



Upper Tribunal
Immigration and Asylum Chamber

Appeal Number: IA/21742/2015

THE IMMIGRATION ACTS

Heard at Field House
On: 6 May 2016

Decision & Reasons Promulgated
On: 18 May 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE KAMARA

BETWEEN

RM
(ANONYMITY DIRECTION MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Goldborough, solicitor, UK Law Solicitors
For the Respondent: Mr N Bramble, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. This is an appeal against the decision, promulgated on 2 October 2015, of First-tier Tribunal Judge Kanagaratnam (hereinafter referred to as the judge). Permission to appeal was granted by Designated Judge Zucker on 15 April 2016.

Background

2. The appellant, aged 52, entered the United Kingdom with leave to enter as a visitor on 17 August 2010. Her leave expired on 11 February 2011. On 2 March 2015, the appellant sought leave to remain in this country in order to care for her daughter and grandchildren.
3. The respondent noted that the appellant could not meet all the requirements of paragraph 276ADE of the Rules. On considering whether there were any exceptional circumstances, the Secretary of State concluded that the appellant's daughter could care for her own children with the support of social services if required and accordingly any disruption to the appellant's private life was proportionate to the legitimate aim of maintaining an effective immigration control.
4. In appealing, the appellant argued that her daughter was mentally affected by an attack upon her, which took place in 2010, which left her unable to care for herself.
5. The judge considered the appeal on the papers before him and dismissed it both under and outside the Rules.
6. The grounds of application argue that the judge found that the suitability requirements of paragraph 276ADE had not been met when this was not in issue; that he erred as to the age of the appellant in describing her as 25; the judge failed to provide reasons for his findings; failed to assess the evidence before him and failed to have regard to section 117B of the 2002 Act.
7. Permission was granted on the basis that the judge put in issue that which was not in issue and provided inadequate and incoherent reasons. Permission was not explicitly refused on the remaining grounds.
8. The Secretary of State lodged a Rule 24 response on 8 April 2016, in which the appellant's appeal was not opposed and a fresh oral hearing was sought. The Upper Tribunal was invited to issue directions that the appellant's representative file and serve a consolidated appeal bundle containing the evidence before the First-tier Tribunal and any updated evidence should the matter be retained in the Upper Tribunal.

The hearing

6. At the hearing before me, both sides were, rightly, in agreement that the judge erred and that the matter ought to be remitted to the First-tier for a de novo hearing.

7. In deciding whether the matter should be remitted to the First-tier Tribunal or retained at the Upper Tribunal, I took into consideration that there were ongoing Family Court proceedings involving one of the appellant's grandchildren. Those proceedings are due to consider the question, among others, of whether the child in question should be placed in the sole or joint care of the appellant. In these circumstances, I found that it was more appropriate for this appeal to be reheard in the First-tier.

Error of law

8. The First-tier Tribunal Judge failed to provide any reasons for his finding that the appellant did not meet the requirements of paragraph 276ADE of the Rules. Once the paragraphs setting out case law are removed from the decision, the reasons provided for dismissing the appellant's Article 8 case outside the Rules are minimal and fail to engage with the evidence provided by the appellant. The remainder of the decision is incoherent and littered with factual errors. The decision cannot, therefore, stand.

Conclusions

The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.

I set aside the decision of the First-tier Tribunal Judge.

No application for anonymity was made at the First-tier, however I do so now given the change in the circumstances of the appellant's family:

"Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings. "

Directions

1. This matter is to be heard afresh by the First-tier Tribunal (Hatton Cross) at an oral hearing before any judge except Judge Kanagaratnam.
2. The matter is to be listed for a paper case management hearing owing to the ongoing Family Court proceedings.

Signed:

Date: 13 May 2016

Deputy Upper Tribunal Judge Kamara