



**Upper Tribunal
(Immigration and Asylum Chamber)
HU/09625/2018**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Glasgow

On 4 July 2019

**Decision & Reasons
Promulgated
On 10 September 2019**

Before

**Mr C M G OCKELTON, VICE PRESIDENT
UPPER TRIBUNAL JUDGE MACLEMAN**

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**KIRITMA SARAH OKONNE
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr H Ndubuisi, of Drummond Miller, Solicitors
For the Respondent: Mr A Govan, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. Parties are as above, but the rest of this determination refers to them as they were in the First-tier Tribunal.
2. By a decision dated 26 March 2018, the Secretary of State for the Home Department refused the appellant's application for leave to remain in the UK based on her family life with her husband and daughter, on grounds of eligibility and suitability. It was not disputed that the appellant has genuine and subsisting relationships with her husband and daughter.
3. First-tier Tribunal Judge Hillis allowed the appellant's appeal by a decision promulgated on 11 October 2018.

4. The appellant had asked for her appeal to be linked to that of her husband. By the time the matter came before Judge Hillis, First-tier Tribunal Judge Zahed had allowed her husband's appeal on private life article 8 grounds by a decision promulgated on 3 July 2018. Judge Hillis obtained a copy of that decision, and noted that Judge Zahed had found the appellant's husband to have an income of almost twice the minimum required for an application such as made by the appellant. Judge Hillis took account of the interests of the child in being with both parents; thought that if the application been considered after the appellant's husband had succeeded, it was likely to have been found to meet the requirements of the rules; and allowed the appeal on human rights grounds.
5. The Secretary of State for the Home Department's grounds of appeal to the First-tier Tribunal are (1) insufficient consideration of how the appellant met the requirements of the rules, including requirements for specified documents and English language ability and (2) no reasons for finding article 8 family life to be engaged, no consideration of factors listed in section 117B [of the 2002 Act], and no balancing exercise.
6. Mr Govan accepted that the outcome of the appeal by the appellant's husband had not been challenged, and that he has been granted indefinite leave to remain. He submitted that the First-tier Tribunal should have gone through the requirements of the rules, analysing what the appellant could and could not meet, and that the decision in the husband's case focused on circumstances at an earlier date, not at the time relevant to his wife's application.
7. The Secretary of State for the Home Department's decision was based on issues which the First-tier Tribunal resolved in the appellant's favour, and which are not challenged in the grounds. We do not think that the First-tier Tribunal was bound to embark on a more detailed examination, without the Secretary of State for the Home Department specifying where the application might further have failed. We note that no such specification is offered in the grounds, and none was suggested to us. It was not for the First-tier Tribunal to make itself the primary scrutineer.
8. We see no error of law in the First-tier Tribunal taking the outcome of the husband's appeal as the starting point, and proceeding from there to find that the appellant had a right on family life grounds to remain.
9. While preparing this decision we observe a feature which was not commented on at the hearing. The Secretary of State for the Home Department's decision dated 26 March 2018 certifies the appellant's claim as clearly unfounded under section 94 of the 2002 Act. The appellant did not leave the UK. She should not have sought to file an appeal without doing so. By appearances, the First-tier Tribunal should not have accepted or decided the case. The Secretary of State for the Home Department did not take the point in the First-tier Tribunal or in the Upper Tribunal. Matters having gone this far, we are satisfied that the Secretary of State for the Home Department, by implication, waived the certificate, so that the case fell within the jurisdiction of the First-tier Tribunal and of the Upper Tribunal.

10. The decision of the First-tier Tribunal shall stand.
11. No anonymity direction has been requested or made.

A handwritten signature in black ink, reading "Hugh Macleman". The signature is written in a cursive style with a large, stylized initial 'H'.

9 September 2019
Upper Tribunal Judge Macleman