Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: OA/02984/2015

THE IMMIGRATION ACTS

Heard at City Centre Tower Birmingham	**Decision & Reasons Promulgated**
On 8th May 2017	**On 21st June 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE RENTON

Between

KHALIDA BEGUM
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

ENTRY CLEARANCE OFFICER - ISLAMABAD

Respondent

Representation:

For the Appellant: Miss E Norman, Counsel instructed by Jacob Law Solicitors
For the Respondent: Mrs M Aboni, Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The Appellant is a female citizen of Pakistan born on 1st January 1945. She is a widow. She visited the UK regularly from December 2008, and eventually applied for leave to enter as the adult dependant relative of her

son, Mohammed Arif, a British citizen. That application was refused on 7th May 2015 for the reasons given in a Notice of Decision of that date. The Appellant appealed, and her appeal was heard by First-tier Tribunal Judge Obhi (the Judge) sitting at Birmingham initially on 5th January 2016. The Judge decided to dismiss the appeal under the Immigration Rules and on human rights grounds for the reasons given in her Decision dated 22nd January 2016, but subsequently as a consequence of a typographical error made by the Judge, the appeal was allowed in a Decision dated 15th August 2016. The Respondent sought leave to appeal that decision, and on 9th January 2017 such permission was granted.

2. According to the Decision of 22nd January 2016, the Judge found the provisions of paragraph E-ECDR.....1 satisfied, and in the alternative she found that the decision to refuse the Appellant entry clearance amounted to a disproportionate interference with her Article 8 ECHR rights. At the hearing, Mrs Aboni argued that the Judge had erred in law in respect of both decisions. As regards the decision made under the Immigration Rules, the Judge had failed to make a finding relating to financial requirements as set out in paragraph E-ECDR.3.1 and E-ECDR.3.2. As regards the Article 8 decision, the Judge had failed to attach sufficient weight to the public interest, and had not made specific findings in respect of the factors mentioned in Section 117B of the Nationality, Immigration and Asylum Act 2002.

3. In response Miss Norman first reviewed the unfortunate history of this application for entry clearance and the subsequent appeal and argued that the issue of financial requirements had not been a matter dealt with at the initial hearing before the Judge. However, it was accepted that the Sponsor had not given any sort of undertaking as required by paragraph E-ECDR.3.2 of Appendix FM. Miss Norman further argued that there was no error of law with regard to the Article 8 decision. The Judge had come to a conclusion open to her on the evidence before her, and she had demonstrated that she had carried out the balancing exercise necessary for any assessment of proportionality. The Judge had explained why she found the circumstances of the Appellant to outweigh the public interest in the appeal.

4. I find an error of law in the decision of the Judge as to the Immigration Rules and that part of the Judge's decision is set aside. To qualify for entry clearance, the Appellant must show that both parts of paragraph E-ECDR.3 of Appendix FM are satisfied and it is not in dispute that paragraph E-ECDR.3.2 is not so satisfied.

5. However, I find no error of law in the decision of the Judge that the decision of the Entry Clearance Officer amounted to a disproportionate interference with the Appellant's Article 8 ECHR family rights. As Miss Norman argued, at paragraph 27 of the Decision the Judge carried out the balancing exercise and came to an assessment of proportionality open to her. It is trite law that the Judge did not have specifically refer to Section 117B of the 2002 Act. It is clear from what the Judge wrote that she

attached the proper weight to the public interest, but found that to be outweighed by the compassionate circumstances in the case.

Notice of Decision

The making of the decision of the First-tier Tribunal under the Immigration Rules did involve the making of an error on a point of law. I set aside that decision.

The making of the decision of the First-tier Tribunal under Article 8 ECHR did not involve the making of an error on a point of law. That decision is not set aside.

I remake the decision in the appeal under the Immigration Rules by dismissing it.

Anonymity

The First-tier Tribunal did not make an order for anonymity. I was not asked to do so and indeed find no reason to do so.

Signed Date 19th June 2017

Deputy Upper Tribunal Judge Renton