



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

Appeal Number: HU/11444/2017

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 23 April 2019**

**Decision & Reasons Promulgated  
On 3 May 2019**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN**

**Between**

**JANET CHIDINMA OLENKI ORJI  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr. R. Roberts, Global Immigration Solutions

For the Respondent: Mr. S. Walker, Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal by the Appellant against a decision of First-tier Tribunal Judge Walker, promulgated on 22 November 2018, in which he dismissed the Appellant's appeal against the Respondent's decision to refuse entry clearance on human rights grounds.
2. Permission to appeal was granted as follows:-

"It is arguable that the judge erred in failing to attach decisive weight, when conducting the proportionality assessment, to the appellant's ability to meet the requirements of the relevant Immigration Rules. TZ (Pakistan) appears to have been wholly disregarded."

3. The Sponsor attended the hearing.
4. In his submissions, Mr. Walker accepted that the decision involved the making of a material error of law. He accepted that, having found that the immigration rules had been met, the appeal should have been allowed with reference to the case of TZ (Pakistan) [2018] EWCA Civ 1109.
5. Given this concession, I set the decision aside, and remade the appeal allowing the Appellant's appeal on human rights grounds.

### **Error of Law**

6. The Judge states at [29]:

"I therefore find that the Appellant has shown to the required standard that she and the Sponsor could meet all the requirements of Paragraph 297 as of the date of the decision."
7. The Judge then moved on to deal with the proportionality exercise, and found that the decision was proportionate. TZ (Pakistan) states at [34]:-

"That has the benefit that where a person satisfies the Rules, whether or not by reference to an article 8 informed requirement, then this will be positively determinative of that person's article 8 appeal, provided their case engages article 8(1), for the very reason that it would then be disproportionate for that person to be removed."
8. This clearly states that, where a person meets the requirements of the rules, that is positively determinative of her Article 8 appeal. In the proportionality assessment conducted by the Judge, there is no reference to the fact that the Appellant met the requirements of the immigration rules. Having found that the immigration rules were met, weight should have been given to this, yet there is no reference to it. TZ (Pakistan) makes the situation even clearer.
9. It was accepted by Mr. Walker that this was a material error of law and that, having found that the immigration rules were met, following TZ (Pakistan) the Judge should have allowed the appeal.
10. I thank Mr. Walker for the approach taken to the Appellant's appeal.

### **Notice of Decision**

11. The decision of the First-tier Tribunal involves the making of a material error of law and I set the decision aside.
12. I remake the decision allowing the Appellant's appeal on human rights grounds.
13. No anonymity direction is made.

Signed

Date 1 May 2019

**Deputy Upper Tribunal Judge Chamberlain**

**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. I have decided to make no fee award as it appears from the decision of the First-tier Tribunal that further evidence was provided for the appeal.

Signed

Date 1 May 2019

**Deputy Upper Tribunal Judge Chamberlain**