Upper Tribunal

(Immigration and Asylum Chamber) Appeal Number: HU/25155/2018; HU/25161/2018

THE IMMIGRATION ACT

Heard at Civil justice Centre Manchester
On 16th September 2019

Decision & Reasons Promulgated
On 27th September 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE MCCLURE

Between

Mrs Yumna [N]

&

Mr Sher [S]

(NO ANONYMITY DIRECTION MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Greer of Counsel

For the Respondent: Mr Tan, Senior Home Officer Presenting Officer

© CROWN COPYRIGHT 2019

DECISION AND REASONS

1. This is an appeal by the Appellants against the decision of First-tier Tribunal Judge McAll promulgated on the 17th June 2019 whereby the judge dismissed the appellants' appeal against the decision of the respondent to refuse the appellants' claims based on Article 8 of the ECHR.

2. I have considered whether or not it is appropriate to make an anonymity direction. Having considered all the circumstances I do not consider it necessary to do so.

3. Leave to appeal to the Upper Tribunal was granted by Deputy Upper Tribunal Judge Owens on 20th August 2019. Thus the case appeared before me to determine whether or not there was a material error of law in the decision.

Immigration background

4. The appellants had married in Pakistan in 2011.

5. They had entered the UK as a Tier 4 student, Mrs [N], and her dependent, Mr [S] with leave to remain until 30th March 2013. Thereafter their leave was extended with leave to expire on the 13th June 2015.

6. On the 27th November 2014 a decision was taken to curtail their leave with leave due to expire on the 26th January 2015. The licence of the sponsoring college had been revoked and accordingly the leave of the appellants had been curtailed in line.

7. On the 21st January 2015 both appellants applied for leave to remain based on human rights grounds, described as exceptional compassionate circumstances. That application did not raise any issue relating to the completion of the course of study undertaken by the appellants.

8. The exceptional compassionate circumstances related to the loss of a child. Prior to the curtailment of leave Mrs [N] had become pregnant but sadly had lost the child after 18 weeks of pregnancy. The child had been born prematurely on the 21st November but had died, according to the decision of Judge Sharkett. [In the leave it is suggested that there was a planned termination]. The child was buried at Everton Cemetery on the 26th November 2014. As a result of the loss of the child Mrs [N] became depressed and required counselling sessions and medication to deal with her grief and depression. No reference is made to Mr [S] having any significant symptoms.

9. It is not clear whether at the time of the curtailment the decision maker was aware of the tragic death of the child.

10. By refusal letter dated the 11th March 2015 the respondent refused the appellants' applications based on human rights. The appellants appealed. The appeals were heard by Judge Sharkett on 30 July 2015. By decision promulgated on 25 August 2015 the applications were allowed. A copy of the decision by Judge Sharkett has been included in the papers.

11. Judge Sharkett noted:-

    a) That it had been less than one year since the loss of the child and the loss of the child had been a most painful experience for Mrs [N].

    b) that Mrs [N] was still in the grieving process and visiting the grave gave Mrs [N] some comfort.

    c) that inevitably as the appellants move through the grieving process there would come a time when they would have to return to a semblance of normality.

    d) that the appellant, Mrs [N], was in the acute stage of grieving over the loss of her child given that less than a year had passed since the loss and that amounted to exceptional circumstances warranting a grant of limited leave

12. The appellants were, in line with the decision of Judge Sharkett, granted a period of further leave which was due to expire on 10 August 2018.

13. On 24 July 2018 both appellants applied for further leave based upon their family and private life established in the United Kingdom and the exceptional compassionate circumstances still prevailing over the loss of the child, the mental anguish of Mrs [N] and her mental state.

14. In the meantime the appellants had had a child, who was aged about 1 at the time of the hearing before Judge McAll.

15. Those applications were refused by the respondent on 5 December 2018 and it was against those decisions the appellants were appealing.

16. After hearing on 31 May 2019 by decision promulgated on 17 June 2019 Judge McAll dismissed the appellants' appeals.

17. It was against that decision that the appellants are now appealing. The Upper Tribunal Judge notes in the grant of leave that the appellants were still seeking further leave to remain on the basis of the current grieving state.

Consideration

18. In paragraphs 21 to 26 Judge McAll has looked at claims made by the appellant in respect of their ties to Pakistan and has given valid reasons for finding that the appellants continue to have ties and family members in Pakistan. The judge was also satisfied that the appellants were healthy, relatively young and relatively well-educated. The appellants had lived most of their lives in Pakistan. He was satisfied that they would be able to find work in Pakistan. The judge was satisfied that the appellants have cultural and social ties in Pakistan which they had established during the first 26 and 28 years that they had lived there prior to coming to the United Kingdom

19. The judge went on to note that the appellants did not meet the requirements of the rules. The judge took account of the findings by IJ Sharkett and specifically noted the fact that the appellant had required a further period of grieving at a

time that was very close to the loss of their child. The judge acknowledged that at that time Mrs [N] had required the support from mental health professionals.

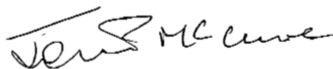
20. Since that time however as set out in paragraph 29 Mrs [N] had been able to reduce her medication and she had not required counselling since 2015. In acknowledging that Mrs [N] had not required counselling the judge had however noted that Mrs [N] was stating that she had not been getting anything from the counselling in terms of helping her to overcome her grief and depression. The judge acknowledged that the appellant would always feel the loss of the child and a sense of sorrow and that tending the child's grave did provide some degree of comfort to the appellants. He acknowledged during the hearing that they became distressed at the thought of not being able to visit their daughter's graveside. The judge was satisfied that that distress was genuine.

21. Thereafter the judge has gone on and carefully examined all of the facts in respect of the appellants. The judge has given valid reasons as to why the decision taken by the respondent is in the circumstances justified and as such would not constitute a breach of anyone's rights under Article 8 of the ECHR. The judge took account of the family ties that the appellants' had in Pakistan. The fact that Mrs [N] was not receiving counselling and had reduced her medication. Whilst acknowledging that the appellants did receive some comfort from tending the grave of their child, the judge taking account of all the circumstances was satisfied that the decision was proportionately justified. The judge has properly considered all the facts and fully justified the findings of fact.

22. Those were findings of fact that the judge was entitled to make on the evidence. In the circumstances there is no error of law in the approach that the judge has taken with regard to the appellant's appeal. For the reasons set out I find that there is no material error of law and I uphold the decision to dismiss both appeals.

Notice of Decision

23. I dismiss the appeal on all grounds.

Signed 

Deputy Upper Tribunal Judge McClure Date 18 September 2019