



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

Appeal number: IA/04911/2015

THE IMMIGRATION ACTS

**Heard at Field House
On February 17, 2016**

**Decision & Reasons Promulgated
On February 23, 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

**MRS SURINDER KAUR
(NO ANONYMITY DIRECTION)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

Appellant

Mr Bellara, Counsel, instructed by S & S Immigration Law

Respondent

Mr Tarlow (Home Office Presenting Officer)

DECISION AND REASONS

1. The Appellant is a citizen of India. The appellant entered the United Kingdom as a visitor in 2009, following a successful appeal to the Tribunal on January 5, 2009. She overstayed and was served with form IS 151A on October 6, 2009. She thereafter applied for asylum but her claim was certified as unfounded on October 27, 2009. She renewed her application but this was refused, with no right of appeal, on December 15, 2009. On April 28, 2012 she applied for leave to remain outside of the Immigration Rules but this was refused on June 26, 2013 with no right of appeal.

2. On October 27, 2014 supplemented by further representations on January 7, 2015 she applied for leave to remain under outside of the Rules on article 3 and 8 grounds. The respondent considered her application under the Immigration Rules and outside of the Rules and on January 21, 2015 refused her application.
3. The appellant appealed this decision on February 5, 2015 under section 82(1) of the Nationality, Immigration and Asylum Act 2002.
4. The appeal came before Judge of the First-tier Tribunal Telford on May 28, 2015 and in a decision promulgated on July 3, 2015 he refused the appeal under the Immigration Rules and articles 3 and 8 ECHR.
5. The appellant lodged grounds of appeal on July 17, 2015 submitting the First-tier Judge had erred in failing to have regard to the best interests of the appellant's nephew. Designated Judge of the First-tier Tribunal Zucker refused permission to appeal on October 6, 2015.
6. Permission to appeal was renewed to the Upper Tribunal on October 23, 2015 arguing the decision was not in accordance with law. Upper Tribunal Judge Frances gave permission to appeal on the basis it was arguable Judge of the First-tier Tribunal Telford had not considered the best interests of the child sufficiently.
7. In a Rule 24 letter dated December 15, 2015 the respondent opposed the appeal. She argued the First-tier Judge had considered the evidence submitted and had made adequate findings.
8. The matter came before me on the above date and I heard submissions from both representatives. The appellant and her family were in attendance.
9. The First-tier Tribunal did not make an anonymity direction and pursuant to Rule 14 of The Tribunal Procedure (Upper Tribunal) Rules 2008 I make no order now.
10. At the outset of the hearing I indicated to Mr Bellara that the renewed ground of appeal alleging the decision was not in accordance with the law could only be argued if he could demonstrate the appellant had raised this in her original application. After a short adjournment Mr Bellara accepted this had not been raised. Case law is clear that if the respondent is unaware of a Section 55 issue when making a decision then the appellant could not later argue the decision was not in accordance with the law. The Judge would have power to deal with the issue at the hearing.

SUBMISSIONS

11. Mr Bellara submitted that the Judge had erred in dealing with the section 55 issue. He should have either adjourned the case for more information, remitted it back to the Secretary of State or carried out his own fact finding during the hearing. He argued the Judge had chosen the latter option but had failed to have full regard to the witness evidence contained in the witness statements of the appellant, Avtar Singh or Mrs Dass. Whilst counsel could have applied for an adjournment, and did not, the Judge

should have been aware of the changing landscape and sought more information. He submitted the decision was flawed.

12. Mr Tarlow relied on the Rule 24 response dated December 15, 2015. He submitted the Judge had had regard to the report at pages 13 and 14 of the appellant's bundle and then reached findings why it was not in the child's best interest that the appellant remain. There was no material error.

DISCUSSION AND FINDINGS

13. I raised with Mr Bellara the fact the evidence submitted was of a poor nature. There were no reports relating to the child and the Judge had to deal with the evidence presented. I also pointed out that Counsel who represented the appellant could have applied for an adjournment if further evidence was needed but chose not to. Mr Bellara did not disagree with either of these points.
14. The appellant applied to remain based on her own medical condition and circumstances. The appellant did not raise her nephew and the effect of removal on her nephew at all in either the application or the grounds of appeal.
15. The statements touched on the relationship but the Judge was placed in the position of having been given a medical report that did not portray the appellant in a favourable light when it came to suitability for contact. There was nothing before the Judge that supported any argument that her remaining in the country would be in the child's best interests.
16. This was an appeal where there was little or no evidence to support the argument now being advanced.
17. I indicated to Mr Bellara that based on the evidence before the First-tier Judge I was not persuaded there was an error in law. It may well be that if further evidence had been produced to the Judge that addressed the child's best interests then the position would have been different.
18. There was no material error of law. The First-tier Judge had reached findings open to him and could not be faulted for the sensitive way he had dealt with this difficult case.

DECISION

19. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law. I uphold the First-tier decision.

Signed:

Dated:



Deputy Upper Tribunal Judge Alis

FEE AWARD

I make no fee award as I have dismissed the appeal.

Signed:

Dated:

A handwritten signature in black ink, appearing to read "SPAL" with a flourish underneath.

Deputy Upper Tribunal Judge Alis