



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

Appeal Number: IA/11857/2014

THE IMMIGRATION ACTS

Heard at Bradford

**Determination
Promulgated**

On 30 September 2014

On 13 January 2015

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

SAFIA KOUSAR

Respondent

Representation:

For the Appellant: Mr Diwnycz, Senior Home Office Presenting Officer

For the Respondent: Mr J Jamil, Arndale Solicitors

DETERMINATION AND REASONS

1. In this determination, I shall refer to the respondent as the appellant and to the appellant as the respondent (when they appeared respectively before the First-tier Tribunal).
2. The appellant had made an application for leave to remain under the Immigration Rules (Appendix FM). A decision to refuse her further leave to remain was made by the respondent on 17 February 2014. The appellant appealed against that decision to the First-tier Tribunal (Judge A M Baker) which, in a determination promulgated on 3 July 2014, allowed the appeal.

The Secretary of State now appeals, with permission, to the Upper Tribunal.

3. The appellant, a citizen of Pakistan born on 5 February 1969 is the mother of a child born 7 July 2006 who is a British citizen. The appellant has separated from her husband (also a British citizen) who is the father of the child. The child is in the physical custody of the appellant. The father of the child is significantly older than the appellant (63 years). He has other adult children in addition to the child by the appellant.
4. The grounds challenge the judge's decision to allow the appeal on the basis that there was no evidence that the child might have to be taken into care if the appellant were removed from the United Kingdom because his father would not care for him. At the present time the appellant and the child live in accommodation provided by the father who also maintains the child. There is weekend contact between the father and child.
5. I find parts of the determination to be difficult to understand. As Judge White noted when granting permission the judge had found [14] that the appellant could not meet the requirements of Appendix FM and would therefore consider the appeal under Article 8 ECHR outside the Rules. Despite that, the judge then allowed the appeal on the basis that the decision of the respondent was "not in accordance with the law and the applicable Immigration Rules" [17]. Relying on the authority of *ZH (Tanzania) 2011 UKSC 4*, the judge had described the best interests of the child as "*the primary consideration*" rather than a primary consideration for a decision-maker. I have to consider whether these problems in the determination are so serious that I should set it aside. Equally, I must determine whether the judge had any justification for concluding that the best interests of the child might suffer to the extent that he would be admitted to care in the event that his custodial parent (the appellant) was removed to Pakistan. Having considered the evidence very carefully, I find that the judge was entitled to conclude that the welfare of the child might be put into serious doubt by the removal of the appellant. I note that social services have previously been involved in this case and had indicated a serious level of concern. There was evidence that the father was not only unwilling to take on the custody of the child he might also, partly on account of his age, be unable to do so. Although much of the language used in the determination is inappropriate, unclear and at times even chaotic, I am satisfied that it was open to the judge, on the evidence, to conclude that there was a "real chance of the boy having to go into care" in the event that the appellant is removed [15]. Unlike the Upper Tribunal, the First-tier Tribunal had the opportunity of hearing the oral evidence and of assessing that testimony together with the other evidence before it. In such circumstances, the Upper Tribunal should be reluctant to interfere with findings of fact made by the First-tier Tribunal which have been properly supported by adequate reasons. In the circumstances, I dismiss the appeal.

DECISION

6. The appeal is dismissed.

Signed

Date 19 November 2014

Upper Tribunal Judge Clive Lane