



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/16733/2016

THE IMMIGRATION ACTS

Heard at Field House
On 3rd August 2018

Decision & Reasons Promulgated
On 21st August 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE ZUCKER

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

LUTHFUNNESA LUTHFUNNESA
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Mr S Walker, Senior Home Office Presenting Officer

For the Respondent: Mr M A Kalam Chowdhury of KC Solicitors London

DECISION AND REASONS

1. Ms Luthfunnesa is a citizen of Bangladesh whose date of birth is recorded as 27th January 1960. On 19th September 2015 she arrived lawfully in the United Kingdom with the benefit of a visitor's visa. On 17th March 2016 after her leave had expired she made application for leave to remain on the basis that her husband's health had suddenly and significantly deteriorated. At the same time, her own health was not good. The circumstances were that there would have been no one to look after her in Bangladesh. Tragically on 11th April 2016 before her application had been considered her husband died. The cause of her husband's death is said to be the consequence of

the negligence of the servants or agents of the National Health Service. Clearly it is not appropriate for me to make a finding as to whether or not there has been negligence; that is a matter for another jurisdiction. However, at the time, litigation was pending. It was said that the Appellant was being supported financially by her children and lived with her son; with her children, British nationals providing all of her needs.

2. A further reason why the Appellant wanted to remain in the United Kingdom was because her late husband was buried here. It was her wish that in due course (hopefully in a very long time) she would be buried next to him. She visits the grave on regular occasions, but this contributes to her depression. The medical condition from which she suffers had deteriorated and at the time of the decision of Judge Devittie, heard on 12th January 2018, she was suffering from a kidney infection and affected liver, was blind in one eye, and as I have already, had no children left in Bangladesh to whom she could turn.
3. The Secretary of State refused the application. The Appellant appealed and as I have said the matter came before Judge Devittie sitting at Taylor House on 12th January 2018. Judge Devittie looked at all of the circumstances with which he was presented, reminded himself of the guidance in the case of Razgar, and formed the view that although there was a public interest in the maintenance of effective immigration control, in the proportionality assessment her circumstances were “exceptional”. He took into account that, “not many persons fall into the category of visitors who not long after arrival, have to deal with her husband terminally ill who eventually succumbs to his illness and seek to prolong their stay in the United Kingdom to be with immediate family”.
4. Judge Devittie allowed the appeal.
5. Not content with that decision by Notice dated 14th February 2018 the Secretary of State made application for permission to appeal to the Upper Tribunal. The grounds are very short. They read as follows:

“The First-tier Tribunal at paragraph 12 has found that the Appellant had been in the United Kingdom for five months at the application but there would be serious obstacles into integration on her return despite the fact that the First-tier Tribunal has noted that the Appellant will return to a country she grew up in and had strong social ties to.”

6. That really does not encapsulate the case that was before the First-tier Tribunal. There was significantly more to it. If the focus were entirely on the Immigration Rule without regard to the wider application of Article 8 ECHR it may be that one could explain why the grounds were drafted in those terms. I note that the judge did allow the appeal both under the Immigration Rules and by reference to the wider application.
7. On 31st May 2018 Judge Farrelly granted permission thus the matter comes before me.
8. I am very grateful to Mr Walker for the very realistic representations that he made in this case. He accepts that what I have to look to is whether the finding was one that

was open to the judge when ultimately the proportionality assessment is a finding of fact.

9. The finding was not perverse nor was it irrational. The judge clearly took into account all of the factors that he was entitled to do and in my judgment came to a finding that was open to him. I remind myself that the amount of time that an Appellant would be allowed to remain in the United Kingdom after a successful grant is a matter entirely for the Secretary of State. The judge was focussed on whether on the day of the hearing it would be unlawful having regard to Article 8 to require the Appellant to leave the United Kingdom. In other words would there be an unjustifiable interference in the private and family life of the Appellant on that day. If the circumstances were materially to change, such that on an application to renew any leave granted to the Appellant, the Secretary of State was of the view that leave could no longer be granted, that would be a matter for the Secretary of State, at that time, and if Ms Luthfunnesa was dissatisfied with that decision, then it would be open to her, no doubt, to take advice as to her next step, but having regard to everything that I have read in the decision of Judge Devittie, and the submissions that have been made, I detect no material error of law in the decision, and therefore the appeal to the Upper Tribunal is dismissed.

Decision

10. The appeal is dismissed. The decision of the First-tier Tribunal is affirmed.

No anonymity direction is made.

Signed

Date: 13 August 2018



Deputy Upper Tribunal Judge Zucker