



**Upper Tribunal
(Immigration and Asylum Chamber)
IA/22465/2014**

Appeal number:

THE IMMIGRATION ACTS

**Heard at Manchester
On January 8, 2015**

**Decision & Reasons
Promulgated On January
12, 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

**MRS MUSSARAT TAHIRA KHAN
(NO ANONYMITY DIRECTION MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Aslam (Legal Representative)

For the Respondent: Mr Harrison (Home Office Presenting Officer)

DETERMINATION AND REASONS

1. The appellant, born January 28, 1968, is a citizen of Pakistan. The appellant entered the United Kingdom on July 20, 2012 as a family visitor. She had been issued with a visa that was valid until June 26, 2014 albeit any stay was limited to a maximum of six months at any one time. On March 11, 2013 she applied for leave to remain on human rights grounds but because she was an overstayer her application was refused without a right of appeal. On January 14, 2014 she was served with form IS151A and on May 6, 2014 the

respondent served her with a decision to remove her together with a refusal letter that considered her rights under the Immigration Rules.

2. The appellant appealed to the First-tier Tribunal under Section 82(1) of the Nationality, Immigration and Asylum Act 2002 on May 23, 2014 and on August 19, 2014 Judge of the First Tier Tribunal Lever (hereinafter referred to as the "FtTJ") heard her appeal and in a determination promulgated on September 5, 2014 he refused her appeal on the basis she had failed to satisfy the requirements of the Immigration Rules or demonstrate that removal would breach her article 8 human rights.
3. The appellant lodged grounds of appeal on September 12, 2014 and on October 16, 2014 Judge of the First-tier Tribunal Gibb gave permission to appeal finding there were grounds that the FtTJ had arguably erred by confusing exceptional circumstances and compelling circumstances with insurmountable obstacles.
4. The matter came before me on the above date and on that date the appellant and her husband were in attendance.

ERROR OF LAW SUBMISSIONS

5. Mr Aslam submitted the FtTJ had erred by failing to have sufficient regard to the personal circumstances of the appellant's husband. The respondent had accepted all the suitability requirements were met and identified that if the appellant demonstrated there were insurmountable obstacles to family life with her husband occurring outside the United Kingdom then she should succeed under Section EX.1 of Appendix FM of the Immigration Rules. The FtTJ misdirected himself in paragraph [3] of his determination because he wrongly recorded the respondent's approach and this may have infected his whole approach to the appeal. The FtTJ failed to have full regard to the fact the appellant was 90 years of age, wheelchair bound and enjoying facilities in the United Kingdom that he would not be entitled to in Pakistan because Pakistan does not have a welfare state. In paragraph [34] of his determination the FtTJ wrongly considered if there were compelling circumstances when he should have considered whether there insurmountable obstacles and this amounted to an error in law.
6. Mr Harrison relied on the Rule 24 letter his office had filed dated November 6, 2014 and maintained the FtTJ had given detailed consideration to the appellant's claim under Section EX.1 in paragraphs [29] to [32] of his determination and had full regard to the appellant's husband's medical condition. The majority of Mr Aslam's submission amounted to nothing more than re-arguing of the case and there was no error in law. Whilst it was accepted the FtTJ wrongly set out the respondent's position in paragraph [3] of his determination, this did not affect his assessment of the case. His comment in paragraph [29] was not a misapplication of the law or

the test to be met as he merely identified that the application could be considered under EX.1. The FtTJ did not use this as the test but demonstrated in paragraphs [32] and [33] of his determination that he had considered all of the pertinent factors and at the end of paragraph [32] he found that there would be little hardship or difficulty in the appellant and her husband returning to Pakistan. Whilst a different judge may have allowed the appeal on the facts this did not amount to an error in law.

7. Mr Aslam had no new submissions to make in response.
8. I reserved my decision to consider the representations.

ERROR OF LAW ASSESSMENT


9. I have carefully considered the submissions in this matter and in particular whether the FtTJ has erred in applying the correct test that had to be applied in this appeal.
10. I accept Mr Aslam's submission that the FtTJ wrongly recorded in paragraph [3] of his determination the respondent's position. The refusal letter makes clear in paragraphs [9] and [11] that the mandatory requirements of Section E-LTRP were met and in paragraph [12] the respondent stated the claim could be considered under Section EX.1 of Appendix FM. However, in light of the detail assessment of the appellant's claim in the remaining part of the determination I am satisfied that this had no impact on his reasoning and consequently it does not amount to an error in law.
11. Mr Aslam spent considerable time inviting me to find that the FtTJ failed to have full regard to the appellant's husband's personal circumstances. I disagree with his submission on this because the FtTJ considered all of the matters raised in paragraphs [31] to [32] of his determination. In other areas of his determination he made reference to the family's immigration history as well as the conditions both here and in Pakistan. The FtTJ's assessment took into account a large number of factors both for and against him as well as having regard to the appellant's own circumstances and the fact she had family and a home in Pakistan. The FtTJ noted the appellant's husband had dual nationality and was not only a British citizen but also a national of Pakistan. He concluded in paragraph [34] there would be little hardship or difficulty in the appellant and her husband returning to Pakistan-a place they had lived together for seven years.
12. The FtTJ reminded himself of the case of Gulshan (Article 8 - new Rules - correct approach) [2013] UKUT 00640 (IAC) and the Tribunal in that case stated at paragraph [24(c)] that "the term "insurmountable obstacles" in provisions such as Section EX.1 ... concern the practical possibilities of relocation. In the absence of such insurmountable obstacles, if removal is to be disproportionate

it is necessary to show other non-standard and particular features demonstrating that removal will be unjustifiably harsh.”

13. The FtTJ had regard to all of the relevant facts and concluded that there were no insurmountable obstacles and I am satisfied that his assessment of the claim cannot be faulted. He applied the right test and I am satisfied there is also no error in paragraph [34]. The FtTJ confirmed the appellant did not meet Section EX.1 and then considered article 8 outside of the Rules. All of the information that was considered under Section EX.1 was equally relevant to a claim outside of the Rules. He did not dispute there was family or private life but concluded that the interests of immigration control and the fact they had family in Pakistan together with the fact the appellant’s husband was estranged from his own children led to him the conclusion he could continue to be with his wife in Pakistan-a country both he and the appellant were nationals of.
14. I find that most of Mr Aslam’s submissions were a mere disagreement with the FtTJ’s findings and I find there was no error in law.

Decision

15. The decision of the First-tier Tribunal did not disclose an error. The original decision shall stand.

16.  Under Rule 14(1) The Tribunal Procedure (Upper Tribunal) Rules 2008 (as amended) an appellant can be granted anonymity throughout these proceedings, unless and until a tribunal or court directs otherwise. No such order was made in the First-tier and I see no reason to make such an order now.

Signed:

Dated:



Deputy Upper Tribunal Judge Alis

TO THE RESPONDENT

I make no fee award as the appeal was dismissed.

Signed:

Dated:

Deputy Upper Tribunal Judge Alis