IAC-HW-AM-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: OA/18501/2013

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 12 February 2015	**On 19 February 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVID TAYLOR

Between

QURAT UL AIN
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Miss A Cooke of Counsel
For the Respondent: Ms A Holmes, Home Office Presenting Officer

DECISION AND REASONS

1. Although the Secretary of State's is, strictly, the appellant in this appeal, I have for the sake of consistency, retained the First-tier Tribunal designations. The Secretary of State is accordingly called the respondent in this decision.

2. The appellant is a 17 year old citizen of Pakistan who has appealed against the Entry Clearance Officer's decision dated 26th August 2013 refusing her leave to enter and settle in the United Kingdom as an adopted child of her UK sponsor or, alternatively, as a dependent relative of her sponsor. The refusal decision made it clear that the Entry Clearance Officer did not

accept that the appellant met the requirements of any of the relevant Immigration Rules.

3. In a decision promulgated on 10 November 2014 First-tier Tribunal Judge Majid allowed the appeal. It would seem – although it is by no means clear – that he purported to do so both under the Immigration Rules and under Article 8 of the ECHR.

4. The Secretary of State has appealed the decision. The grounds essentially argue that the judge failed to give any or adequate reasons for his decision, that he failed to analyse or appropriately apply the law in respect of Article 8 and failed to apply Section 19 of the Immigration Act 2014. The grounds also argue that Judge Majid at [15] appears to indicate that he is exercising discretion when any such discretion may properly be exercised only by the respondent.

5. At the commencement of the hearing before me it was acknowledged by both representatives that there were problems with the judge's decision. Miss Cooke told me that although it was clear to her that there were numerous errors of law in the decision her instructions were to make submissions that, despite those errors, the judge had come to the correct conclusion. She acknowledged that the judge had failed to identify which Immigration Rules were relevant in this case or under which he was purporting to allow the appeal and, further, that it was by no means clear whether the judge was purporting to allow the appeal under Article 8. Nevertheless she submitted that the ultimate conclusion that the appeal should be allowed was correct. She acknowledged that the appellant had not been formally adopted in Pakistan.

6. I have read, with some dismay, the decision of the First-tier Tribunal. It is almost incomprehensible as to its reasoning. It could be said that paragraphs 15-17 (which together constitute about one-third of the whole decision) are completely irrelevant and inappropriate. They are also largely wrong in law.

7. There is no doubt that the First-tier Tribunal decision must be set aside in its entirety. Nowhere does it identify the Immigration Rules that the judge was bound to consider. Nowhere does it give detailed or indeed any reasons by reference to the Immigration Rules or to the Article 8 case law (outside the Rules) as the basis on which the judge purported to allow the appeal.

8. The determination must be regarded as a nullity. It is devoid of comprehensible reasoning. The decision must accordingly be set aside in its entirety.

9. Both representatives submitted that the appeal must be remitted to the First-tier Tribunal for a full rehearing. I agree and I remit the appeal for a full rehearing at Taylor House on 4 August 2015 to be heard by any judge (other than Judge Majid). No part of his decision is to be retained.

10. No anonymity direction was sought or is made.

Deputy Upper Tribunal Judge David Taylor
18 February 2015