



**UPPER TRIBUNAL  
(IMMIGRATION AND ASYLUM CHAMBER)  
IA/38802/2013**

**APPEAL NUMBER:**

**THE IMMIGRATION ACTS**

**Heard at: Field House**

**Determination  
Promulgated**

**On: 7 August 2014**

**On 1 September 2014**

**Prepared: 28 August 2014**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE MAILER**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**Appellant**

**and**

**MRS LAILA BEGUM**

**Respondent**

**Representation**

**For the Appellant: Mr P Duffy, Senior Home Office Presenting Officer  
For the Respondent: Mr M Kalam, Solicitor (Kalam Solicitors)**

**DETERMINATION AND REASONS**

1. For the sake of convenience I shall refer to the appellant as the "secretary of state" and to the respondent as "the claimant."
2. The claimant is a national of Bangladesh, born on 9<sup>th</sup> January 1964. Her appeal against the decision of the secretary of state dated 6<sup>th</sup> September 2013 refusing her application for variation of her leave to enter or remain in the UK on the basis of her family and private life under the rules.
3. The Judge found that the claimant had failed to satisfy the requirements under E-LTRP1.2-1.12 as she came to the UK in 2012 as a family visitor. That was fatal to her claim for leave to remain under the rules.

4. There is no challenge by the claimant to that finding which is clearly correct.
5. However the claimant's appeal was allowed by First-tier Tribunal Judge Dean under Article 8 of the Human Rights Convention.
6. The secretary of state appeals with permission from First-tier Tribunal Judge Carruthers dated 10<sup>th</sup> June 2014.
7. It is contended in the reasons for appealing that Judge Dean had noted the guidance set out in the case of **Gulshan (Article 8 - new rules - correct approach) [2013] UKUT 640 (IAC)**, namely, that it is only where there are arguably good grounds for granting leave to remain outside the Immigration Rules that it would be necessary for Article 8 purposes to go on to consider whether there are compelling circumstances not sufficiently recognised under the rules.
8. The secretary of state noted that the Judge stated that she had considered the facts of the case carefully and found that there are arguably good grounds for granting leave to remain outside the rules because of the compelling circumstances presented by the factual matrix in this case.
9. The secretary of state complained however that Judge Dean had not made any "case specific findings" addressing the issue of "arguably good grounds and compelling circumstances not sufficiently recognised under the rules." Accordingly, there was not an adequate basis justifying a departure from the Immigration Rules leading to a "further consideration of Article 8." Judge Carruthers found the grounds to be arguable.

#### **The hearing on the 7<sup>th</sup> August 2014**

10. Mr Duffy relied on the grounds of appeal presented. He noted that the complaint was really "a question of form rather than substance." He made no further submissions.
11. Mr Kalam, who represented the claimant at the hearing before the First-tier Tribunal Judge, submitted that the circumstances justifying the finding that there were arguably good grounds for granting leave to remain outside the rules had been set out by the Judge at paragraphs 21 and 22 of the determination. She has had regard to the documentation submitted including the claimant's witness statement and a statement from her cousin.
12. The Judge accepted that the claimant's husband was a British citizen, aged 78 and that she is the mother of their two children aged 10 and 14 respectively, who are both British citizens.

13. She had further accepted the evidence submitted in respect of the child Jihan, aged 10, revealing that he has a serious disability. Following assessments in accordance with s.324 of the Education Act 1996, he is now in receipt of special needs education.
14. At paragraph 21 of her determination, the Judge found that the claimant's husband had medical conditions such that he would not choose to return to Bangladesh. Further, her younger son is autistic and has special educational needs which are being addressed in the UK.
15. She found that because of this unusual "factual matrix" this is not a case where the claimant's family would return to Bangladesh if the claimant were removed. Her husband and children have the right to remain here and to benefit from all the educational and health advantages that the UK offers. They also have a protected right to a family life with the claimant.
16. Judge Dean had regard to **Beoku Betts [2008] UKHL 39** when considering the best interests of her two children as well as those of her elderly husband. She found that it would be in all their interests that the claimant remained as part of the family in the UK.
17. She referred to the age, medical history and recent cancer diagnosis of the claimant's husband as well as the significant care needs of the younger son. These cumulatively establish that the family unit needed to be maintained and that the claimant's proposed removal, weighed against the public interest, would not be proportionate.
18. At the hearing before me, Mr Kalam referred to the medical evidence regarding the condition of the claimant's husband, Mr Noor. There is a report from Dr David Propper, a consultant medical oncologist, in which he stated in his assessment that he had a carcinoma of unknown primary which was relatively indolent. He advised that he should have investigations to delineate whether there is an isolated metastasis. An urgent PET scan was therefore arranged.
19. Mr Kalam produced at the hearing on the 7<sup>th</sup> August 2014, without objection, a booklet as well as appointment cards indicating that in fact Mr Noor is indeed currently in receipt of chemotherapy. This has been ongoing for a number of months and is to continue.
20. In summary Mr Kalam submitted that the basis for the Judge's finding that there were good grounds for granting leave to remain outside the rules as a result of compelling circumstances were in fact set out at paragraphs 21 and 22.

21. In response, Mr Duffy simply stated that the secretary of state's submission relates to the form as opposed to the substance of the decision.

### **Assessment**

22. It is correct that the Judge did not set out with precision referable to 'case specific findings', the basis upon which she found that there were arguably good grounds for granting leave to remain outside the rules.
23. However, as fairly and properly noted by Mr Duffy, that really amounts to a matter of form rather than substance.
24. In fact there is no difficulty identifying the basis for Judge Dean's conclusion when regard is had to the "unusual features" in this case referred to in paragraphs 21 and 22 of her determination.
25. I have also had regard to the evidence available at the time regarding the finding that the claimant's husband had recently been diagnosed as having cancer [22]. His care needs, together with those of her son, Jahin, combine to establish the need for the family unit to be maintained in the UK.
26. Mr Duffy did not contend that the Article 8 decision was in any way irrational or perverse.
27. Although the First-tier Tribunal Judge might have identified more concisely what the "arguably good grounds" were, I find that there has been no material error of law in the circumstances.

### **Decision**

a The determination of the First-tier Tribunal did not involve the making of material error on a point of law and shall accordingly stand.

No anonymity order made.

Signed

Date 28/8/2014