



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/11187/2018

THE IMMIGRATION ACTS

Heard at Field House
On 3rd April 2019

Decision & Reasons Promulgated
On 15th April 2019

Before

UPPER TRIBUNAL JUDGE MARTIN

Between

JAKMEET [K]
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Sidhu (Harbans Singh & Co, Solicitors)

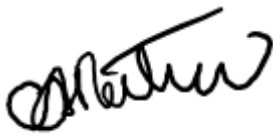
For the Respondent: Ms A Everett (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. This is an appeal to the Upper Tribunal by the Appellant in relation to a decision and reasons of Immigration Judge Parkes promulgated on 28th November 2018 following a hearing at Birmingham. The Appellant is a lady of Afghan nationality who had applied to remain on the basis that she was a spouse of a British citizen. She applied on human rights grounds under Appendix FM. The application was refused on financial grounds and the Secretary of State also decided that there were no insurmountable obstacles to the Appellant and her British spouse enjoying family life in Afghanistan.

2. The judge in considering human rights found that the relationship was genuine and subsisting, found at paragraph 14 that it was not possible to enjoy their family life in Afghanistan but did find that they could enjoy family life in India on the basis that the Appellant had previously lived there. India as an option was not mentioned in the refusal letter, does not appear to have been mentioned or relied upon by the Secretary of State at the hearing and indeed I have seen a letter from UNHCR dated 30th June 2015 indicating that whilst the Appellant had been recognised by UNHCR in India as a refugee, she had withdrawn that on the basis that she was coming to the UK. The judge therefore made an error of law in considering return to India when that was not put to the Appellant, was not raised by the Presenting Officer and indeed on the basis of the letter from UNHCR would appear to be not possible in any event. The judge having found that they could not enjoy family life in Afghanistan which is the only option open to them, the Appellant was clearly entitled to succeed in this appeal on the basis of EX.1 of Appendix FM.
3. I therefore set aside the decision of Judge Parkes on the basis of the error of law concerning return to India and I re-decide it on the findings made by him, unchallenged by the Secretary of State, and on the basis that family life cannot be enjoyed in Afghanistan, and thus cannot be enjoyed outside the UK, the Appellant is entitled to succeed. The appeal to the Upper Tribunal is allowed.

No anonymity direction is made.



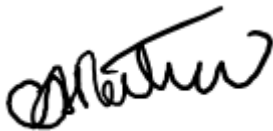
Signed

Date 11th April 2019

Upper Tribunal Judge Martin

TO THE RESPONDENT
FEE AWARD

As I have allowed the appeal and because a fee has been paid or is payable, I have considered making a fee award and have decided to make to make a whole fee award of £140 for the following reason. The Appellant clearly met the requirements of Ex.1(b).



Signed

Date 11th April 2019

Upper Tribunal Judge Martin