



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

Appeal number: IA/10940/2015

THE IMMIGRATION ACTS

**Heard at Manchester
On February 16, 2016**

**Decision and Reasons
Promulgated
On February 24, 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

**MRS DUR-E-SAMEEN
(NO ANONYMITY DIRECTION)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

Appellant

Mr Brown, Counsel, instructed by Arshed & Co

Respondent

Ms Johnstone (Home Office Presenting Officer)

DECISION AND REASONS

1. The Appellant is a citizen of Pakistan. The appellant last entered the United Kingdom as a visitor on May 4, 2014 with six months leave that expired on October 10, 2014. On October 2, 2014 she applied for leave to remain under Paragraph 276ADE and Appendix FM of the Immigration Rules on the basis of her private and family life in the United Kingdom. The respondent considered her application and on March 6, 2015 refused her application.

2. The appellant appealed this decision on March 18, 2015 under section 82(1) of the Nationality, Immigration and Asylum Act 2002.
3. The appeal came before Judge of the First-tier Tribunal Holmes on July 30, 2015 and in a decision promulgated on August 27, 2015 he refused the appeal under the Immigration Rules and article 8 ECHR.
4. The appellant lodged grounds of appeal on September 8, 2015 submitting the First-tier Judge had approached the appellant's case unfairly and his findings infected his assessment of the appellant's claims under paragraph 276ADE, Appendix FM and article 8 ECHR.
5. Judge of the First-tier Tribunal Shimmin gave permission to appeal on basis the Judge's approach to the failure to seek an explanation on matters important to him amounted to a material error. He accepted that may have then impacted on his approach to paragraph 276ADE, Appendix FM and article 8 ECHR.
6. In a Rule 24 letter dated January 6, 2016 the respondent opposed the appeal. She argued the First-tier Judge had considered the evidence about the family in Pakistan but had rejected their claims and given reasons.
7. The matter came before me on the above date and I heard submissions from both representatives. The appellant and her witnesses were in attendance.
8. 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.

SUBMISSIONS

9. Mr Brown submitted this was a case where the appellant's circumstances in Pakistan was crucial. The First-tier Judge recognised this as he referred to the lack of evidence from witnesses living in Pakistan. The First-tier Judge did not seek any explanation from the witnesses about the availability of accommodation for the appellant and his failure to do this undermined his findings on both private and family life. He referred me to the grounds of appeal and invited me to find an error in.
10. Ms Johnston adopted the rule 24 response dated November 12, 2015. She submitted that whilst the First-tier Judge may not have considered all of the evidence nevertheless the Judge's findings at paragraphs 16, 17 and 23 demonstrated he had engaged with the evidence and the decision was open to him.
11. Mr Brown reminded me that the public are entitled to see justice dispensed fairly and if the hearing was tinged with any perceived unfairness then the decision should be set aside. The Judge formulated his conclusions based on the fact he had no regard to the circumstances in

Pakistan because of the lack of evidence from witnesses living in Pakistan even though the respondent would have argued they were self-serving.

DISCUSSION AND FINDINGS

12. Permission to appeal was given because Judge of the First-tier Tribunal Shimmin found it arguable the First-tier Judge erred by attaching too much weight to the lack of statements from family members.
13. This was a detailed decision in which it is clear the First-tier Judge engaged with the appellant's unfortunate circumstances. Paragraph [15] of the First-tier Judge's decision appears on the face of it to amount to nothing more than a statement of fact. However, Mr Brown has submitted there was procedural unfairness because the First-tier Judge should have raised why there were no statements on the file from these witnesses.
14. In assessing this argument, it is necessary to have regard to the First-tier Judge's whole decision. The First-tier Judge noted that Mr Siddiq repeatedly asserted the appellant was alone and had nobody to care for or assist her. Part of his evidence the First-tier Judge recorded was supported by two other family UK based family members.
15. The First-tier Judge considered all of the evidence and found that the witnesses had each failed to disclose that she had close family in Pakistan. The First-tier Judge placed considerable weight on evidence elicited in cross-examination that the appellant had been spending a substantial proportion of her time with her father and sister at their home address. Paragraph [15] of the decision has to be considered against the background of this evidence in the sense that these witnesses had not provided any evidence to explain circumstances in Pakistan. If the First-tier Judge had simply found, without any evidence to support his finding, that the appellant could stay with her father and/or her sister then that could have been open to challenge but those were not the circumstances facing the First-tier Judge as he was satisfied there were close family members who had demonstrated a willingness to care for the appellant. Full details of this relevant evidence was recorded in paragraph [17] of the First-tier Judge's decision.
16. At paragraph [18] the First-tier Judge examined the evidence further and concluded the witness statements were misleading having regard to the oral evidence he heard. He found, contrary to what was been advanced by her family, that she would have both practical and emotional support available in Pakistan.
17. Ms Johnstone argued before me that in light of this finding the appellant could not succeed because she was unable to demonstrate very significant obstacles or meet the dependant relative provisions.

18. Mr Brown's criticism of the decision was that the First-tier Judge should have asked the witnesses why the family in Pakistan had not offered any views on the matter but whether the evidence would be viewed as self-serving is a matter of conjecture.
19. The refusal letter made it clear that the respondent felt she could return to Pakistan. The First-tier Judge did not accept the oral evidence given and concluded the evidence was not reliable.
20. The appellant bears the burden of proving her case and bearing in mind the alternative to the appellant continuing to live here was for her return I am satisfied the First-tier Judge was entitled to make findings as he did. It is not unusual for appeal files to include statements from family members and it was the absence of such statements together with the unsatisfactory nature, in the First-tier Judge's opinion, of the witnesses' evidence that led the First-tier Judge to refuse this appeal.
21. Mr Brown's submissions on the remaining grounds of appeal were tied into the unfairness issue and I see no error in the First-tier Judge's approach to the evidence.
22. Mr Brown indicated that there may have been reasons for there being no evidence from family members but I am satisfied that is something the witnesses should have covered if they had wanted the First-tier Judge to know about it. As stated above the First-tier Judge was unimpressed with the evidence he heard and was satisfied there were close family members because of what he had been told.
23. I find there has been no error in law.

DECISION

24. 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 "SPALIS". The signature is written in a cursive style with a long horizontal stroke at the end.

Deputy Upper Tribunal Judge Alis