



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/24613/2018

THE IMMIGRATION ACTS

Heard at Manchester Civil Justice Centre
On 10th June 2019

Decision & Reasons Promulgated
On 25th July 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

RN
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S. A. Salam (Solicitor)

For the Respondent: Ms H. Aboni (Senior HOPO)

DETERMINATION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Thorne, promulgated on 7th March 2019, following a hearing at Manchester on 18th February 2019. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a citizen of Pakistan, was born on 19th September 1980, and is a female. She appealed against the decision of the Respondent refusing her application for leave to remain in the United Kingdom on the basis of her private life, such a refusal decision being dated 23rd November 2018.

The Appellant's Claim

3. The essence of the Appellant's claim is that she initially entered the UK on 16th February 2011 as a student. In December 2012 she made an application for leave to remain on the basis of Tier 2 and submitted a TOEIC certificate from the Education Testing Services (ETS), which was rejected on the basis that she had obtained the results fraudulently. Her test was cancelled on the basis that it was invalid. The Appellant appealed. She was asked to take a further language test by the Home Office, which she did in June 2015, and she passed the test and obtained a distinction in listening. However, by that time, some two and a half years had gone by from 2012 to 2015. The partner in her business had left and set up on his own. The Appellant's own husband left her, and they were divorced. The Appellant's father also passed away at the time. She lived in the UK with her sister and her family. She claims that she cannot return back to Pakistan as a lone divorced woman. In this country, she has adequate maintenance to be able to live in an economically sufficient way, given the income she has from her business.

The Judge's Findings

4. The judge, considering the Appellant's appeal, made two essential findings. First, that he found the Appellant "to be an honest and reliable witness" and that "she spoke very good English" such that when asked to take another language test by the Home Office in June 2015 she had "obtained a distinction in listening and that as a result the Respondent granted her leave and has made no allegations that this certificate was fraudulently obtained" (paragraph 54).
5. Second, the judge concluded that the Appellant was someone who "was educated to a degree level in Pakistan using the English language and had been taught using the medium of the English language since she was 7 years old" (paragraph 55). However, the judge now had to consider whether the Appellant could succeed in remaining here on the basis of her Article 8 rights, which required a decision by the Secretary of State to be proportionate. The judge concluded that the decision by the Secretary of State was proportionate for two essential reasons. These were that, first, there was inadequate evidence that the Appellant could be maintained economically in the UK because "the accounts of her business show a very small profit and there is inadequate evidence of any additional income" (paragraph 82(v)). The reference here by the judge was a reference to the profit for the Appellant's business ending March 2018, which showed a sum of only £241 (see paragraph 47 of the determination). Second, the judge held that the Appellant "has never had a legitimate expectation that she could make the UK her home" (paragraph 82(vi)).

6. Against this background, the judge concluded that although the Appellant was a lone divorced woman, she could return back to Pakistan, where she had five brothers, although two of them were ill, and be supported by them. This is because there was no evidence that she had been ostracised by her family in Pakistan and she had never claimed to fear domestic violence from them. The judge concluded that “there is no suggestion that they would not help her at least in the short term” (paragraph 85).
7. The appeal was dismissed.

Grounds of Application

8. The grounds of application stated that the judge erred in law for three reasons. First, he concluded that there were no very significant obstacles, which was incorrect, given that the Appellant would face difficulty in integration on return to Pakistan as a divorced woman. Second, that the proportionality rate assessment in relation to the Appellant’s ability to support herself financially, had not been properly undertaken. Third, that the Appellant had an expectation of settlement, and the judge’s failure to proceed in considering her case on that basis, was an error in law, because had the Appellant not been wrongly rejected on the basis that she had fraudulently undertaken a TOEIC test, she would by now have been settled. Instead, there had been a two and a half year break from 2012, when she first applied, to 2015.
9. On 15th April 2019 permission to appeal was granted.

