Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: VA/34836/2014

THE IMMIGRATION ACTS

Heard at Glasgow	**Determination Promulgated**
on 6 March 2014	**On 7 April 2014**

Before

MR C M G OCKELTON, VICE PRESIDENT
UPPER TRIBUNAL JUDGE MACLEMAN

Between

FOUZIA ASIF

Appellant

and

ECO, PAKISTAN

Respondent

For the Appellant: Mr O Mullan, Advocate, instructed by Sandhill, Solicitors, Manchester

For the Respondent: Ms Gough, Senior Home Office Presenting Officer

No anonymity order requested or made

DETERMINATION AND REASONS

1) The appellant is a citizen of Pakistan, born on 27 November 1985. By application submitted on 17 September 2012 she sought a visit visa, stating her purpose as "access to her child" for 5 months. She said that her son, born on 25 September 2006 was living with his father, a UK citizen, at an address in Rochdale. She proposed to stay with a "sponsor" in Glasgow, who would pay her living costs. An accompanying letter from her solicitors, dated 19 July 2012, explained that she had been duped into returning to Pakistan in February 2008, and although she had seen the child when he was taken on visits to Pakistan since then, he had in effect been snatched away from her.

2) The ECO refused the application by notice dated 27 September 2012. The ECO was not satisfied as to maintenance and accommodation requirements or as to the appellant's alleged personal and financial circumstances, did not entirely accept the history given by her, and was not satisfied that she genuinely planned only a visit. The ECO considered that her right of appeal was limited by section 84(1)(c) of the 2002 Act to human rights grounds.

3) The appellant appealed to the First-tier Tribunal, contending that her case attracted "full" not limited rights of appeal, and that she was in any event entitled to succeed under Article 8 of the ECHR. Judge J S Law heard the appeal at Stoke on Trent on 3 June 2013. Parties do not appear to have focused clearly on the extent of the grounds available, but the judge accepted that this was a "family visit" case in relation to the appellant's son, and so found at paragraph 19 that there was a "valid right of appeal", not a limited one.

4) The judge did not find the "sponsor" a credible witness, in particular being sceptical that he had carried out an act of charity re-uniting the appellant's cousin, another spurned wife from Pakistan, with her child. It now appeared that the appellant would have to ascertain the whereabouts of her child and commence legal proceedings. The judge did not think that these hurdles could be overcome within the time available and did not accept that the appellant's intentions were to return to Pakistan within 6 months. The appeal was dismissed under the Rules and under Article 8.

5) Permission to appeal to the Upper Tribunal was granted on the view that the judge's assessment of Article 8 was arguably inadequate for failure to take into account the best interests of the child.

6) In a Rule 24 response, the respondent submitted that Article 8 needed to be viewed "through the prism of the application to come here as a visitor. It is clear that the judge took the view that this was not the appropriate application … and that the appellant should have [applied] as the parent of a resident child".

7) Mr Mullan accepted the following matters at the outset. Although the appellant hoped to contact her son, that would firstly involve making enquiries about his present whereabouts. If and when her son and former husband were traced, there might be informal agreement, but on the other hand the background suggested that there might be no contact without judicial intervention. This is not the typical family visit case, where the family member to be visited is the proposed host.

8) Mr Mullan said that although it was unclear whether the appellant would be able to see her son at all, that remained the primary purpose of her proposed visit. The judge erred in three ways. Firstly and most significantly, the judge failed to address the best interests of the child and the Article 8 interests of the parties concerned. Even if there had been no

specific evidence before the FtT of how the best interests of the child might be served, there was evidence from the appellant of her past relationship with her son. The child had lived for some years in family with both parents, before the appellant was duped into being left out of the country apart from her son. There had been contact in Pakistan when the appellant's mother-in-law took the child there, and there appeared to have been some telephone contact up to about the date of application. The latest evidence before the FtT was that the appellant's solicitors had become aware that the husband and child had moved from the address in Rochdale. It therefore could not be said that there was evidence that the child was still in the UK. However, it was a reasonable inference that the best interests of the child would be served by having contact with his mother, and there was a duty on a public authority to consider human rights.

9) Secondly, Mr Mullan argued that there was error in the conclusion that it was likely the appellant would not leave after 6 months. Although she previously overstayed, she explained that she had been misled by her husband's family. The FtT Judge thought that proceedings could not be concluded within 6 months, but there had been no evidence how long proceedings might take. The judge was not an expert in family law. The judge did not know whether contact with the child might be reached by agreement or mediation rather than through contested proceedings.

10) Thirdly, Mr Mullan submitted that the judge erred in relation to maintenance. The sponsor was shown to be of substantial means. He has 5 properties producing rental income. The judge's findings were speculative. There was no reason to think that the sponsor could not maintain the appellant as he said.

11) We reserved our determination.

12) The second and third points go to the outcome under the Rules, rather than under Article 8.

13) The desire of a mother to resume contact with a son from whom she has been unjustly separated would be entirely natural. However, on her own account and on the latest information from her solicitors, the appellant does not know where her son lives. Her obvious first steps would be (1) to find out where he is; (2) to try to arrange contact informally; and (3) failing agreement, to seek contact through the court. She says blandly in her statement that she cannot initiate matters from Pakistan, but we see no reason for that. Her former husband is the son of her paternal aunt. Family sources may be available. Failing results from informal investigation, enquiry agents might be instructed. Even to begin court proceedings, if matters came to that, does not need her presence. It would make obvious sense to apply for entry only when that becomes necessary or (on the most favourable outcome) once contact arrangements are in place. There are provisions in the Immigration Rules for parents to come to the UK to seek or exercise contact.

14) The appellant's relationship with her son puts her in the category of relationship for a family visitor, but this is not the appropriate route for tracing a child or for taking proceedings.

15) Permission to appeal to the Upper Tribunal was not granted about the judge's adverse findings on the evidence regarding financial and other assistance to be provided by the "sponsor". Those conclusions were open to the judge, and adequate reasons were given. We also think that it was open to the judge to conclude that if the appellant did come to the UK matters it was likely that matters would not be fully resolved within 6 months, and that she would not leave within the period permitted.

16) We see no error requiring correction in the judge dismissing the appeal under the Immigration Rules. Under the circumstances, including the absence of evidence of the whereabouts of the person to be visited, it is difficult to see that another outcome might reasonably have been reached.

17) It is also difficult to see how another outcome might reasonably have been reached under Article 8. There are provisions in the Rules which the appellant can be expected to use to exercise contact with her son, if and when the time comes. Her entry to the UK, as matters stand, was not shown to have more than a nebulous and distant relationship to advancing her child's best interests. There was, for example, no report from social services on the family circumstances.

18) There is no error of law in the determination such as might require it to be set aside, and it shall stand.

3 April 2014
Judge of the Upper Tribunal