



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

Appeal Number: HU/13532/2016

THE IMMIGRATION ACTS

Heard at North Shields

On 13 February 2018

**Decision & Reasons
Promulgated**

On 23 February 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE APLEYARD

Between

**MRS NASIM AKHTAR JAHAN
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms M Cleghorn, Counsel.

For the Respondent: Mr M Diwnycz, Home Office Presenting Officer.

DECISION AND REASONS

1. The Appellant is a citizen of Pakistan who appealed against a decision of the Respondent to refuse her application for leave to remain in the United Kingdom on the basis of her British partner and two children. That appeal was heard by Judge of the First-tier Tribunal S T Fox who in a decision promulgated on 25 April 2017 dismissed it.
2. The Appellant sought permission to appeal which was granted by Judge of the First-tier Tribunal Miler on 27 November 2017. His reasons for so doing are: -

- “1. The appellant is a national of Pakistan born on 19 May 1949. Her appeal against the respondent’s decision to refuse her application for leave to remain in the UK on the basis of her British partner and two children, was refused on human rights by the First-tier Tribunal Judge in a decision promulgated on 25 April 2017.
 2. It was conceded by her counsel at the hearing that she could not satisfy the requirements under the relevant Rules. The appeal was on the basis of Article 8 outside the Rules.
 3. It is arguable that he did not properly consider her Article 8 claim outside the Rules and imposed too high a threshold. He arguable failed to consider whether, having regard to her mental health problems and her husband’s frail health, the return to Pakistan would result in unjustifiably harsh consequences - Agyarko [60]. It is also not clear why the Judge found at [29] that on the basis of the evidence before him, the Appellant was not entitled to a Residence card as confirmation of her right to reside in the UK, which appears to relate to applications under the Immigration (EEA) Regulations
 4. The grounds are arguable.”
3. Thus, the appeal came before me today.
 4. At the outset of the hearing Miss Cleghorn handed up the authority of **ZB (Pakistan) v SSHD [2009] EWCA Civ 834** which she relied in making her submissions supporting the grounds of appeal.
 5. Mr Diwnycz firstly accepted that the reference by the Judge at paragraph 29 of his decision to the entitlement of the Appellant to a Residence Card was a cause of concern as no such issue was within this appeal. He also accepted that this was an inadequately reasoned decision for the reasons put forward in the grounds and one which on the face of it is absent any “Razgar” analysis.
 6. Both parties invited me, in these circumstances to conclude that the Appellant had been deprived of a fair hearing within the First-tier Tribunal and to remit the appeal.
 7. That is an analysis that I share.

Decision

The making of the decision of the First-tier Tribunal involved the making of an error on a point of law. The decision is set aside. The appeal is remitted to the First-tier Tribunal to be dealt with afresh pursuant to Section 12(2)(b)(i) of the Tribunals, Courts and Enforcement Act 2007 and Practice Direction 7(b) before any Judge aside from Judge S T Fox.

No anonymity direction is made.

Signed

Date 19 February 2018.

Deputy Upper Tribunal Judge Appleyard