



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

Appeal Number: HU002822016

**THE IMMIGRATION ACTS**

**Heard at Field House**

**Oral decision given following hearing  
On 18 July 2017**

**Decision & Reasons  
Promulgated  
On 31 July 2017**

**Before**

**UPPER TRIBUNAL JUDGE CRAIG**

**Between**

**YEN [P]  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms C Record, Chambers of Celia Record  
For the Respondent: Mr P Armstrong, Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant in this case is a national of Vietnam who came to this country in 2004 in the back of a lorry. She claimed asylum which claim was refused but she remained as an overstayer. In October 2011 she met [A] and they subsequently married in May 2014. It is accepted on behalf of the respondent that this is a genuine relationship and she also assists

[A] in providing substantial help to her father-in-law who has been suffering from schizophrenia and anxiety and depression for many years. It is the appellant's case that she has been assisting in the care of her father-in-law since before her mother-in-law died. The appellant applied for leave to remain on the basis of her family life in this country but this application was refused on 11 December 2015. The respondent accepted that the appellant met the suitability and eligibility requirements of Appendix FM and the relationship was genuine and subsisting. However, she found that paragraph EX.1 did not apply because there were "no insurmountable obstacles" to family life continuing in Vietnam. She also found there were no exceptional circumstances justifying the grant of leave outside the Rules.

2. The appellant appealed against this decision and her appeal was heard before First-tier Tribunal Judge Broe sitting at Birmingham on 28 September 2016. In a very short Decision and Reasons promulgated on 13 October 2016 Judge Broe dismissed her appeal. The appellant now appeals to the Upper Tribunal permission having been granted by Upper Tribunal Judge Kamara on 26 May 2017. The reasons given by Judge Kamara for granting permission are set out as follows:

"...2. The facts are not in dispute. Briefly, the appellant's father in law suffers from schizophrenia and depression and required regular help from the appellant's husband as well as from the appellant. It is argued that these are compelling circumstances and that the removal of the appellant in these circumstances would be unjustifiably harsh.

3. It is arguable that the judge's Article 8 findings, both within and outside the Rules were inadequate."

3. On behalf of the appellant in her commendably succinct but nonetheless persuasive submissions Ms Record referred the Tribunal to the fact that the findings, which begin at paragraph 16, fail to engage with the evidence which had been before the judge as to the effect of the removal of the appellant on the family life of this family which includes the father-in-law. At paragraph 17 the judge had accepted that family life was established and stated that "I accept that they will find a period of separation upsetting and that the burden of caring for her father-in-law will fall more heavily on [A] until she returns" but nonetheless found or considered that "the appellant will be in the same position as any other applicant seeking leave to join the spouse in this country". What the judge did not seem to take into account (in Ms Record's submission) was the effect on the father-in-law and he did not even take note of the fact that she had cared for him for a long time even while his wife was alive. Also, there was no reference to the report from the independent social services on this family and the evidence that if the son-in-law was not able to maintain the care he was providing, which he did with the assistance of his wife, there was a very real risk that the appellant's father-in-law would lose his home and be required to go into long-term care.

4. On behalf of the respondent Mr Armstrong very fairly accepted (as is apparent) that the judge did not go into any detail concerning the facts in this case and that it would appear that he had not given anxious scrutiny to the reports which had been made.

### **My Findings**

5. In my judgment, on the facts of this case Judge Broe's consideration was wholly inadequate. While it may be that a judge could find that removal is proportionate given the long period in which this appellant had been in the country unlawfully and that she had made some three previous applications which had all been unsuccessful, nonetheless it cannot be said that it was not at least arguable that the circumstances in this case are compelling. On the facts of this case it is at least arguable in my judgment that there are "insurmountable obstacles" (that is that there would be very significant obstacles) to Mr Armstrong relocating to Vietnam and it is also arguable that it would be very harsh indeed on the father-in-law if the appellant was required to return to Vietnam in order to make an application from that country to be allowed to re-join her husband. It is not appropriate on the facts of this case for this argument just to be dismissed on the basis that there is "no need for consideration of the appellant's Article 8 rights outside the Rules". As I have said, such an application may or may not succeed, but it is sufficiently arguable that it needed to be considered.
6. In these circumstances it follows that the judge's failure either to consider whether there would be "insurmountable obstacles" preventing Mr Armstrong relocating to Vietnam with his wife or to give any or any adequate reasons within his decision as to why the appellant's case did not fall to be considered outside the Rules is a material error of law and that the decision will now have to be remade.
7. It was agreed on behalf of both parties that the appropriate course in these circumstances is for this appeal be remitted back to Birmingham (where the appellant and her husband and father-in-law live) so that it can be considered afresh in the First-tier Tribunal by any judge other than Judge Broe and I will so order.

### **Decision**

**I set aside the decision of First-tier Tribunal Judge Broe as containing a material error of law and remit this appeal back to the First-tier Tribunal sitting at Birmingham for the decision to be remade by any First-tier Tribunal Judge other than Judge Broe.**

Signed:

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A handwritten signature in black ink on a light blue background. The signature reads "Ken Craig" in a cursive style. The "K" is large and loops back, and the "C" in "Craig" is also large and loops back.

Upper Tribunal Judge Craig

Date: 25 July 2017