



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/38339/2014**

THE IMMIGRATION ACTS

**Heard at Manchester Piccadilly
On 5 June 2015**

**Determination Promulgated
On 15 June 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE BIRRELL

Between

**FARHANA BIBI
(ANONYMITY DIRECTION NOT MADE)**

Appellants

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms K Smith Counsel instructed by Maya Solicitors
For the Respondent: Mr G Harrison Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.
2. The Appellant is all national of Pakistan born on 2 June 1972 and there were three dependents in that appeal her children born on 26 May 2001, 16 September 2005 and 5 August 2008 respectively.. The Appellant appealed against the decision of the Secretary of State dated 10

September 2014 to refuse to grant an application for an extension of stay as the spouse of a person present and settled in the United Kingdom under paragraph 284 and under Appendix FM and paragraph 276ADE and also found no exceptional circumstances to warrant a grant of leave outside the Rules under Article 8 and to remove her from the United Kingdom. First-tier Tribunal Judge Holt dismissed the appeal under the Rules and the Appellant now appeals with permission to this Tribunal.

3. The background to this appeal is that the Appellant entered the United Kingdom on 7 June 2012 accompanied by her three children as the spouse of Mohammad Arshad. The Appellant had limited leave to remain until 11 August 2014 . In an application dated 14 July 2014 the Appellant applied to extend her leave. The refusal was on the basis set out above.
4. The First-tier Tribunal Judge heard oral evidence from the Appellant and her husband. The Judge concluded that given the fact that the Appellant had not , she accepted , achieved the required level of English she could not meet the requirements of the Rules. The Judge acknowledged therefore that the case fell to be decided under Article 8 considerations. The Judge was aware that there were 3 dependent children (paragraph 14) but other than that reference and a brief one at paragraph 22 there is no reference to the children or their best interests or indeed to the fact that there had been no reference to this in the refusal letter.
5. At the hearing before me Mr Harrison and Ms Smith were both in agreement and submitted to me that the Refusal Letter and the decision were inadequate in that they did not address the best interests of the children. Ms Smith relied on the decisions of JO and Others (section 55 duty) Nigeria [2014] UKUT 00517 (IAC) MK (section 55 - Tribunal options) Sierra Leone [2015] UKUT 223 (IAC) and suggested that the appropriate remedy in the circumstances was to remit the case to the Respondent for them to remake the decision.

Error of Law

6. The grounds of appeal to the Upper tribunal content that the First-tier Tribunal Judge erred in failing to give consideration to s 55 of the Borders, Citizenship and Immigration Act 2009 in respect of the 3 minor children.
7. Ms Smith relied on JO. I particularly note what was said at paragraphs 11 and 12:

“11. I consider that, properly analysed, there are two guiding principles, each rooted in duty. The first is that the decision maker must be properly informed. The second is that, thus equipped, the decision maker must conduct a careful examination of all relevant information and factors. These principles have a simple logical attraction, since it is difficult to conceive how a decision maker could properly have regard to the need to safeguard and promote the welfare of the child or children concerned otherwise. Furthermore, they reflect long recognised standards of public law. Being adequately informed and conducting a scrupulous analysis are elementary prerequisites to the inter-related tasks of identifying the child's best

interests and then balancing them with other material considerations. This balancing exercise is the central feature of cases of the present type. It cannot realistically or sensibly be undertaken unless and until the scales are properly prepared.

12. The second of the duties imposed by section 55 is, per subsection (3), to have regard to the statutory guidance promulgated by the Secretary of State. In considering whether this discrete duty has been discharged in any given case, it will be necessary for the appellate or reviewing Court or Tribunal to take cognisance of the relevant guidance emanating from the same subsection, juxtaposing this with the representations and information provided by the person or persons concerned and the ensuing decision. The guidance is an instrument of statutory authority to which the decision maker "must" have regard: there is no element of choice or discretion. The guidance was duly published in November 2009. It is entitled "Every Child Matters: Change for Children". Notably, at paragraph 2.7 it contains a series of "principles" which are rehearsed in the context of a statement that UKBA (the United Kingdom Borders Agency, the Secretary of State's agents) "must .. act according to ." same." "

8. The failure of the First-tier Tribunal to address and determine whether the Respondent had been properly informed and carried out a careful examination of all relevant information and factors and thus carried out their statutory duty and thereafter herself failing to carry out any assessment of the children's best interests constitutes a clear error of law. This error I consider to be material since had the Tribunal conducted this exercise the outcome could have been different. I therefore set the decision aside.

Remaking the decision

9. I have considered the guidance given in JO and MK and the submissions of the parties and I find that the appropriate remedy is to remit the decision to the Respondent to be remade.

Decision

10. **There was an error on a point of law in the decision of the First-tier Tribunal with regard to Article 8 and the best interests of the children such that the decision is set aside**
11. **I remake the decision.**
12. **As the Secretary of State's decision was not in accordance with the law, for the reasons given above, I allow the appeal to the extent that it is incumbent on the Respondent to remake the decision.**

Signed

Date 12.6.2015

Deputy Upper Tribunal Judge Birrell