



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

Appeal Number: VA/25487/2012

THE IMMIGRATION ACTS

Heard at Field House

**On 13 June 2013
Oral Determination**

**Determination
Promulgated
On 5 July 2013**

Before

LORD BURNS

UPPER TRIBUNAL JUDGE RINTOUL

Between

MUSARRAT ZAHIR

Appellant

and

ENTRY CLEARANCE OFFICER, ABU DHABI

Respondent

Representation:

For the Appellant: Mr Muzenda, Legal Representative
For the Respondent: Mr Melvin, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Pakistan born on 22 October 1971. She appeals with permission against the determination of First-tier Tribunal Judge Telford promulgated on 13 January 2013 in which he dismissed her

appeal against the respondent's decision to refuse her entry clearance to the United Kingdom as a visitor to visit her husband who is a British citizen.

2. The appellant's case is that she wished to come to the United Kingdom to visit her husband with her two children who are British citizens and that it is no longer possible for her husband to visit her in Pakistan owing to his ill health. He has had one previous heart bypass and as a result of a further heart attack, on 21 April 2012, he is no longer able to travel. The respondent refused the application for reasons set out in the refusal notice. In summary he did not accept that the intentions of the appellant were to return to Pakistan or that she intended just a genuine visit.
3. The appellant's notice of appeal averred that the respondent's decision was not in accordance with the immigration rules, and contrary to the United Kingdom's obligations under Article 8.
4. The appeal came before First-tier Tribunal Judge Telford sitting at Hatton Cross on 19 December. He dismissed the appeal on all grounds finding that he was not satisfied as to the appellant's intentions and stating that there was no Article 8 claim. Permission to appeal against that decision was granted by Upper Tribunal Judge Allen on May 2013 and the matter then came before us on 13 June 2013.
5. We heard submissions from Mr Muzenda on behalf of the appellant and Mr Melvin on behalf of the Secretary of State.
6. In his determination the judge stated [16] that there was no evidence of the current bank account, land owned in the appellant's name or her close family. There were, however, in the bundle of documents attached to the notice of appeal, which was before the judge, evidence of money transfers to the appellant from her husband, and evidence of property owned by the appellant [6-12], amongst other matters. We consider that the judge did err in law in failing to give adequate consideration to the financial and other documents which were set out in the bundle which was attached to the grounds of appeal and e. The determination does not engage properly with the documentary evidence [16, 18].
7. We consider that, had the judge had proper regard to the evidence before him, it is possible that he would have reached a different conclusion about the appellant's intentions.
8. We are satisfied also that in the particular circumstances of this case the judge erred in failing to give consideration to the Article 8 claim. Not only was it a ground of appeal, it would have been apparent to the judge that there are two children involved and this is a case of an appellant seeking to enter the United Kingdom to visit her husband.
9. We are satisfied that these errors are material in that they could have affected the outcome of the appeal given particularly the nature of the

documents which are in the bundle and also the nature of the relationship between the appellant and her husband.

10. We are satisfied that the determination of the First-tier Tribunal Judge did involve the making of an error of law and we set it aside. Given that there will have to be a substantial amount of fresh fact-finding to be undertaken in relation to Article 8 and in relation to the substantive matter under the Immigration Rules, in line with the Presidential Statement of Practice, on 25th September 2012, we consider that this is a matter which should be sent back to the First-tier to be heard afresh.

SUMMARY OF CONCLUSIONS

1. The determination of the First-tier Tribunal did involve the making of an error of law. We set it aside.
2. We remit the appeal to the First-tier Tribunal to be remade.
3. None of the findings made by Judge Telford are preserved.

Signed

Date

Upper Tribunal Judge Rintoul