



**Upper Tribunal
(Immigration and Asylum Chamber)**
HU/08648/2015

Appeal Number:

THE IMMIGRATION ACTS

Heard at: Manchester

Decision & Reasons Promulgated

On: 10th May 2017

On: 1st June 2017

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

The Secretary of State for the Home Department

Appellant

And

**Tazneem Bibi
(no anonymity direction made)**

Respondent

**For the Appellant: Mr Harrison, Senior Home Office
Presenting Officer**
For the Respondent: Ms Hashmi, Mamoon Solicitors

DETERMINATION AND REASONS

1. The Respondent is a national of Pakistan date of birth 1st January 1979. On the 30th September 2016 the First-tier Tribunal (Judge D. Taylor) allowed her appeal, on human rights grounds, against a decision to refuse to grant her indefinite leave to remain as the spouse of a person present and settled in the UK. The Secretary of State for the Home Department now has permission to appeal against that decision.

Background and Matters in Issue

2. The Respondent (hereinafter Mrs Bibi) married a Mr Muhammad Qadir in Pakistan in 2003. Her husband is British and in due course the couple came to live here. She was granted entry clearance as his spouse on the 14th June 2005. Her visa expired on the 14th June 2007. She did not make an application for further leave until the 13th August 2007. Although that application was initially refused Mrs Bibi was subsequently granted discretionary leave, on the basis of her marriage, on the 12th March 2009, a status she has held ever since.
3. On the 16th April 2015 Mrs Bibi made an application for indefinite leave to remain. She asserted that she had lived in the UK as a spouse for approaching ten years and that she met all of the requirements of the rules. The application was made under cover of letter dated 14th April 2015 from Mamoon Solicitors which asserted that Mrs Bibi was about to take the 'life in the UK test' and that the results would be forwarded when available. A test certificate dated 22nd May 2015 was duly forwarded to the Respondent.
4. The refusal letter is dated the 9th October 2015. The Secretary of State did not accept that Mrs Bibi had in fact passed the 'life in the UK test' and accused her of having submitted a counterfeit certificate. On that basis the application fell to be refused under paragraph 322(1A) of the immigration rules. The letter went on to refuse to grant indefinite leave to remain with reference to E-ILRP.1.2 (the requirement that she have leave to remain as a partner at the time of her application) and E-ILRP.1.3 (that she has accrued a period of 60 months with leave to remain as a partner of a settled person). In the alternative consideration was given to whether she should be granted indefinite leave to remain on the basis of 6 years' discretionary leave, but because of the fraud accusation, the application fell to be refused on this ground.
5. When the appeal came before Judge Taylor there was no appearance by the Home Office. A letter from the Presenting Officers Unit apologised and blamed the absence on staff shortage. Judge Taylor proceeded to hear the appeal. Having considered all of the evidence Judge Taylor found that it "fell well short" of establishing any sort of fraud. He found as fact that Mrs Bibi had taken the test and that the certificate was genuine. The Secretary of State's refusal letter had acknowledged that Mrs Bibi could qualify for indefinite leave to remain on the basis of her 60 months' discretionary leave, and since the only ground for refusal under that head was the accusation of fraud, it followed that the appeal should be allowed on that basis.
6. The Secretary of State argued three grounds on appeal to the Upper

Tribunal. The first was that the Tribunal erred in law in not agreeing with the Secretary of State about the 'life in the UK test'. In refusing permission on this ground Judge Kinnell rightly recognised that Judge Taylor conducted a careful analysis of the evidence and was perfectly entitled to reach the decision that he did. No arguable error of law arises.

7. The second ground was that the First-tier Tribunal materially erred in law in failing to address the matters raised in the refusal letter in respect of E-ILRP.1.2 and E-ILRP.1.3, and the financial requirements at E-LTRP 3.1 TO 3.4. Judge Kinnell was prepared, albeit reluctantly, to grant permission on the basis that it was arguable that these matters had not been addressed.
8. The third ground was that "there were no findings in respect of paragraph 276ADE". Quite why the First-tier Tribunal would have made findings on that rule is unclear. Judge Kinnell did not address this point in his permission decision and it was not pursued before me.

My Findings

9. The only ground that Judge Kinnell considered arguable was the First-tier Tribunal's failure to consider the matters raised in the refusal letter relating to whether or not Mrs Bibi qualified for indefinite leave to remain under the rules. As Mr Harrison had to acknowledge, the drafter of the grounds, and indeed Judge Kinnell, appear to have overlooked the fact that the appeal was not allowed with reference to those provisions. It was accepted by Ms Hashmi that Mrs Bibi could not meet them all: for instance, she could not demonstrate that she had leave to remain as a partner at the date that she made the application since she in fact held discretionary leave at that time. Paragraph 44 of the decision makes clear that the appeal was allowed on the basis that Mrs Bibi had accrued six years of continuous residence with discretionary leave. She did not have to demonstrate that she met any of the requirements mentioned in the grounds or grant of permission. That ground is not therefore made out.
10. That is not however the end of the matter. Mr Harrison submitted that the First-tier Tribunal nevertheless erred in law in allowing the appeal "under the immigration rules". The decision to refuse leave that was taken on the 9th October 2015 was a decision to refuse a human rights claim. That was the appeal pursued, and the only basis upon which the Appellant could have succeeded.
11. Ms Hashmi conceded that it had not been open to the Tribunal to allow the appeal "under the immigration rules".

12. I am satisfied that this amended ground of appeal is made out. I am not however satisfied that it can have any material impact on the outcome of this appeal. There was no dispute that Article 8 was engaged by the facts in this case. Mrs Bibi has a family life and the decision to refuse her lawful leave to remain would constitute an interference with it. It is accepted that all other things being equal, Mrs Bibi would qualify for leave on the basis of the Secretary of State's policy of granting indefinite leave to remain to persons who have accrued six years' continuous residence with discretionary leave to remain. If she qualifies for leave under a published policy, the Secretary of State can hardly show the decision to be proportionate, no matter what factors might weigh against her in s117B of the Nationality Immigration and Asylum Act 2002. The findings of the Tribunal were that all things were equal and that the sole reason given for refusal - the accusation of forgery - was unfounded. It followed that Mrs Bibi should be granted leave to remain on the basis of the published policy, and that the appeal should have been allowed on human rights grounds.

Decisions

13. The First-tier Tribunal erred in allowing the appeal "under the immigration rules". Following the amendments to s82 of the Nationality immigration and Asylum Act 2002 introduced by the Immigration Act 2014 that was no longer an option available to the Tribunal. The decision is set aside to that extent only. The decision is remade as follows:

"the appeal is allowed on human rights grounds".

14. There is no direction for anonymity.

Upper Tribunal Judge Bruce
31st May 2017