



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

Appeal Number: AA/05668/2014

THE IMMIGRATION ACTS

Heard at Field House

Decision and Reasons

On 22 January 2016

**Promulgated
On 25 January 2016**

Before

Deputy Upper Tribunal Judge Pickup

Between

Secretary of State for the Home Department

Appellant

and

**Pristimah Vintaremdoo
[No anonymity direction made]**

Claimant

Representation:

For the claimant: Ms J Rothwell, instructed by North Kensington Law Centre
For the appellant: Mr S Staunton, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The claimant, Pristimah Vintaremdoo, date of birth 24.12.75, is a citizen of Mauritius.
2. The Secretary of State appealed against the decision of First-tier Tribunal Judge Petherbridge promulgated 29.9.14, allowing on human rights grounds only the claimant's appeal against the decision of the Secretary of State to refuse her asylum, humanitarian protection and human rights claims. The Judge heard the appeal on 11.9.14.

3. First-tier Tribunal Judge Frankish refused permission to appeal on 15.10.14. However, when the application was renewed to the Upper Tribunal, Upper Tribunal Judge C Lane granted permission to appeal on 2.2.15.
4. Thus the matter came before me on 23.7.15 as an appeal in the Upper Tribunal. As set out in my error of law decision, I found such error of law in the making of the decision of Judge Petherbridge as to require it to be set aside and remade. In summary, I found that the First-tier Tribunal Judge gave too much weight to the single fact that the claimant's eldest child has entered secondary school education in concluding that it was not reasonable to expect the claimant and her family to leave the UK. The judge failed to have regard to all relevant circumstances including the public interest in controlling immigration and the cost to the public purse of educating the child in the UK, when there was no entitlement to such education.
5. However, as there had been no appeal or cross-appeal in relation to the findings and conclusion of Judge Petherbridge dismissing the claimant's asylum and humanitarian protection claims, I considered that that part of the decision must stand and the appeal remained dismissed on those grounds. The only matter in issue adjourned for the continuation hearing was that of private and family life under article 8 ECHR.
6. The matter came back before me for a Case Management Review hearing on 8.9.15, following the granting of an application for adjournment of the continuation hearing in order to adduce expert evidence on the impact on the appellant's children of being removed from the UK. At the CMR the expert report was not ready but believed to be able to be served by the end of October 2015.
7. The report was lodged with the tribunal by fax on 12.11.15, but sent to an out of date address for the Secretary of State, with the effect that Mr Staunton had not seen the report and was entirely unaware of its existence prior to the continuation hearing listed before me on 22.1.16. He stated that he was consequently not in a position to deal with the issues raised in the report.
8. However there are further concerns raised by the report, which suggests that there is a risk on return for the appellant's children and an issue as to viability of internal flight. In consequence, Ms Rothwell drafted by hand on the morning of the listed hearing an application for permission to appeal the decision of the First-tier Tribunal in relation to asylum and humanitarian protection. As stated above, the appellant had not previously sought to challenge the findings and decision of the First-tier Tribunal in respect of these issues.
9. On reflection, it appears to me that the fairest course is to revisit my error of law finding setting aside the decision of the First-tier Tribunal by setting aside the decision of the First-tier Tribunal in its entirety and remitting the

decision to the First-tier Tribunal to be remade afresh with no findings preserved, thereby giving the opportunity for all relevant issues to be considered anew. Neither Mr Staunton nor Ms Rothwell demurred from this proposal.

10. When a decision of the First-tier Tribunal has been set aside, section 12(2) of the Tribunals, Courts and Enforcement Act 2007 requires either that the case is remitted to the First-tier Tribunal with directions, or it must be remade by the Upper Tribunal. The scheme of the Tribunals Court and Enforcement Act 2007 does not assign the function of primary fact finding to the Upper Tribunal. Where the facts are unclear on a crucial issue at the heart of an appeal, as they now are in this case, effectively there has not been a valid determination of those issues.
11. In all the circumstances, and at the invitation of both parties to relist this appeal for a fresh hearing in the First-tier Tribunal, I do so on the basis that this is a case which falls squarely within the Senior President's Practice Statement at paragraph 7.2. The effect of the error of law has been to deprive the appellant of a fair hearing and that the nature or extent of any judicial fact finding which is necessary for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2 to deal with cases fairly and justly, including with the avoidance of delay, I find that it is appropriate to remit this appeal to the First-tier Tribunal to determine the appeal afresh.

Conclusion & Decision

12. For the reasons set out herein and in my error of law decision, I find that the making of the decision of the First-tier Tribunal did involve the making of an error on a point of law such that the decision should be set aside.

I set aside the decision.

I remit the decision to be remade in the First-tier Tribunal.



Signed
Deputy Upper Tribunal Judge Pickup

Dated

Consequential Directions

13. The decision in the appeal is remitted to be heard at Taylor House at the first convenient date after 6 weeks;
14. The estimated length of hearing is 3 hours, the only witness is likely to be the appellant;
15. No interpreter is required.
16. The appeal may be listed before any First-tier Tribunal Judge, except Judge Petherbridge.

Anonymity

I have considered whether any parties require the protection of any anonymity direction. No submissions were made on the issue. The First-tier Tribunal did not make an order. Given the circumstances, I make no anonymity order.

Fee Award

Note: this is not part of the determination.

In the light of my decision, I have considered whether to make a fee award. I have had regard to the Joint Presidential Guidance Note: Fee Awards in Immigration Appeals (December 2011).

I make no fee award.

Reasons: No fee is payable and thus there can be no fee award.



Signed
Deputy Upper Tribunal Judge Pickup

Dated