



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/11633/2016

THE IMMIGRATION ACTS

Heard at Field House  
On June 15, 2018

Decision & Reasons Promulgated  
On June 21, 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MS SANDRA ELAIN BELL  
(NO ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr Bramble, Senior Home Office Presenting Officer  
For the Respondent: Ms Revill, Counsel, instructed by Anthony Ogunfeibo & Co

DECISION AND REASONS

1. I do not make an anonymity order in this appeal.
2. The respondent in these proceedings was the appellant before the First-tier Tribunal. From hereon I have referred to the parties as they were in the First-tier Tribunal so that, for example, reference to the respondent is a reference to the Entry Clearance Officer.
3. The appellant entered the United Kingdom on September 1, 2001 with entry clearance as a visitor for six-months. Her leave was extended until March 21, 2002.

4. Applications to remain were subsequently lodged on June 8, 2004, November 4, 2013 and February 3, 2014 but these were refused on November 1, 2006, December 20, 2013 and April 4, 2014 respectively. The appellant failed with an appeal in respect of the April 2014 refusal.
5. On January 20, 2016 the appellant applied for further leave to remain on private life grounds. The respondent refused her application on April 19, 2016 and the appellant appealed that decision on April 29, 2016.
6. The appeal was listed before Judge of the First-tier Tribunal Greasley on November 17, 2017 and in a decision promulgated on August 24, 2017 the Judge allowed the appeal under both the Immigration Rules and article 8 ECHR. The respondent lodged permission to appeal on September 4, 2017.
7. Permission to appeal was granted by Judge of the First-tier Tribunal Brunnen on February 8, 2018. He found it arguable that the Judge had erred in applying the Immigration Rules and article 8 ECHR.

### **Preliminary Issues**

8. I raised with both representatives whether the Judge had the power to allow the appeal under the Immigration Rules and both agreed that he did not. To this extent it was accepted there was an error in law but the material issue in this appeal would be whether there was an error in the article 8 assessment.

### **Submissions**

9. Mr Bramble adopted the grounds of appeal that had been lodged by his colleague and invited the Tribunal to find there had been an error in law. In particular he submitted that the Judge had erred when finding insurmountable obstacles and in his assessment of the best interests of the children/grandchildren.
10. Ms Revill relied on the rule 24 response that had been provided in this appeal and submitted that the Judge had reached a finding that had been open to him in relation to both insurmountable obstacles and the best interests of the children/grandchildren.

### **Findings**

11. Permission to appeal had been granted because it was felt arguable that the Judge had misdirected himself when considering the evidence.
12. It would be fair to say that in presenting his case to me, Mr Bramble did not seek to expand on any of the matters contained within the grounds of appeal and I find that was a sensible and realistic approach to take.
13. The Judge, in a detailed decision, considered all aspects of the appellant's appeal and took into account the fact there had been previous adverse Tribunal decisions against the appellant.

14. The Judge explained in paragraph 38 of his decision why he felt able to depart from those decisions and identified new and additional evidence and case law that was not previously before the Tribunal.
15. The Judge referred, at length, to decisions from the Supreme Court that were not before the original Tribunals and identified positive elements of the evidence that had changed since the matter had last been before the Tribunal.
16. The Judge noted that the respondent accepted that Appendix FM of the Immigration Rules should be considered by the respondent and the Judge considered, as he should, whether the appellant satisfied the requirements of section EX.1 of Appendix FM of the Immigration Rules. He concluded there would be insurmountable obstacles and then went on to give reasons why he had reached this conclusion in paragraph 42 of his decision.
17. The Judge went on to find, when considering the appeal under article 8 ECHR, that there would be a disproportionate interference with the appellant's family and private life. The Judge gave detailed reasons in paragraphs 43, 44, 45 and 47 why he formed these views.
18. All of these findings were open to the Judge and the grounds of appeal against the article 8 decision amounts to nothing more than a disagreement with those findings. I therefore uphold the decision under article 8 ECHR.
19. The Judge had allowed the appeal under the Immigration Rules and this is an error. This appeal is governed by the Immigration Act 2014 and there was no power to allow the appeal under the Immigration Rules. To this extent only I find an error in law and I set aside that aspect of the decision only. This does not affect the article 8 decision.

### DECISION

20. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law to the extent that the Judge erred in allowing the appeal under the Immigration Rules. To that extent only I set that part of the decision aside.
21. In all other respects (article 8 decision) I uphold the Judge's decision.

Signed

Date June 15, 2018



Deputy Upper Tribunal Judge Alis

**TO THE RESPONDENT**  
**FEE AWARD**

The fee award previously made is upheld.

Signed

Date June 15, 2018

A handwritten signature in black ink, appearing to read "SPAR" with a flourish underneath.

Deputy Upper Tribunal Judge Alis