



**Upper Tribunal
(Immigration and Asylum Chamber)
HU/03060/2019**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

On: 2 December 2019

**Decision & Reasons
Promulgated
On: 9 December 2019**

Before

UPPER TRIBUNAL JUDGE KAMARA

Between

**KALSOOM AKHTAR
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Gajjar, counsel instructed by Law Lane Solicitors
For the Respondent: Mr N Bramble, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. This is an appeal against the decision of First-tier Tribunal Judge SL Farmer, promulgated on 15 July 2019. Permission to appeal was granted by on First-tier Tribunal Judge Bristow on 18 October 2019.

Anonymity

2. No direction has been made previously, and there is no reason for one now.

Background

3. The appellant entered the United Kingdom on 9 November 2010 with leave to enter as a Tier 4 General Student until 24 February 2012. Her leave was initially extended until 28 June 2014 but curtailed to 27 April 2013. She was subsequently granted leave to remain from 14 July 2013 until 19 September 2014. Thereafter the appellant made and withdrew an asylum claim and made further submissions which were variously certified and rejected. On 23 May 2017, the appellant made a further human rights claim. It is the refusal of that claim in a decision dated 7 February 2019 which is the subject of this appeal.
4. The substance of the appellant's human rights claim is that she has a family life with her partner and child M, who was born in the United Kingdom during July 2018. The respondent refused that claim primarily on suitability grounds as it was considered that the appellant had used deception in a previous application by relying on a fraudulently obtained English-language test certificate. In addition, M was not a qualifying child; there were no very serious obstacles to the appellant integrating in Pakistan and no exceptional circumstances had been put forward that would warrant a grant of leave to remain in the United Kingdom.

The decision of the First-tier Tribunal

5. The First-tier Tribunal judge found that the appellant met the suitability requirements under the Rules, in that she had not used deception. The judge considered the appellant's claim that she and her partner were not married and that he had an outstanding asylum claim in the United Kingdom. The judge found that the appellant and her partner had chosen not to marry and that the partner's asylum claim had been refused on two occasions. The conclusion was that it was not disproportionate for the appellant and her child to return to Pakistan.

The grounds of appeal

6. The grounds of appeal mainly argued that the judge erred in failing to attach any weight to the "historic injustice" issue which related to the false accusation of deception, which had led to the curtailment of her leave in 2013. In addition, it was submitted that the judge failed to have regard to the third limb of *Razgar* in circumstances where the allegation of dishonesty was resolved in her favour as had the overstaying following the 2013 issue and this affected the public interest principle.
7. Permission to appeal was granted on the basis sought, with the judge commenting as follows:

"it is arguable that the judge has not considered whether any weight should be attached to the accusation of deception, which was found not to

be proved, and which resulted, according to the grounds, in the Appellant's leave being curtailed in April 2013. The factor has not been considered in the proportionality balancing exercise."

8. The respondent did not file a Rule 24 response.
9. Shortly before the hearing, the appellant filed a bundle of material which disclosed that following the hearing of her own appeal, her partner's protection appeal had been allowed and he had been recognised as a refugee by the Secretary of State. A photocopy of his residence permit dated 4 October 2019 confirmed that this was the case. In addition, an application had been made to regularise the position of the appellant's child with her partner.

The hearing

10. Mr Gajjar swiftly addressed the historic injustice point by clarifying that the appellant's leave to remain was curtailed in 2013 for working in breach and not deception. Consequently, he was not relying on this point. He asked that regard was had to the recent events, in that the appellant's partner was granted refugee status after the appellant's appeal. In addition, he argued that while the judge accepted the appellant's explanation that she did not use deception in her TOEIC examination, he did not take this into account in his Article 8 assessment despite suitability being a factor in the respondent's decision. Mr Gajjar argued that this was a material error to fail to take into account positive findings.
11. Mr Bramble asked me to note that the appellant received further leave to remain as a Tier 4 migrant notwithstanding that her previous leave was curtailed for working in breach. While accepting that the judge failed to mention his positive findings that there had been no deception, this was not material. The judge provided clear reasoning in terms of Article 8 outside the Rules including in the proportionality balancing exercise. As for the change in circumstances, no attempt had been made by the appellant's representatives to hold the case back to await the outcome of her husband's appeal. The change of circumstances could be addressed by the appellant applying for status as the partner of a refugee.
12. Mr Gajjar had nothing further to add, in response.
13. At the end of the hearing I announced that the decision of the First-tier Tribunal was upheld there being no material error of law.

Decision on error of law

14. The sole outstanding complaint with the decision and reasons of the First-tier Tribunal is that the judge did not specifically mention his positive findings on the issue of deception in conducting his balancing exercise. That is indeed the case. I heard no submissions on behalf of the appellant as to what material difference it would have made to the outcome of the appeal, had the judge mentioned those positive findings. All that could have been said is that the appellant did not use deception. That an

appellant does not use deception should be a normal state of affairs and not a matter which is deserving of additional weight. At the time of the hearing, the appellant's circumstances were that she had overstayed since 2014, she had a very young child, a partner who had an outstanding asylum appeal having been previously unsuccessful and that she had had recourse to the NHS. The positive findings on deception make no difference to these facts and could not have had a material impact on the outcome of the appeal. That circumstances have changed some months after the hearing could not have been foreseen by the First-tier Tribunal.

Decision

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

The decision of the First-tier Tribunal is upheld.

Signed:
Upper Tribunal Judge Kamara

Dated 4 December 2019