IAC-AH-CJ-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/08955/2014

THE IMMIGRATION ACTS

Heard at Bradford	**Decision & Reasons Promulgated**
On 1 February 2016	**On 12 April 2016**

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

SHAHNAZ TANVEER
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Mrs R Pettersen, Senior Home Office Presenting Officer
For the Respondent: Mr Ahmed, Equity Law Chambers Solicitors

DECISION AND REASONS

1. The respondent Shahnaz Tanveer, was born on 5 February 1973 and is a female citizen of Pakistan. She entered the United Kingdom as a visitor on 13 June 2013. On 12 December 2013 she applied for further leave to remain. On 29 January 2014, her application was refused and the respondent appealed to the First-tier Tribunal (the late Judge Upson)

which, in a determination promulgated on 17 June 2014 dismissed the appeal under the Immigration Rules but allowed it on Article 8 ECHR grounds. The Secretary of State now appeals, with permission, to the Upper Tribunal. I shall hereafter refer to the appellant as the respondent and the respondent as the appellant (as they appeared respectively before the First-tier Tribunal).

2. I find that the appeal succeeds and that the decision of the First-tier Tribunal should be set aside. I have reached that decision for the following reasons. Judge Upson worked his way through the relevant Immigration Rules and found that the appellant could not meet their requirements [31]. *Inter alia*, the judge was not satisfied that the appellant could accommodate and maintain herself without recourse to public funds [19]. The appellant had entered as a visitor and could not avail herself of the provisions of EX1. She did not have sole responsibility for her two children who are British citizens [16]. Having dismissed the appeal under the Immigration Rules, the judge went on to consider Article 8. At [23], he stated that,

> In this case the appellant is the mother of two young children who are British citizens. In that respect I also have had regard to Section 55 of the Borders, Citizenship and Immigration Act 2009. I am satisfied the best interests of the children have to take some prominence in this case *[sic].*

Then, somewhat puzzlingly, the judge wrote,

> I find therefore [the children's] existence provides arguably good grounds for granting leave to remain outside the Rules. Additionally, I am satisfied that their presence in the UK in the circumstances of this case amounts to a compelling circumstance not sufficiently recognised under the Rules.

3. It would appear that the first part of the passage which I have quoted above relates to the judge's application of *Gulshan (Article 8-new rules-correct approach) [2013] UKUT 640 (IAC)* , an authority to which he had referred at [22]. However, the existence of the children fell to be considered under the Immigration Rules as did their "presence in the UK", the very circumstance which the judge identifies as "not sufficiently recognised under the Rules". It is not clear what he means by that statement. Indeed, the existence of the children in the United Kingdom had been a circumstance recognised under the Immigration Rules as the judge himself acknowledged in his earlier analysis. He does not explain why he considers that their presence was "not sufficiently recognised". The obvious implication is that the judge believed that he was dealing with a "near miss" case which failed to satisfy the Immigration Rules but, which he believed for reasons which are unclear, should be allowed under Article 8. At [29], the judge simply observes that the interference with the lives of the children would be disproportionate. He writes that, "I am satisfied that the best interests of the children dictates that the appellant remains a constant and regular feature of their lives". Again, the judge gives no proper reasoning to support that statement.

4. Having regard to these observations, I find that the judge has erred in law such that this determination falls to be set aside. There may need to be a further updating fact-finding and for that reason, I return the appeal to the First-tier Tribunal for that Tribunal to remake the decision following a hearing.

Notice of Decision

The decision of the First-tier Tribunal which was promulgated on 17 June 2014 is set aside. None of the findings of fact shall stand. The appeal is returned to the First-tier Tribunal for that Tribunal to remake the decision.

No anonymity direction is made.

Signed Date 20 March 2016

Upper Tribunal Judge Clive Lane