



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

Appeal Number: IA/32032/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 25 May 2017**

**Decision & Reasons Promulgated
On 9 June 2017**

Before

**UPPER TRIBUNAL JUDGE MCGEACHY
DEPUTY UPPER TRIBUNAL JUDGE NORTON-TAYLOR**

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MRS MARIA INES PENA DE GONZALES
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr S Whitwell, Senior Home Office Presenting Officer

For the Respondent: Mr A Jafar, Counsel, instructed by Thoree & Co Solicitors

DECISION AND REASONS

1. For the purposes of our decision we shall refer to the parties as they were before the First-tier Tribunal. Therefore the Secretary of State is once more the Respondent and Mrs De Gonzales is the Appellant.
2. This is an appeal by the Respondent against the decision of First-tier Tribunal Judge Majid (the judge), promulgated on 11 October 2016, in which he allowed the Appellant's appeal. That appeal had been against a decision of the Respondent dated 17 September 2015, refusing her human rights claim. That claim had in essence been based upon the assertion

that the Appellant was providing essential care both for her own daughter and, perhaps more importantly, for her three grandchildren.

The judge's decision

3. The appeal came before the judge on 5 October 2016. He sets out the nature of the claim and makes some reference to various aspects of the evidence before him. His findings and conclusions begin at paragraph 18 of his decision. There is a conclusion that the Appellant's daughter had not practised deception at any stage and that the best interests of the children (by this we infer that he was intending to refer to the grandchildren) meant that the case should be decided in their favour (see paragraph 21). Then at paragraph 22, reference is made to the well-known decision in ZH (Tanzania) [2011] UKSC 4.
4. At paragraph 26, the judge states:

"I cannot ignore the "legal requirements" stipulated by immigration law. It is incumbent upon me to advert to the new Rules giving respect to the intention of the House of Commons dictated by the supremacy of Parliament. The Appellant can benefit from the relevant Rules because she is fully committed to the best interests of her three grandchildren detailed in paragraph 13 above."
5. Finally, at paragraph 27 the judge concludes that in his view the Appellant came within the relevant Immigration Rules.

The grounds of appeal and grant of permission

6. The Respondent's grounds of appeal are succinct. It is asserted that there is an absence of reasoned findings in the judge's decision, that such findings as appear are confusing, and there is a failure to have any regard to the mandatory factors set out in section 117B of the Nationality, Immigration and Asylum Act 2002, as amended.
7. Permission to appeal was granted by First-tier Tribunal Judge Saffer on 20 April 2017. In his view the findings of the judge were "wholly inadequate".

The hearing before us

8. Mr Jafar sought valiantly to defend the decision of the judge. However, in our view there are clear and numerous fundamental material errors of law in this decision.
9. With all due respect to the judge, the decision is conspicuous by its absence of clear and reasoned findings on the specific evidence before him. Having looked at that evidence for ourselves, there was clearly an array of medical reports and associated issues relating to the Appellant's family members in the United Kingdom, particularly her grandson. None of this was grappled with to any adequate extent. Mere reference to the fact that evidence existed is insufficient.

10. There is also a complete failure to deal with the mandatory grounds under section 117B of the 2002 Act. The judge fails to deal with the nature and importance of the public interest, financial issues and the precariousness of the Appellant's situation in this country. There is a failure to set out with any clarity or indeed at all as to what extent, if any, the Appellant could fit within the framework of the Article 8-related Immigration Rules.
11. There is a reference to the best interests of the grandchildren as being "paramount", which in itself is a misdirection in law, and it is clear to us that the judge appears to have regarded the best interests (such as he found them to be) as effectively trumping all other possible considerations.
12. Stepping back to take an overview of the decision, it appears to us as though the judge's efforts are somewhat less than intelligible either to ourselves or the parties.
13. In light of the above, the judge's decision must be set aside.

Disposal

14. We canvassed the views of the representatives as to how this appeal should be disposed of. Mr Jafar suggested that the matter should be remitted, whilst Mr Whitwell remained neutral.
15. Having regard to the nature of the judge's decision, the evidence in this case, and paragraph 7.2 of the Practice Statement, we have decided to remit this appeal to the First-tier Tribunal for a complete rehearing. The lack of fact-finding and the failure to address virtually any of the relevant legal issues means that, in effect, there was no proper hearing before the First-tier Tribunal at all.

Notice of Decision

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

We set aside the decision of the First-tier Tribunal.

We remit the case to the First-tier Tribunal.

No anonymity direction is made.

Signed

Date: 5 June 2017

Deputy Upper Tribunal Judge Norton-Taylor

Directions to the First-tier Tribunal

- 1. The appeal is remitted for a complete rehearing, with no findings from the previous decision preserved.**