



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

**Case No: UI-2023-004511**  
**First-tier Tribunal Nos:**  
**HU/57282/2022 IA/10293/2022**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On the 19 March 2024**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE MAHMOOD**

**Between**

**Asia Bibi**  
**(NO ANONYMITY ORDER MADE)**

Appellant

**and**

**The Secretary of State for the Home Department**

Respondent

**Representation:**

For the Appellant: Mr Ahmed of Counsel, instructed by DN Law Limited Solicitors  
For the Respondent: Mr McVeety, Senior Home Office Presenting Officer

**Heard at Manchester Civil Justice Centre on 12 February 2024**

**DECISION AND REASONS**

1. No anonymity direction has been made and I see no basis upon which such a direction is appropriate in view of the principle of open justice and indeed no anonymity has been sought.
2. This is my oral decision which I have delivered at the hearing today.

**Background**

3. The Appellant has appealed against the decision of the Respondent to refuse her human rights claim whereby she had sought leave to remain. The Appellant had originally entered the United Kingdom as a visitor and thereafter sought an extension to that leave but which the respondent had refused.

4. The appeal against the respondent's refusal decision had come for hearing before First-tier Tribunal Judge Sarwar sitting at the Manchester Hearing Centre on 7 July 2023. By way of a decision dated 15 August 2023 the judge had dismissed the Appellant's appeal.
5. Thereafter permission to appeal was sought but refused by First-tier Tribunal Judge G Cox. A further application was made to the Upper Tribunal on 20 December 2023. Permission to appeal was granted by Upper Tribunal Judge Blundell. The learned judge said in granting permission:

"In circumstances in which the Appeal Skeleton Argument before Judge Sarwar stated that the first of the two 'key issues for determination' was paragraph 276ADE(1)(vi) of the Immigration Rules, it was arguably incumbent on the judge to consider that Rule. The remaining grounds are less meritorious but may all be argued."

### **The Hearing Before Me**

6. The grounds of appeal set out in some detail the background but ultimately it is paragraph 8 which incapsulates the submissions which Mr Ahmed has amplified before me today. Paragraph 8 of the grounds state,  
  
"It is of further and important concern that despite being addressed in the Skeleton Argument on paragraph 276 ADE(1)(vi) the Judge makes no finding at all on this point. A finding the Appellant was entitled to."
7. In oral submissions today Mr Ahmed said that he relied on the grounds of appeal. He said that the skeleton argument at the First-tier Tribunal had clearly relied on paragraph 276ADE. Although the Respondent had said there was no very significant obstacles for return, nonetheless this was a determination which was silent in that regard. Mr Ahmed said that the situation was that this Appellant was a lone woman, she was dependent on her niece, there was no assessment of paragraph 276ADE and this was material because of the unique circumstances of the case. The Appellant's niece had given evidence and there was no challenge to that evidence which had been adopted. The Appellant had been saying to the judge that she was relatively elderly, she had issues with her mobility and even having to have reminders to take her medication. It was further said there was Article 8 in respect of family life which was engaged, there were no findings in respect of the Court of Appeal's decision in **Kugathas**.
8. Mr McVeety in his helpful submissions replied to say that although the determination did not have any pagination or paragraph numbers, ultimately the decision for the Upper Tribunal was whether or not the deficiency in respect of the lack of findings in relation to paragraph 276ADE was material or not. Here, said Mr McVeety, there was a clear and concise account. The Appellant had said her condition had deteriorated and said that she lived on her own and that she was depressed. Ms Younas was candid in her evidence and it was noted that the emotional support was the key issue. The judge treated some of the evidence with caution.
9. Mr McVeety said ultimately, although he was sympathetic to the grounds, the issue remained as to whether or not the error was material. There was a higher

threshold and the issue of very significant obstacles and integration had to be considered.

### **Consideration and Judgment**

10. I invited each of advocates to address whether this was a case in which it might be possible, if I was to find an error of law, for the matter to return to First-tier Tribunal Judge Sarwar for the purpose of making findings in respect of paragraph 276ADE in particular. Having canvassed that with the parties, it appears to me that the difficulties with the determination are of a more fundamental nature.
11. In my judgment the Upper Tribunal's decision in **MK (duty to give reasons) [2013] UKUT 641** is apt. That states,
  - “(1) It is axiomatic that a determination discloses clearly the reasons for a tribunal's decision.
  - (2) If a tribunal finds oral evidence to be implausible, incredible or unreliable or a document to be worth no weight whatsoever, it is necessary to say so in the determination and for such findings to be supported by reasons. A bare statement that a witness was not believed or that a document was afforded no weight is unlikely to satisfy the requirement to give reasons.”
12. It is the first part of the Upper Tribunal's decision in **MK** in particular which is my focus. In my judgment, although there is indeed a lack of page or paragraph numbers in the FTT Judge's decision, that obviously is not sufficient of its own to show an error of law. In my judgment, as I have seen for myself, the skeleton argument did specifically refer to an argument in respect of paragraph 276ADE. Because the nature of the Article 8 findings required the judge to assess the emotional ties, if any, that thereby required the judge to go further than he did in the findings and conclusions which were reached. As a consequence the lack of findings an application mean that there were inadequate findings. In the circumstances, in my judgment, albeit with some hesitation, I conclude that there is a material error of law in the FTT Judge's decision.
13. I turn to what ought to happen next with the appeal. In considering the Senior President's Practice Direction and the case of **AEB [2022] EWCA Civ 1512** and **Begum (Remaking or remittal) Bangladesh [2023] UKUT 00046 (IAC)**, I carefully consider whether to retain the matter for remaking in the Upper Tribunal in line with the general principle set out in paragraph 7 of the Senior President's Practice Statement. I take into account the history of the case, the nature and extent of the findings to be made and that this appeal requires assessment of the evidence to be relied upon by the Appellant. In considering paragraph 7.1 and 7.2 of the Senior President's Practice Statement, there has to be a reassessment of the Appellant's claim as a whole. I conclude that fairness requires that there be a rehearing at the First-tier Tribunal and that the Appellant be afforded the opportunity of having her appeal heard by the First-tier Tribunal.

**Notice of Decision**

The decision of the First-tier Tribunal contains a material error of law and is set aside.

The matter is remitted to the First-tier Tribunal for rehearing.

No anonymity order is made.

A. Mahmood

Deputy Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**12 February 2024**