

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



Appeal Number:

IA/25432/2014

THE IMMIGRATION ACTS

Heard at Field House

On 14 April 2015

Determination

Promulgated

On 27 May 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE DRABU CBE

Between

**Ms H C
(ANONYMITY DIRECTION MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Sharma of Counsel instructed by Malik & Malik, Solicitors.

For the Respondent: Mr P Nath, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, a citizen of Pakistan, was granted permission to appeal to this Tribunal by Upper Tribunal Judge Goldstein against the decision of Judge Trevaskis, a Judge of the First tier Tribunal who had dismissed her appeal against the respondent's decision refusing her leave to remain as a partner under Appendix FM and Paragraph 276ADE of the Rules.
2. In granting permission to appeal Judge Goldstein noted that a First Tier Tribunal Judge had refused permission to appeal in this case. He said in his decision, "Without wishing to unduly raise the Appellant's hopes, but having considered the handwritten grounds

of this unrepresented Appellant..... In conjunction with the original Judge's determination, I am (just) persuaded that the renewed application demonstrates that the Tribunal may have made an error of law in its approach to Article 8 and proportionality, not least in light of the positive findings made by the Judge at paragraphs 32 to 36 of the determination, that rejected much of the basis upon which the Respondent refused the Appellant's application, refusing her leave to remain as a parent/partner."

3. Material facts in this application before me are not in dispute. The appellant is an unmarried mother of an infant and has sought leave to remain here as a parent to look after her baby since her removal to her country of origin is most likely to cause her grave hardship due to social and religious norms. The appellant's mother lives in the UK and the appellant claims to be dependant on her. The respondent was not satisfied that she is the mother of an infant child and that she has sole parental responsibility for the child. The respondent was also not satisfied that the child is not British and has not lived in the UK continuously for at least 7 years immediately preceding the date of the application i.e. 20 May 2014.
4. The appellant has been in the United Kingdom since 17 December 2005. She came on a student visa and has remained here since that date. She has two brothers in the United Kingdom and her mother is a British citizen present and settled here since the death of her husband. The appellant has a Masters degree and intends to study for a Ph.D. During the course of her studies she formed a relationship with a man and gave birth to their child when they were not married. The father has not been in touch once he found that she was pregnant. She did not know of his immigration status. She knows that he is a Pakistani national and his name is A S K. He had seen his son in March or May of 2014. The appellant's son was born on 12 November 2013. The appellant is dependant on her mother.
5. In determining the appeal Judge Trevaskis made a number of findings. The Judge found that the infant Suleman lives with the appellant; there is no continuing relationship between the appellant and A S K; the appellant is taking and intends to continue to take an active role in the upbringing of her child. The Judge, based on these findings concluded that the appellant meets the requirements of E-ETRPT.2.3 and LTRPT.2.4 of the Immigration Rules. The Judge again correctly concluded that because of the requirements of E-LTRPT.2.2 are not met and therefore the appellant does not qualify for leave under Appendix FM as a parent.
6. The Judge then went on to consider whether the appeal could engage Article 8 and concluded that it did for reasons set out in

Paragraph 41 of the determination. The Judge was of the view that the decision of the respondent is likely to have a significant impact on the private or family life continuing. Analysing the facts on the basis of structured approach enjoined in the decision in R (Razgar) v Secretary of State for the Home Department [2004] UKHL 27, the Judge upon a full appraisal of all the relevant facts as is evident in paragraphs 46 to 53, the Judge came to the decision that the Respondent's decision amounts to a proportionate interference with her rights under Article 8.

7. In her handwritten grounds of appeal the appellant has said that she had not intended to pursue her case as mother of a child born in the UK but as a dependant of a British citizen mother who cannot return to Pakistan due to her medical conditions, employment and length of residence in the UK. She also contends that the Judge did not engage properly with her claim that her life as an unmarried mother would be at severe risk in Pakistan.
8. I heard submissions from Mr Sharma. He said that the matter raises three issues. The first issue is that in giving insufficient consideration to the stigma caused on the appellant due to being an unmarried mother was a material error in law as was the Judge's failure to give due weight to the appellant's lack of familial connections with Pakistan. Thirdly the Judge had given no consideration to the ability of the son to obtain a passport. As the appellant was unrepresented, the Judge should have gone further in exploring all relevant facts and by so doing, the Judge had erred in law.
9. I did not see the need to call upon Mr Nath to make submissions, as I was satisfied that the Judge had made no material error of law in dismissing the appeal. The criticisms made of the Judge in the grounds of appeal are wholly unjustified and have arisen because as I suspect the appellant failed to seek proper legal advice before making her application for further leave to remain in May 2014. In my judgement the appellant's claim under the Immigration Rules as well as under Article 8 have received a very fair and full consideration. The points taken in the grounds of appeal as well as those made by Mr Sharma during the hearing have little or no merit in the context of the nature of the application that the respondent had to decide. The appellant did not present an asylum or human rights claims under Articles 2,3 and 8 and therefore the respondent was under no obligation to consider the appeals on the basis of claims not presented to her. As far as the issue of being a dependant of a British citizen mother is concerned, the Judge took all the evidence relevant to that aspect into account and given the relevant jurisprudence in that area of law, the claim had little or no chance of success based on facts which, were presented. The determination of Judge Trevaskis in this case is exemplary. I agree with the decision of Judge Simpson who in refusing to grant permission to appeal to the Upper Tribunal said, In a careful, well

reasoned and sympathetic decision the Judge correctly followed the approach recommended in MM v SSHD [2004] EWCA Civ 985 when dealing with the issue of Article 8...

- 10 As I have found no material error in the decision of Judge Trevaskis, the decision to dismiss the appeal against the respondent's decision must stand.

K Drabu CBE
Date: 18 May 2015
Deputy Judge of the Upper Tribunal.

Anonymity Direction:

On the facts of this case anonymity direction is appropriate.

Having dismissed the appeal no fee award can be made.

K Drabu CBE
Deputy Judge of the Upper Tribunal