



**Upper Tribunal
(Immigration and Asylum Chamber)
HU/06688/2015**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

On 26th May 2017

**Decision & Reasons
Promulgated
On 19th June 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE ZUCKER

Between

**MRS SHAKILA ELIYAS KHAN
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A Vatish of Counsel, Westbrook Law
For the Respondent: Mr P Duffy, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of India whose date of birth is recorded as 11th April 1985. On 29th April 2015 she made application for leave to remain in the United Kingdom as a spouse. On 9th September 2015 a decision was made to refuse the application. The Appellant appealed. Her appeal was heard in the First-tier Tribunal by Judge Bartlett sitting at Taylor House on 19th October 2016. Judge Bartlett made a number of significant findings, not least of which were that the Immigration Rules were not met because the English language requirement was not satisfied. Exceptions within the

rules were looked at but the judge made specific findings that there were no insurmountable obstacles to the Appellant's return.

2. The judge went on to consider the appeal, having regard to the wider application of Article 8 and appears to have allowed the appeal only on the basis that there had been an earlier appeal made out of country in which the Appellant was successful and allowed to enter the United Kingdom. Based therefore, it would appear, upon the fact that the Appellant was now present with her spouse, the judge allowed the appeal.
3. Not content with that decision by Notice dated 17th November 2016 the Secretary of State made application for permission to appeal to the Upper Tribunal. This was granted by Judge Pooler on 12th April 2017.
4. The appeal before me focused on the English language requirement and whether or not it was open to the judge, without more, to allow the appeal in the First-tier simply because the Appellant was already in the United Kingdom. In her opening submissions to me Ms Vatish sought to persuade me that in any event the Appellant met the English language requirement. If that was to have been contended then there should have been a cross-appeal but in any event the certificate relied upon dated 27th January 2011, which the Appellant passed with an overall band score of 5, was not sufficient notwithstanding the pass to meet the pass grade required, in order for her to have met the Rules.
5. The issue then is whether it was open to the judge simply to allow the appeal on the basis that the Appellant was in the United Kingdom. The judge clearly took into account the fact that her partner has been recognised as a refugee and may well have found some sympathy for the Appellant on that basis. But in my judgment there was no sufficient basis to allow the appeal simply because the Appellant was already in the United Kingdom. Many applicants are already in the United Kingdom who have partners here. The Rules require a level of English for good reason. Section 117B of the 2002 Act sets it out. Those people who can speak English are better able to integrate into the society as a whole.
6. There was in my judgment therefore an error of law and I set aside the decision of Judge Bartlett. It is open to me either to remit the case to the First-tier Tribunal or to remake the decision. In this case it seems to me entirely appropriate that I should remake the decision.
7. Application was made to me at the last moment and without proper notice to admit further evidence. The Rules, both Procedure and the Immigration Rules, are there for a purpose and it is disappointing that if further evidence is to be put before the Tribunal representatives do not adhere to those Procedure Rules. Nevertheless I do not think that it would be either right or fair to hold that against the Appellant in this case.
8. The evidence which I was invited to admit were certificates evidencing academic qualifications and language proficiency. Mr Duffy did not object, As it happens the Appellant gave evidence also to the effect that her

academic qualification at the University of Madras was taught in English such that the requirements of the Immigration Rules would be met in any event. Based on the certificates and the evidence that I have heard and without Mr Duffy seeking to persuade me to take a different course it seems to me that whilst one might have taken a view that the Appellant should be required to make fresh application no real benefit to anyone comes from that because this unusually is one of those cases in which all parties agree that a fresh application would inevitably succeed.

9. Mr Duffy's real objection to me simply remaking the appeal was that the Secretary of State would be deprived of a fee. The Secretary of State may have been deprived of a fee but on balance it seems to me that it would be unjust taking into account all of the circumstances, including as I do, the fact that the Appellant's partner is a refugee and might be said to have suffered enough. I am able to address that issue in some measure by no making a fee award.
10. In all the circumstances I allow the appeal having regard to the evidence now admitted as well as the wider application of Article 8.

Notice of Decision

The appeal to the Upper Tribunal is allowed. The decision of the First-tier Tribunal is set aside and is remade. The appeal in the First-tier Tribunal is allowed.

No anonymity direction is made.

Signed

Date 8 June 2017

Deputy Upper Tribunal Judge Zucker

TO THE RESPONDENT **FEE AWARD**

Given the late production of the documents I do not think that it is appropriate to make a fee award in this case and I do not make one.

Signed

Date 8 June 2017

Deputy Upper Tribunal Judge Zucker