



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/05372/2018

THE IMMIGRATION ACTS

Heard at Field House
On August 17, 2018

Decision & Reasons Promulgated
On August 28, 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

MRS FATMA HASSAN ALI ABDELMOTELEB
(NO ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Represented by husband, Mr Mohamed Boraik
For the Respondent: Ms Kiss, Senior Home Office Presenting Officer

DECISION AND REASONS

1. No anonymity direction is made.
2. The appellant is a national of Egypt and on April 27, 2016 the appellant lodged an application for leave to remain on the basis of family life with her spouse and three children. The respondent refused the application in February 2018.
3. The appellant lodged grounds of appeal on February 21, 2018 and in the grounds of appeal she submitted the respondent had failed to consider the fact that her husband had indefinite leave to remain and that her children had applied to be registered as British citizens.

4. Her appeal came before Judge of the First-tier Tribunal Bradshaw (hereinafter called "the Judge") on April 17, 2018 and the Judge dismissed the appellant's appeal on human rights grounds in a decision promulgated on May 3, 2018.
5. The appellant appealed this decision on May 14, 2018 on the grounds that the Judge had erred by failing to have regard to the evidence that had been sent to the Tribunal. Such evidence included certificates confirming that all three children were British citizens. As the Judge had dealt with the appeal on the basis the children were Egyptian citizens she submitted there was an error in law.
6. Permission to appeal was granted by Judge of the First-tier Tribunal Robertson on June 21, 2018 who found it was arguable there had been procedural unfairness.
7. The appellant had provided evidence that she had sent her bundle to Arnhem Support Centre on April 14, 2018 with a guaranteed delivery date of April 16, 2018 and although the bundle was stamped as having been received on May 14, 2018 it appears the bundle turned up at the Bradford Hearing Centre on May 2, 2018.
8. Ms Kiss accepted that as the evidence had been lodged prior to the hearing and before the Judge promulgated his decision there was a material error in law.
9. I considered the timeline, set out above, and whilst the Judge cannot be criticised for not having regard to the evidence the fact remained the appellant had submitted evidence in accordance with the Tribunal's directions and that evidence, for whatever reason, had not been passed to the Judge. There was therefore procedural unfairness to the appellant.
10. Ms Kiss accepted that as the parties were lawfully married and in a genuine and subsisting relationship and the appellant's husband had indefinite leave to remain which consequently led to the three children (youngest 18 months old) all being recognised as British citizens then this would be a case which must succeed under article 8 ECHR.
11. I am satisfied the original decision taken by the respondent under the Immigration Rules was correct as the children's status was different then to what is now.
12. By the date of hearing the appellant's children were British and applying section 117B(6) of the 2002 Act I find it would be unreasonable to expect the children to leave the United Kingdom and in doing so I have also had regard to the respondent's policy as set out in "Family Migration-Appendix FM, Section 1.0 Family life as a Partner or Parent and Private Life, 10 year Routes".
13. The only reason to refuse the appellant's application would be if her conduct gave rise to public interest considerations of such weight as to justify her removal, where the British citizen child could remain in the UK with another parent or alternative primary carer, who is a British citizen or settled in the UK or who has or is being granted leave to remain.

14. The circumstances envisaged include those in which to grant leave could undermine our immigration controls, for example the applicant has committed significant or persistent criminal offences falling below the thresholds for deportation set out in paragraph 398 of the Immigration Rules or has a very poor immigration history, having repeatedly and deliberately breached the Immigration Rules.
15. None of these factors are present in this appeal.

DECISION

16. There is an error in law and I set aside the Judge's decision and allow the appeal under article 8 ECHR.

Signed

Date 17/08/2018



Deputy Upper Tribunal Judge Alis

TO THE RESPONDENT
FEE AWARD

I make no fee award as the appeal has been allowed based on circumstances that occurred after the appeal was lodged.

Signed

Date 17/08/2018



Deputy Upper Tribunal Judge Alis