Submissions

10. At the hearing before me on 10th June 2019, Mr Salam, appearing on behalf of the Appellant, made the following submissions. He stated that the judge’s approach to proportionality at paragraph 82 was misconceived because he had given seven reasons there for why the decision by the Secretary of State was not disproportionate and yet they had all been premised on the wrong basis. This was a case where there was no Home Office Presenting Officer. It would have been helpful if the Appellant’s evidence had been tested during cross-examination because then it would have transpired that the Appellant did in fact have income in the United Kingdom from her business. What the judge had done was to have looked at the “very small profit” (paragraph 82(v)), which the business generated, but quite neglecting the fact that the Appellant was drawing an income on an annual basis of £18,600, which would have been enough for her to sustain herself on the requisite legal standard.
11. In the same way, the Appellant did have a legitimate expectation of making the UK her home because she was well on her way to settlement when she was asked to take the test, following her 2012 application on the basis of Tier 2. The rejection of her application on the basis that the test was invalid as having been fraudulently undertaken was plainly without any basis. On top of that, the evidence objectively before the Tribunal with respect to divorced women in Pakistan was that “it was ‘next to impossible’ for a single woman to live alone in Pakistan due to prejudices

against women and economic dependence...”(see paragraph 83), and the judge ought to have heeded this with more attention.

12. For her part, Ms Aboni submitted that there was no material error of law. The judge had treated the Appellant as a person who was educated and of higher class. She had not been ostracised by her family. There was no risk of domestic violence. She could return back to Pakistan.

Error of Law

13. I am satisfied that the making of the decision by the judge involved the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision and remake the decision. My reasons are as follows.
14. First, there has been a confusion in the determination as to the Appellant’s ability to be able to maintain herself in the UK without recourse to public funds. What the judge has done is to refer to the “very small profit” (paragraph 82(v)) that the Appellant’s catering business was producing. Whereas it is indeed the case that there was evidence to this effect (see paragraph 47) when the Appellant ran a dessert parlour “earning about £800 to £900 a week” (see paragraph 47), but the reality was that the Appellant was annually drawing an income of £18,600. That being so, it is not correct to say that the Appellant would not be able to maintain herself in the United Kingdom.
15. Second, the statement that the Appellant never had a legitimate expectation to make the UK her home ignored the fact that the Appellant had entered the UK as a student in 2011, and that thereafter remained here lawfully before making an application in December 2012 on the basis of Tier 2 to remain here, which application was rejected wrongly on the basis that she had engaged in fraudulent conduct.
16. Finally, although the judge was correct to have noted that the Appellant was an educated person of higher class, it is relevant to note that the full citation at paragraph 7.5.1 of the country guidance report for women in Pakistan for 2016 states that, “if a woman is educated, higher class and working it was reported to be easier to live alone, although this was still quite a rare occurrence”.
17. The judge concluded that the Appellant did fall into this category principally because she had not been ostracised from her family and she had never claimed to fear domestic violence (paragraph 85). It was also concluded that “with the support of her family and bearing in mind the aforementioned findings” that there would not be “very significant obstacles” to the Appellant integrating into life in Pakistan (paragraph 86).
18. This, however, ignored the fact that the Appellant had expressly stated that she would not be able to do so, and could not live with her family members on account of the practical difficulties of doing so. As Mr Salam submitted, this was a case where the Appellant had not been cross-examined on the evidence as there was no Home Office Presenting Officer in attendance, but taken in their entirety, these

matters are of sufficient concern when considered as a whole, to warrant that the matter be remitted back to the First-tier Tribunal again.

Decision

The decision of the First-tier Tribunal involved the making of an error on a point of law. I set aside the decision of the First-tier Tribunal. I remake the decision as follows. This appeal is remitted back to the First-tier Tribunal to be determined by a judge other than Judge Thorne, pursuant to practice statement 7.2(b) of the Practice Directions. An anonymity order is made.

This appeal is allowed.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date

Deputy Upper Tribunal Judge Juss

12th July 2019