



**Upper Tribunal
(Immigration and Asylum Chamber)
IA/48885/2014**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

On 12 February 2016

Decision & Reasons

Promulgated

On 22 February 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE KAMARA

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

**MISS ELNARA KARAMATOVA
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Ms A Fijiwala, Senior Home Office Presenting Officer

For the Respondent: Ms J Norman, counsel instructed by Sterling & Law
Associates LLP

DETERMINATION AND REASONS

Introduction

1. This is an appeal against the decision of First-tier Tribunal Judge Traynor (hereinafter referred to as the FTTJ), promulgated on 25 August 2015, in which he allowed an appeal against the respondent's decision, dated 11 November 2014, to refuse to vary the respondent's leave to remain and to remove her from the United Kingdom under section 47 of the Immigration, Asylum and Nationality Act 2006.

2. Permission to appeal was granted by First-tier Tribunal Judge McDade on 18 December 2015.

Anonymity

3. No direction has been made previously, and I see no reason for one now.

Background

4. The respondent arrived in the United Kingdom on 4 September 2004 with leave to enter as a student. Further periods of leave to remain were granted, following timely applications, in the same capacity until 31 July 2009. An in time application made on 21 July 2009 which was rejected on 4 August 2009.
5. On 7 August 2009 the respondent applied, out of time, for leave to remain as a Tier 4 (General) student. That application was refused, with no right of appeal. On 24 October 2009 the respondent applied, out of time, for leave under Tier 4, which was granted from 15 December 2009 until 23 December 2010. Further successful, in time, applications were made under Tier 4 and Tier 1 (post-study work) with the respondent granted leave to remain until 30 August 2014. On 12 August 2014, she applied, in time, for indefinite leave to remain based on long residence (10 years)
6. The said application for indefinite leave to remain was refused on 11 November 2014. According to the reasons for refusal letter of the same date, it was not accepted that the appellant had acquired 10 years continuous lawful leave and her application under the Rules was refused under paragraph 276B(i)(a). Reference was made to her position between 5 August 2009 and 14 December 2009 when it was considered that she was without lawful leave. The Secretary of State considered the respondent's private life under paragraph 276ADE but concluded that she met none of the residence or age requirements.
7. The Secretary of State further commented that the respondent retained ties to Turkmenistan as she had travelled home during her stay in the United Kingdom and that there were "no known reasons why (she) could not be expected to return home. Finally, there were said to be no sufficiently compassionate or compelling issues, which would make it appropriate for the respondent to be allowed to remain in the United Kingdom exceptionally.
8. In the concise grounds of appeal to the First-tier Tribunal it was argued that the Secretary of State ought to have exercised her discretion differently; that the decision breached Article 8 ECHR owing to the respondent's close links to the United Kingdom and lack of links to Turkmenistan; there were said to be mitigating circumstances in relation to her applications made in 2009; the respondent feared persecution in Turkmenistan owing to converting to Christianity and she was undergoing treatment in the United Kingdom which was not available in Turkmenistan.

The hearing before the FTTJ

9. The FTTJ heard the appeal in the absence of a representative of the Secretary of State. He allowed the appeal under paragraphs 276B and 276ADE of the Immigration Rules. In relation to paragraph 276ADE, the FTTJ accepted that the appellant's religious conversion as well as being a Russian speaker would prevent her from gaining employment or carrying out her private life in a meaningful way. The FTTJ, ultimately, rejected the respondent's claim that she would suffer inhuman and degrading treatment in Turkmenistan because of her religious beliefs or owing to her medical problems.

The grounds of appeal

10. In essence, the grounds argued; (1), that the FTTJ had entered into procedural unfairness in hearing the appeal in the absence of the Secretary of State's representative in circumstances where the respondent's evidence was not produced until the day of the hearing and; (2), that the FTTJ had materially misdirected himself and/or failed to give reasons with regard to his reliance on Rodriguez (Flexibility policy) [2013] UKUT 0042 and Basnet (validity of application - respondent) [2012] UKUT 00113(IAC).
11. The FTTJ granting permission did so on the basis that there was an arguable error in relation to an "allegation of legal ambush." Permission was not explicitly refused in relation to ground 2.
12. In her response of 8 January 2016, the respondent opposed the appeal, stating with regard to Ground 1, the Secretary of State had been put on notice as to the appellant's religious conversion as documents relating to this had been included with her application for settlement. It was said that the FTTJ had not allowed the appeal on Article 3 grounds but under Article 8, within the Rules.
13. In respect of ground 2, it was contended that permission had not been granted. Alternatively, it was argued that the FTTJ was entitled to find that the Secretary of State's decision-making process was procedurally unfair given the "*unreasoned rejection*" of the 2009 application.

The hearing

14. At the hearing before me, Ms Fijiwala promptly advised me that the Secretary of State wished to withdraw the appeal, with a view to granting the respondent indefinite leave to remain in the United Kingdom on the basis that her appeal had been allowed under paragraph 276B of the Rules as well as paragraph 276ADE.
15. I accordingly considered the following provisions of the Tribunal Procedure (Upper Tribunal) Rules 2008;

17.—(1) Subject to paragraph (2), a party may give notice of the withdrawal of its case, or any part of it—
(a) [] by sending or delivering to the Upper Tribunal a written notice of withdrawal; or

(b) orally at a hearing.

(2) Notice of withdrawal will not take effect unless the Upper Tribunal consents to the withdrawal except in relation to an application for permission to appeal.

16. In view of the fact that the respondent had been granted leave to remain in the United Kingdom, I was prepared to consent to Ms Fijiwala's oral notice of withdrawal. I therefore had no need to hear from Ms Norman.

Decision

I consent to the Secretary of State's application to withdraw the appeal.

Signed

Date: 14 February 2016

T Kamara
Deputy Judge of the Upper Tribunal