant would need to clarify precisely how they are put as it was not clear from the grounds as drafted whether it was proposed to advance an irrationality challenge with the appropriate high threshold in addition to an argument that relevant evidence was overlooked.
5. On 18th December 2014 the Secretary of State responded to the Grounds of Appeal under Rule 24. Those grounds contended that it was clear when the determination was read as a whole that the judge had correctly self-directed herself on the standard of proof in the appeal against the refusal of further leave.
6. It is on that basis that the appeal comes before me to determine whether or not there is a material error of law in the decision of the First-tier Tribunal. The Appellant appears by her instructed solicitor Ms Layoo. The Secretary of State appears by her Home Office Presenting Officer Mr Kandola.

Submissions/Discussions

7. The submissions are substantially curtailed by an admission by Mr Kandola that the determination fails to make proper reference to the standard of proof and that as such the Secretary of State is prepared to accept that

the determination is unsafe. Further, he indicates that it is agreed that it is highly probable that prior to the matter coming back before the First-tier on the basis that I remit it, that there will be a claim made by the Appellant for asylum and that that would cut down considerably the evidence that is required to be heard on this issue in the First-tier. Ms Layoo indicates that she is anxious that this matter proceeds but fully understands the constraints of listing indicates that she is prepared for the matter to be remitted.

The Law

8. Areas of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial consideration, reaching irrational conclusions on fact or evaluation or to give legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.
9. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue of argument. Disagreement with an Immigration Judge's factual conclusion, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence which was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration Judge concludes that the story is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

Findings

10. Having given due consideration to this matter and considered fully the determination of the First-tier Tribunal Judge, I am prepared to accept and endorse the view that there has been a failure to engage properly by the First-tier Tribunal Judge with the correct and proper burden of proof. It may be a bland statement at paragraph 3 that the judge has failed to address the issues in this particular case. To such extent I am satisfied that there is a material error of law and I set aside the decision of the First-tier Tribunal. None of the findings of fact are to stand and I remit the matter to be heard at Taylor House on the first available date. I am advised that that date is 3rd July 2015 and an appropriate listing has been given accordingly.

Notice of Decision

The decision of the First-tier Tribunal discloses a material error of law and is set aside. None of the findings of fact are to stand. The matter is remitted for hearing on 3rd July 2015 at Taylor House before any Immigration Judge other than Immigration Judge Wellesley-Cole with an estimated length of two hours. No interpreter is required.

Leave is granted to both parties to file and serve up-to-date bundles of evidence upon which they seek to rely at least seven days pre-hearing.

The First-tier Tribunal did not make an order pursuant to Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014. No application is made to vary that order and none is made.

Signed

Date **23rd January 2015**

Deputy Upper Tribunal Judge D N Harris

TO THE RESPONDENT
FEE AWARD

No application is made for a fee award and none is made.

Signed

Date **23rd January 2015**

Deputy Upper Tribunal Judge D N Harris