Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/27196/2014

THE IMMIGRATION ACTS

Heard at Manchester **Decision & Reasons Promulgated**
On 25 February 2015 **On 5 May 2015**

Before

UPPER TRIBUNAL JUDGE DAWSON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT)

Appellant

and

RUBAB JAVID

Respondent

Representation:

For the Appellant: Mr M Diwnycz, Senior Presenting Officer
For the Respondent: Mr J Rashid, instructed by Southern Solicitors

DECISION and REASONS

1. A memorandum was sent to the parties following my oral decision to allow this appeal at the hearing on 25 February 2015 in the following terms.

   (a) It has been necessary for me to reconsider my decision given at the hearing to allow this appeal.

   (b) First-tier Tribunal Judge De Haney dismissed the appeals by the parents on Article 8 grounds considered under the Rules and on a second stage basis but allowed the appeal by the respondent. This

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was because he had been persuaded that the provision she relied on under paragraph 276ADE was not a subject to the qualification that was added on 12 December 2012 ... "and it would not be reasonable to expect the applicant to leave the UK".

(c) The parents unsuccessfully applied for permission to appeal to the Upper Tribunal. The Secretary of State also applied for permission to appeal in relation to the decision on the respondent. This was on the basis that the judge had erred by failing to take into account HC 820. The Statement of Changes in HC 760 inserted the following wording into paragraph 276ADE:

"201. In paragraph 276ADE(iv) (after 'discounting any period of imprisonment'), insert ', and it would not be reasonable to expect the applicant to leave the UK'".

(d) As to the transitional provisions HC 760 provided that if an applicant had made an application for entry clearance or leave before 13 December 2012 and it had not been decided, it would be decided in accordance with the Rules in force on 12 December 2012.

(e) These transitional arrangements were however amended by HC 820. The effect of that amendment was that the changes to *inter alia* paragraph 276 in HC 760 were to apply to all applications decided on or after 13 December 2012 regardless of the date the application was made.

(f) Mr Rashid explained in the course of review at the outset of the hearing that were the decision to be remade, the claimant would succeed under a different provision of paragraph 276ADE(v):

"Is aged 18 years or above and under 25 years and has spent at least half of his life living continuously in the UK (discounting any period of imprisonment); ..."

This category does not carry with it any reasonableness or ties test. Accordingly he conceded that the judge had made a material error and that there was in force a reasonableness requirement applicable to the category under 276ADE when considered in the decision.

(g) Reporting on a discussion he had had with Mr Diwnycz, it was accepted that the respondent had entered the United Kingdom on 6 March 2005 which indicated that she had to date spent nine years eight months and four days in Pakistan and nine years eleven months and seventeen days in the UK. He invited me to set aside the decision and remake it on the basis of allowing the appeal.

(h) Mr Diwnycz was content to leave matters in my hands.

(i) I announced that I set aside the decision insofar as it related to the respondent and I allowed the appeal.

(j) I have reflected on what I have heard. Whilst it is correct that the claimant has now been here for a sufficient period of time to qualify under paragraph 276ADE(v), the rule requires that *at the date of application* she came within one of the six categories. I am therefore unable to allow the appeal under the Immigration Rules.

(k) Although Mr Rashid indicated that he no longer wished to rely on Article 8 grounds, I consider it entirely proper in these circumstances for him to now do so.

(l) It was evident at the hearing that Mr Diwnycz did not challenge the assertion by Mr Rashid that the respondent is now able to meet the requirements of the rule. Of course he is not in a position to concede compliance where it is simply not possible on a proper construction of the rule. Nevertheless the ability of her to meet the requirements of the Rules were she now to reapply is a compelling factor under Article 8.

(m) Accordingly unless within ten working days from the date of the sending out of this memorandum I receive a proposal from either party objecting to this course, I will allow the appeal on Article 8 grounds.

2. There has been no response from either party. I set aside the decision of the FtT and allow the appeal on article 8 grounds.

Signed Date 1 May 2015

Upper Tribunal Judge Dawson