



**Upper Tribunal
(Immigration and Asylum Chamber)**
OA/16745/2013

Appeal Number

THE IMMIGRATION ACTS

**Heard at Field House
On 25th September 2015**

**Decision and Reasons Promulgated
On 16th October 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE PARKES

Between

**NOOR IFFAT
(ANONYMITY DIRECTION NOT MADE)**

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr G Davison (Counsel, instructed by Adam Bernard Solicitors)

For the Respondent: Mr S Whitwell (Home Office Presenting Officer)

DETERMINATION AND REASONS

1. The Appellant's application to enter the UK as the dependent child of her mother was refused. Her appeal was heard by First-tier Tribunal Judge Cohen at Taylor House on the 14th of October 2014 and dismissed in a decision promulgated on the 27th of October 2014. The initial application to the First-tier Tribunal for permission to appeal to the Upper Tribunal was refused but the renewed application to the Upper Tribunal was granted.
2. The reasons for dismissing the appeal are set out at paragraphs 14 to 24 of the decision. The Judge did not accept that the Sponsor had had sole responsibility for the Appellant against the history given the delay in making the application suggested she did not have sole responsibility. The Judge did not accept that there was no contact with her ex-husband. There were discrepancies in the address for the Appellant. It was said that there was no evidence of financial support for the Appellant and there were other discrepancies that were not set out. The Judge found that the Appellant's father shared responsibility for her.

3. The grounds complain that the Judge did not have regard to the statement of the Appellant's father, the evidence that her mother stayed with her most of the time in Pakistan, in paragraph 24 article 8 was considered on the basis that the Appellant was an adult but was 16 when she applied, the Judge did not look at the case from the child's point of view and did not consider her best interests.
4. Permission was granted by Upper Tribunal Judge Lindsley. It was observed that the grounds were easy to understand. It was arguable that the Judge had not properly considered the contents of the Appellant's father's affidavit, had not considered the time that the Appellant and her mother had spent together, nor the evidence of her uncle and was wrong in stating that there had been no financial support when the Appellant's step-father appeared to have paid her school fees. There was also arguably an error in respect of article 8 as that should have been considered at the date of the decision when the Appellant was under 18. The lack of chronology and the delay in making the application were legitimate matters for consideration.
5. The parties made submissions in line with their respective positions and these are set out in the Record of Proceedings. The decision itself contains a number of typing errors which themselves do not inspire confidence. For example in paragraph 6 this line appears "The sponsor was asked if her husband was reluctant to apply for the appellant to come to the UK in 2007 what changed into thousand 13 [sic] and she responded that now. [sic] The appellant is grown up and she says that she doesn't want to live alone..." At paragraph 9 "There were no questions arising from mine, [sic] and I then heard all [sic] evidence from the appellant's step father..."
6. It is the responsibility of the Judge to check the decision for such errors before it is approved for promulgation and whilst there is a tendency to read what you expect to see the errors set out above are to be avoided. Those errors do not themselves amount to an error of law but raise concerns about the care taken in the approach to the case.
7. The judge was clearly in error in approaching the article 8 aspect of the case in paragraph 24 on the basis that the Appellant and Sponsor are both adults. In out of country appeals all matters, including article 8, are considered with regard to the position at the date of the decision. In this appeal that was on the 2nd of September 2013 when the Appellant had not long turned 17. If it is correct that the Appellant does not succeed under the Immigration Rules then she will be struggling under article 8 outside the rules but is still entitled to a proper consideration of the issue.
8. Clearly the Judge was entitled to consider the issues of delay in making the application and to express a degree of scepticism with regard to the evidence from the Appellant's father. However, the Judge confined the remarks to how the statement was obtained and the level of contact that was maintained. There was no analysis of the contents of what he had said or that of the Appellant's uncle either and this was evidence that went directly to the issue of sole responsibility.
9. The Judge also erred in the evidence relating to financial support. The Judge may have been entitled to reject the evidence of school fees being paid but if that were the case then that finding should have been made explicitly and reasons given for rejecting the evidence. The bald statement in paragraph 16 that there was no evidence of financial support from the Appellant's step father was insufficient given the evidence that the Judge had recorded.
10. Whilst it is not necessary for each and every discrepancy in the evidence to be set out given the concerns set out above the Judge's observations in paragraph 19 do not help the understanding of the case.
11. In the circumstances I am satisfied that the Judge's reasons in relation to the decision under the Immigration Rules are inadequate and amount to a material error of law such that the decision

cannot be sustained. This is compounded by the errors in relation to the approach taken to article 8 outside the rules.

12. I am satisfied that the decision cannot stand and that the appropriate course of action is to set the decision aside and to remit the appeal to the First-tier Tribunal for rehearing on all matters with no findings preserved. Directions are given separately.

CONCLUSIONS

The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.

I set aside the decision.

The appeal is remitted to the First-tier Tribunal for hearing on all issues.

Anonymity

The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and I make no order.

Fee Award

The decision on a fee order is reserved to the First-tier Tribunal and is dependent on the outcome of the appeal in that Tribunal.

Signed:

Deputy Judge of the Upper Tribunal Parkes (IAC)

Dated: 14th October 2015