



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

Appeal Number: OA/20913/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 23 January 2015**

**Determination Promulgated
On 3 February 2015**

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL DRABU CBE

Between

MRS SHABABA BEEVI SYED IBRAHIM

Appellant

and

THE ENTRY CLEARANCE OFFICER, CHENNAI

Respondent

Representation

For the Appellant: No appearance.

For the Respondent: Mr S Walker, Senior Presenting Officer.

DETERMINATION AND REASONS

1. The appellant is a national of India and date of birth is 29th of July 1989. The respondent refused her an entry clearance as a point based spouse. Judge Carroll heard the appeal at Taylor House on 2 October 2014. Mr Solomon of Counsel represented the appellant and the respondent was not represented at the hearing. In a determination promulgated on 16 October 2014. The Judge dismissed the appeal and gave reasons for doing so.
2. The appellant sought and was granted permission to appeal to Upper Tribunal by Judge Robertson, a Judge of the First-tier Tribunal. Grounds seeking permission to appeal to the Upper Tribunal are dated 14

November and are drafted by the Counsel who represented the appellant before Judge Carroll.

3. However at the hearing before me no one appeared for the appellant. After being satisfied that the appellant had been duly served with notice of hearing and had not provided any explanation for non-appearance, I agreed with Mr Walker that there was no good reason for not proceeding with the appeal.
4. In his customary fairness Mr Walker conceded that the determination of Judge Carroll was in material error of law and that error could only be remedied by re-making the decision against which the appellant had brought her appeal. Mr Walker agreed that the outcome of my consideration would be to allow the appeal as at the time when the appellant was refused entry clearance her husband, who she wished to join, had valid leave to remain in the UK as a Tier 1 Migrant until Many 2016.
5. Unfortunately Judge Carroll's decision to dismiss the appeal was based on facts and considerations which had no relevance to the law as it applied to the case. As Judge Robertson has said in his decision granting permission to appeal to the Upper Tribunal, "The Sponsor had leave, which is valid until curtailed by the Secretary of State. If the ECO was concerned about the validity of the Sponsor's leave, it was open to him to defer the decision and refer the matter to the Respondent for proper investigations to be undertaken." I agree. It was not for the Entry Clearance Officer or Judge Carroll to go behind the Sponsor's Residence permit, which established that, he had valid leave as a Tier 1 Migrant.Paragraph319C (b) (i)(ii) simply requires it to be established that the relevant PBS migrant has valid leave
6. The appeal is therefore allowed under Immigration Rules.

K Drabu CBE
Deputy Judge of the Upper Tribunal.
2 February 2015

DIRECTIONS REGARDING ANONYMITY NOT MADE.

ORDER ON FEES:

The appeal having been allowed and it having been found that the impugned decision was fundamentally flawed, I direct that the fees paid be refunded to the appellant in full.

K Drabu CBE
Deputy Judge of the Upper Tribunal