



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

Appeal Number: HU/06223/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 30 April 2019**

**Decision & Reasons
Promulgated
On 14 May 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**SAWSAN NASIR MOHUMED
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr. N. Bramble, Home Office Presenting Officer

For the Respondent: Mr. M. Aslam, Counsel instructed by Bond Adams LLP
Solicitors

DECISION AND REASONS

1. This is an appeal by the Secretary of State against a decision of First-tier Tribunal Judge Head-Rapson, promulgated on 8 March 2018, in which he allowed Mrs. Mohumed's appeal against the Secretary of State's decision to refuse further leave to remain on human rights grounds.

2. For the purposes of this decision I refer to the Secretary of State as the Respondent and to Mrs. Mohamed as the Appellant, reflecting their positions as they were before the First-tier Tribunal.
3. Permission to appeal was granted as follows:

“Permission to appeal is granted because:
 - (i) as asserted the Decision disclosed an arguable lack of findings on material matters namely under EX.1(b) and with reference to article 8;
 - (ii) the Decision arguably disclosed an overall lack of reasoning.”
4. The Appellant and Sponsor attended the hearing.
5. Following a brief discussion, I stated that I found that the decision involved the making of a material error of law. I set the decision aside and remitted it to the First-tier Tribunal.

Error of Law

6. Although just before [20] the Judge has put the heading “Findings of fact”, no findings follow. The Judge sets out the Appellant’s case from [21] to [40]. The Respondent’s case is set out from [41] to [51]. Just before [52] is the heading “Human rights”. The Judge then sets out some of the law from [52] to [58]. There is a reference to the Appellant at the start of [59], where the Judge finds that there is family life. There is a reference to the Appellant and Sponsor in the first sentence of [60], but the remainder this paragraph considers caselaw. There is then further reference to caselaw from [61] to [63].
7. At [64] the Judge sets out his conclusion. He finds “for the reasons given above” that the decision “was not in accordance with the law and the Immigration Rules; and that requiring the Appellant to leave the United Kingdom would breach the human rights of her or those of her husband”.
8. Mr. Aslam accepted that the structure of the decision was “as odd as it could be” but he submitted that the ingredients were there, if one was to look closely enough. He submitted that Judge was aware of the relevant immigration rule [20], and referred to matters set out from [21] onwards.
9. However, I find that the problem with the decision is not merely structural. There are no findings which relate to the specific circumstances of the Appellant and Sponsor. It is clear that from [21] to [40] the Judge is merely setting out the Appellant’s case. These are not findings of fact. That this is the case is made clearer by the fact that from [41] to [51] the judge sets out the Respondent’s case, which argues against the points

made in the earlier paragraphs setting out the Appellant's case. It cannot be said that [21] to [40] amount to a series of findings of fact.

10. Under the heading "Human rights", the Judge has not turned to consider the Appellant's circumstances but, as set out above, in the seven paragraphs under this heading, there are only two very brief references to the Appellant's own situation.
11. I find that the Judge has not engaged with the Appellant's case at all. He has not given any or adequate consideration as to whether or not paragraph EX.1(b) is met. There are no findings of fact. It is not clear to what he is referring when, at [64], he states that he has come to his conclusion "for the reasons given above".
12. I find that the decision involves the making of material errors of law for failure to make findings, and failure to give adequate reasons for the decision. The fact that the Judge has set out the Appellant's case does not remove the need to make clear findings as to which parts of that are accepted, and which parts have led him to come to his conclusion.
13. I have taken account of the Practice Statement dated 10 February 2010, paragraph 7.2. This contemplates that an appeal may be remitted to the First-tier Tribunal where the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for the party's case to be put to and considered by the First-tier Tribunal. Given the nature and extent of the fact-finding necessary to enable this appeal to be remade, given that there are no findings, and having regard to the overriding objective, I find that it is appropriate to remit this case to the First-tier Tribunal.

Notice of Decision

14. The decision of the First-tier Tribunal involves the making of a material error of law and I set the decision aside.
15. The appeal is remitted to the First-tier Tribunal to be reheard.
16. The appeal is not to be listed before Judge Head-Rapson.
17. No anonymity direction is made.

Signed

Date 10 May 2019

Deputy Upper Tribunal Judge Chamberlain