



Upper Tribunal  
(Immigration And Asylum Chamber)

Appeal Number: IA/21929/2014

**THE IMMIGRATION ACTS**

Heard at: Field House  
On 22 December 2015

Promulgated

Decision and Reasons

On 18 January 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE MAILER

Between

MRS RUPASREE DAS  
(NO ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation**

For the Appellant: Mr D Chuckooa, solicitor (Suman Kumar Das)  
For the Respondent: Mr S Kotas, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The appellant is a national of Bangladesh, born on 12 April 1995. She appeals against the decision of the First-tier Tribunal dismissing her appeal against the respondent's decision pursuant to paragraph 319V of the Immigration Rules refusing her application for leave to remain in the UK as the parent of her son.
2. The Judge found that she had not been able to show that ".....on return she meets the very high threshold in order to meet the requirements of 'living in the most exceptional compassionate circumstances'". [11]

3. In his "Notice of Decision" the Judge stated that "the appeal is dismissed under the Immigration Rules and on human rights grounds".
4. It is not evident, however, that the Judge considered the appellant's appeal under Article 8.
5. Her grounds of appeal before the Tribunal asserted that the refusal was unlawful because it is incompatible with her rights under the Human Rights Convention.
6. In her grounds of appeal seeking permission to appeal to the Upper Tribunal, it is contended that the Judge erred in failing to have regard to the appellant's Article 8 rights despite a lengthy submission which was advanced at the hearing. A written statement from Mr S. Alam who represented the appellant at the hearing was produced. He stated without contradiction that he did refer to and advance submissions to the Tribunal pursuant to the appellant's Article 8 rights which focused on the appellant, her sponsor and other siblings, including her grandchild.
7. In granting permission to the appellant to appeal, First-tier Tribunal Judge McDade considered the grounds relating to Article 8 and noted that the Judge's reasoning is contained in one short paragraph and it is arguable that anxious scrutiny had not been given to the relevant issues. He found that there was an arguable error of law.
8. Mr Kotas submitted that although the Judge's reasons may have been brief, they were succinct and he was entitled to be satisfied that on the basis of the evidence before him, the appellant was not living in the most exceptional compassionate circumstances.
9. Mr Chukooa submitted that there had been a complete failure to consider the appeal under Article 8.

### **Assessment**

10. The Judge dismissed the appeal under the rules and on human rights grounds. However, there was no consideration given to the appellant's claim under Article 8. The appellant had relied on human rights in her grounds of appeal before the Tribunal.
11. The appeal before the Upper Tribunal was originally scheduled for 20 October 2015. It was adjourned for the production of a witness statement from Mr Alam confirming the contention that the appellant's Article 8 claim had been fully ventilated before the First-tier Tribunal. I accept his assertion that has not been disputed, that the appellant's article 8 claim was fully ventilated before the First-tier Tribunal.
12. In the circumstances, I find that there has been an error on a point of law as the Judge has not engaged at all with the submissions made under Article 8, notwithstanding his dismissal of the appeal on human rights grounds. I cannot find

that the same result would inevitably have been reached even if the human rights claim had been properly considered.

13. Mr Chukooa submitted that the appeal should be remitted to the First-tier Tribunal.
14. I have had regard to the Senior President's Practice Statement and the approach to be considered when remitting an appeal to the First-tier Tribunal for a fresh decision. In giving effect to such approach, I am satisfied that the effect of the error has been to deprive the appellant before the First-tier Tribunal of a fair hearing as her human rights appeal has not been properly considered.
15. The appeal is accordingly remitted to the First-tier Tribunal at Hatton Cross for a fresh decision to be made under Article 8.
16. The date of such hearing is still to be allocated.

**Notice of Decision**

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

The decision is set aside and the case is remitted to the First-tier Tribunal (Hatton Cross) for a fresh decision to be made.

No anonymity direction is made.

Signed

Date 15 January 2016

Deputy Upper Tribunal Judge Mailer