



Upper Tribunal

(Immigration and Asylum Chamber)

Appeal Number: HU/08367/2015

THE IMMIGRATION ACTS

**Heard at Manchester Piccadilly
On 7 July 2017**

**Decision & Reasons Promulgated
On 12 July 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE BIRRELL

Between

SHAGUFTA JABEEN

(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr G Brown for Arshed & Co Solicitors

For the Respondent: Mr C Bates Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.
2. The Appellant , a national of Pakistan, was born on 26 September 1979. The Appellant appealed against the decision of the Secretary of State dated 2 October 2015 to refuse a human rights claim following an application for leave to remain based on long residence. First-tier Tribunal Judge Frankish dismissed the appeal and the Appellant now appeals with permission to this Tribunal.
3. The background to this appeal is that the Appellant entered the United Kingdom on 5 July 2005 as a student. This was extended after various rejections to 4 September 2014. On 8 December 2010 she obtained a certificate of approval for marriage. On 29 April 2014 her application for a residence card was refused. On 14 May 2015 her application for leave based on family and private life was withdrawn. On 17 June 2015 she made an application based on long residence which is the subject of this appeal .
4. The Respondent refused the application because in relation to long residence the continuity of residence for the required period could not be established. In relation to paragraph 276ADE it could not be established that there were very significant obstacles to the Appellants reintegration back into life in Pakistan. No basis for a grant of leave outside the Rules was found. .
5. The First-tier Tribunal Judge found that the Appellant could not meet the requirements of long residence. In considering the private life requirements it was common ground before me that the Judge at paragraph 12 set out a previous version of the Rule in issue which referred at subsection (vi) to the applicant having '*no ties (including social, cultural or family) with the country to which he would have to go if required*' summarising that he the Appellant relied upon 'a complete loss of ties in Pakistan' (paragraph 13)
6. Mr Brown argued that while the Judge was required to approach the human rights appeal through the prism of the Rules the Judge had failed to apply the correct version of the private life requirements and in this case it could have

made a difference. The Judge failed to adequately consider that her case was that she would, given her former marriage, be ostracised by her family and the Judge failed to consider that these cultural and family issues would amount to very significant obstacles both for the purpose of paragraph 276ADE and when considering the appeal by reference to Article 8 generally. He noted that there was no wider consideration of Article 8 in the decision at all and the private life findings were inadequate.

7. Mr Bates conceded that there was a material error of law in that the Judges consideration of the private life was based on the wrong version of the Rules.

Error of Law

8. Having heard those submissions I reached the conclusion that the Tribunal made material errors of law.
9. While this was not an appeal against a refusal of leave under the Rules the Judge nevertheless was required to approach the assessment of the human rights appeal in his proportionality assessment through the prism of the Rules. In this case it was accepted that he applied the wrong version of the Rules and that had he considered the social and cultural issues that it was claimed had arisen out of the Appellant marrying outside of the cultural norms this may have been found to be very significant obstacles to her reintegration even if it was not a basis for arguing that she had no ties. I also note that there was no consideration of any of the factors set out in section 117B of the Nationality Immigration and Asylum Act 2002 that the Judge was required to take into account in his assessment of the issue of proportionality. The findings made in respect of the Appellants private life appeal were therefore inadequate.
10. I am satisfied therefore that Mr Bates was correct to concede that the Judges approach to this human rights appeal was in error. This error I consider to be material since had the Tribunal conducted this exercise the outcome could have been different. That in my view is the correct test to apply.
11. I therefore set aside the Judges decision.

12. Under Part 3 paragraph 7.2(b) of the Upper Tribunal Practice Statement of the 25th of September 2012 the case may be remitted to the First Tier Tribunal if the Upper Tribunal is satisfied that:

(a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or

(b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal.

13. In this case I have determined that the case should be remitted because the Appellant did not have a fair hearing due to the Judges findings in relation to the Appellants private life and what she faced in Pakistan were wholly inadequate. In this case none of the findings of fact are to stand and the matter will be a complete re hearing.

14. I set aside the decision and remit the matter back to the First-tier Tribunal sitting at Manchester to be heard on a date to be fixed before me.

Signed

Date 12.7.2017

Deputy Upper Tribunal Judge Birrell