



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

Appeal Number: HU/03405/2016

THE IMMIGRATION ACTS

Heard at Field House

On 31 January 2018

Prepared 31 January 2018

**Decision & Reasons
Promulgated
On 20 April 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

**MS GURMEL KAUR BRAR
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms M Malhotra, Counsel instructed by Lex Sterling
Solicitors

For the Respondent: Ms A Everett, Senior Presenting Officer

DECISION AND REASONS

1. The Appellant, a national of India, appealed against the Respondent's decision dated 18 September 2015 to refuse leave to remain. The appeal came before First-tier Tribunal Woolf who on 25 May 2017 dismissed the appeal for want of jurisdiction.

2. Permission to appeal was given by First-tier Tribunal Judge Pickup on 7 December 2017. By a Rule 24 response dated 18 January 2018 the Secretary of State through the Specialist Appeals Team conceded that the Judge did have jurisdiction and the Tribunal was invited to determine the appeal with a fresh oral hearing to consider the individual appeal on the facts and merits.
3. At the hearing today, the parties were agreed that that concession will stand and that there has never been any consideration of the merits of the human rights based claim which largely appears to be health related reasons. The absence of any consideration of the human rights claim does in the light of the Presidential Statement, paragraph 7.2, indicate that this is a case which is suitable for consideration by the First-tier Tribunal and notwithstanding the directions given which contemplate a hearing of the matter in the Upper Tribunal, it is clear that further evidence needs to be prepared in support of the human rights based claim bringing it up-to-date and fully addressing the medical grounds as a basis of the claim under Articles 3 or 8 ECHR. I agree that the Judge made an error of law in relation to the issue of jurisdiction and there was a valid appeal on human rights grounds advanced.
4. In the circumstances the appropriate course is that the Original Tribunal's decision cannot stand and the matter will be returned to be dealt with in the First-tier Tribunal in accordance with the law.
5. No anonymity order was sought nor one made.

DIRECTIONS

1. List for hearing at the First-tier Tribunal at Hatton Cross not before First-tier Tribunal Judge Woolf.
2. List for two hours.
3. Punjabi interpreter required.

4. Appellant's bundle of documents and medical reports to be filed and served not later than 21 days before the further hearing.
5. Skeleton argument addressing Articles 3 and 8 and any other human rights issues, if applicable not later than seven working days before the further hearing.
6. The Respondent to serve any documents or skeleton argument relied upon not less than seven working days before the further hearing.

Signed

Date 26 February 2018

Deputy Upper Tribunal Judge Davey