IAC-AH-SC-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/21465/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 18th August 2015	**On 7th September 2015**

Before

UPPER TRIBUNAL JUDGE RENTON
UPPER TRIBUNAL JUDGE GRAY

Between

IMTIAZ BEGUM
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr T Samuel, Counsel instructed byHarrow Solicitors
For the Respondent: Ms E Savage, Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The Appellant, a female citizen of Pakistan born on 1st January 1945, entered the UK on various occasions between February 2005 and August 2013 using valid visit visas. Eventually and on 13th December 2013, the Appellant applied for indefinite leave to remain outside of the Immigration Rules. That application was refused on 1st May 2014 for the reasons given in a refusal letter of that date. At the same time, a decision was made to

remove the Appellant under the provisions of Section 10 Immigration and Asylum Act 1999. The Appellant appealed, and her appeal was heard by First-tier Tribunal Judge Baldwin (the Judge) sitting at Hatton Cross on 19th December 2014. He decided to dismiss the appeal under the Immigration Rules and on human rights grounds for the reasons given in his Decision dated 21st December 2014. The Appellant sought leave to appeal that decision, and on 23rd March 2015 such permission was granted.

Error of Law

2. We must first decide if the decision of the Judge contained an error on a point of law so that it should be set aside.

3. The Judge dismissed the appeal under paragraph 276ADE and Appendix FM of HC 395 and those decisions have not been contested in this appeal. The Judge also dismissed the appeal under Article 8 ECHR. He followed the decision given in **R (Razgar) v SSHD [2004] UKHL 27** and found that the Appellant had a family life in the UK with her adult son and his children, her grandchildren, which would be interfered with by her removal to such a degree of gravity as to engage the Appellant's Article 8 rights, but that such interference was proportionate.

4. Leave to appeal was granted on the basis that it was arguable that the Judge had given insufficient consideration to the best interests and welfare of the Appellant's four grandchildren aged between 14 and 7 years. The Appellant had been their "primary female carer for a very long time". The Judge had not referred specifically to the duty imposed by Section 55 of the Borders, Citizenship and Immigration Act 2009 to consider their best interests.

5. At the hearing, Mr Samuel referred to the terms of the grant and argued that when considering the best interest of the children, the Judge had failed to fully take into account the role of the Appellant in her grandchildren's lives, particularly as some of those children had special needs. The Appellant had been the de facto mother of her grandchildren for a lengthy period of time. The Judge did not seem to appreciate that the children's other grandmother lived in Pakistan. The mother of the children had mental health problems and was only allowed to see the children under the supervision of both the Appellant and her son. Without the contribution of the Appellant, it was likely that the children would be taken into care, or that the Appellant's son would have to give up his employment to care for them.

6. In response, Ms Savage referred to the Rule 24 reply and argued that there had been no error of law. The Judge had fully taken into account the Appellant's relationship with her grandchildren and all other relevant factors at paragraphs 19, 21, and 24 of the Decision. The Judge came to findings which were open to him and which were well-reasoned. The consideration of the best interests of the children was at least adequate,

and the other grounds relied upon by the Appellant were no more than a disagreement with the findings of the Judge.

7. We find that we are in agreement with the submissions of Ms Savage and our Decision is that there was no error of law contained in the Decision of the First-tier Tribunal which Decision is not set aside. We come to that conclusion because we are satisfied that the Judge carried out a proper consideration of the Article 8 rights of the Appellant and her family. As Ms Savage argued, the Judge came to a conclusion that was open to him on the evidence before him and which he fully explained. Leave to appeal was granted on the basis that it was arguable that the Judge had failed to treat the best interest of the Appellant's grandchildren as a primary consideration, and it is true that in the Decision the Judge did not specifically refer to Section 55 Borders, Citizenship and Immigration Act 2009. However, it is apparent from what the Judge wrote in the Decision that he was fully aware of the nature and extent of the relationship between the Appellant and her grandchildren, and also the part played by the Appellant in facilitating the children's access to their mother. However, the Judge was entitled to find that there were no compelling exceptional circumstances in this case and on that basis to dismiss the appeal on Article 8 ECHR grounds.

8. Leave was also granted on the basis that it may have been an arguable error of law for the Judge to refuse an application for an adjournment at the outset of the hearing. That issue was not pursued by Mr Samuel at the hearing, and we will not deal with it further.

Notice of Decision

9. The making of the Decision of the First-tier Tribunal did not involve the making of an error on a point of law. We do not set aside that Decision and the appeal to the Upper Tribunal is dismissed.

Anonymity

10. The First-tier Tribunal did not make an order for anonymity and we find no reason to do so.

Signed Date

Upper Tribunal Judge Renton