



IAC-PE-SW-V1

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

Appeal Number: IA/04440/2015

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 11<sup>th</sup> January 2016**

**Decision & Reasons Promulgated  
On 11<sup>th</sup> February 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE MCCLURE**

**Between**

**O K**

**~~(NO ANONYMITY DIRECTION MADE)~~**

Appellants

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Abbas, of ST Law solicitors

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

**DETERMINATION AND REASONS**

1. The appellant, OK, is a citizen of Pakistan. No order for anonymity was made in the First-tier Tribunal. Having considered all the circumstances I do not make an anonymity order.
2. This is an appeal by the appellant against the decision of First-tier Tribunal Judge M Symes promulgated on 23<sup>rd</sup> June 2015, whereby the judge dismissed the Appellant's appeal against the decisions of the Respondent to refuse the appellant further leave to remain in the UK and to remove the appellant from the UK to Pakistan.

3. By decision made on the 3<sup>rd</sup> November 2015 leave to appeal to the Upper Tribunal was granted. Thus the matter appears before me to determine in the first instance whether or not there is an error of law in the original determination and to re-decide, if appropriate.
4. The appellant entered the UK on the 22<sup>nd</sup> April 2004 as a student dependent spouse. She has two children by her husband, one child born on the 1<sup>st</sup> October 2002 and one born 23<sup>rd</sup> November 2007.
5. It appears that the husband abandoned the appellant and the children for another woman. The children appear to have been living with the appellant thereafter.
6. The appellant's leave was extended at various stages until 30<sup>th</sup> November 2007. It is unclear whether the appellant had leave between November 2007 and October 2011. On the 24<sup>th</sup> October 2011 the appellant was granted further leave on the basis of her relationship with her children.
7. Again it is not entirely clear whether the children were living with the appellant at the time. The decision refers to the appellant being granted discretionary by reason of her relationship with her daughters, who had been in the UK in respect of the eldest for over 10 years and the youngest since birth in 2007. It appears however that the appellant had been suffering from a mental disorder and had spent significant periods of time as an in-patient in a hospital dealing with mental health problems. By reason of her medical condition the children were in the care of the local authority and appear to have been living with foster carers for some time.
8. The appellant's contact with her children was limited to telephone contact once a month from January 2015 onwards. Whilst originally the appellant had had no direct contact since April 2013 due to her mental health, by the time of the hearing the appellant was having supervised contact to her children on a monthly basis.
9. There was a report before Judge Symes from Mr Baldwin of North East London NHS Trust, which indicated that the Appellant had a "schizo-affective disorder" that was in remission. The report also referred to the fact that the appellant was unhappy that her children were not with her. The report also acknowledges that the appellant had exhibited chaotic behaviour and had failed to engage with medical treatment in the past.
10. The judge considered the requirements of the Immigration Rules specifically Appendix FM paragraphs E-LTRPT, specifically E-LTRPT.2.4 and EX.1-2. At paragraph 23 the judge found that the appellant was exercising "access" rights to children in the UK and found otherwise that the Appellant was in a genuine mother and child relationship. In effect Judge Symes found that the appellant meet the requirements of the Immigration Rules. Despite that Judge Symes dismissed the appeal.

11. The appellant appealed against that decision. In the reply the Respondent has set out the following:-

“2. The respondent accepts that there may have been a “slip of the pen” in the judge’s determination ...”

12. It was not challenged that the appellant met the requirements of the rules. As the appellant met the requirements of the rules the appeal should have been allowed. Accordingly there is a material error of law in the original decision. I set aside the original decision. In light of the findings made by the judge, which stand and have not been challenged, the appellant meets the requirements of the rules and I allow the appeal under Immigration Rules.

Decision

13. There is a material error of law in the decision. I set aside the original decision and substitute the following:-

**The appeal is allowed under the Immigration Rules.**

14. I have considered whether or not it is appropriate to make a fee award. Taking account of all the circumstances especially the fact that the children [were] not living with the appellant at the time of the decision, I have decided not to make a fee award.

Signed

Date

Deputy Upper Tribunal Judge McClure