



**Upper Tribunal
(Immigration and Asylum Chamber)
HU/08221/2019 (P)**

Appeal Number:

THE IMMIGRATION ACTS

**Decided under Rule 34 of the
Tribunal Procedure (Upper
Tribunal) Rules 2008**

**Decision & Reasons Promulgated
On 20 July 2020**

Before

UPPER TRIBUNAL JUDGE REEDS

Between

**ZA
(Anonymity direction continued)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION

1. The appellant appeals with permission from the decision of the First tier (Judge Malik) dismissing her appeal against the respondent's decision to refuse her leave to remain on the basis of her marriage under R-LTRP1.1 (c)(ii) and on human rights grounds.
2. FtTJ Malik made an anonymity direction in her decision promulgated on the 20 October 2019. It is unclear to me the basis upon which the order was made but in the light of this appeal being considered on the papers and in the absence of any further submissions on this, I shall continue the direction made by Judge Malik.

3. Permission was granted by the FtT (Judge Ford) on the 30 March 2020. The FtTJ considered that it was arguable that the outcome of the appellant's appeal turned on the outcome of her husband's appeal which was allowed on 15 November 2019.
4. In the light of the present need to take precautions against the spread of Covid-19, and the overriding objective expressed in the Procedure Rules¹, directions were sent out to the parties that the Upper Tribunal's provisional view was that it would be appropriate to determine the following questions without a hearing:
 - (a) whether the making of the First-tier Tribunal's decision involved the making of an error of law, and, if so
 - (b) whether that decision should be set aside.
5. That decision also set out directions. It was sent out the parties by way of email. In compliance with those directions, submissions were provided by the respondent dated 17 June 2020 which indicated that she accepted that the decision of the FtTJ contained material errors of law and therefore did not oppose the application for permission to appeal and invited the Upper Tribunal to determine the appeal by setting aside the decision of the First-tier Tribunal (Judge Malik) and by allowing the appeal outright. This was on the basis that the appellant's husband's appeal was allowed by the Upper Tribunal but that this appeal and her husband's appeal could not be linked at the time of the hearing before the Upper Tribunal (see decision of UTJ Finch promulgated on the 15 November 2019 at paragraph 5).
6. It is further recorded in the written submissions on behalf of the Secretary of State that in the light of the concessions made at the appellant's husband's appeal before the Upper Tribunal, the respondent invited the Upper Tribunal to set aside the decision of Judge Malik and to allow the appellant's appeal with no further oral hearing.
7. There has been no further correspondence from the appellant and there has been no compliance with the directions sent on behalf of the Upper Tribunal on the 22 May 2020 to the address notified to the Tribunal for the appeal.
8. Having had full regard to the Pilot Practice Direction: Contingency arrangements in the First -Tier Tribunal and Upper Tribunal, the Presidential Guidance Note No 1 2020 and all

¹ The overriding objective is to enable the Upper Tribunal to deal with cases fairly and justly: rule 2(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008; see also rule 2(2) to (4).

documents submitted by the parties, including the representations made to the Upper Tribunal for the application for permission to appeal and the provision of the decision of UTJ Finch by the appellant, I have reached the decision this appeal should be made without a hearing.

9. In the preceding paragraphs I have set out the submissions advanced on behalf of the appellant in the original application for permission to appeal. No issues have been raised other than those addressed in the written submissions. In my judgment and in the light of the issues set out in the respondent's written submissions which have been resolved in favour of the appellant there is no complexity which necessitates an oral hearing to ensure fairness and that the decision is one which can properly and fairly be made on the papers taking into account the overriding objective as set out in the Tribunal Procedure Rules which includes the issue of delay.
10. The application made by the appellant was for leave to remain as the spouse of a settled person. At the hearing before FtJ Malik an application had been made for an adjournment of her appeal because her spouse had a hearing before the Tribunal. In the application drafted by counsel dated 1/11/2019 at paragraph 7, it set out that it had been submitted on behalf of the appellant that she would be less likely to succeed in her own right and therefore an adjournment should have been granted. At paragraph 8 of the same document, counsel set out that the appellant's application had always been entirely dependent/parasitic to her husband's appeal as his dependent/spouse of a person seeking ILR and that if her spouse succeeded, that the appellant's appeal would be more likely to "see the same fate". Thus, to deal with the appeal separately, might lead to a risk of contrasting decisions.
11. As set out in the grounds of appeal submitted on behalf of the appellant, the appellant's application for leave was made on the basis that her husband had applied for ILR as a settled person on the basis of his long residence and that the outcome of his application and subsequent appeal for the Upper Tribunal was likely to dictate the outcome of the appellant's own application. It was further submitted as a result of failing to adjourn the application, the judge failed to consider the effect of requiring the appellant to leave the United Kingdom where the appellant's husband cannot leave without having the effect of abandoning his appeal.
12. Since the decision of FtJ Malik and the application for permission to appeal, there has been a decision made by the Upper Tribunal on the appeal of the appellant's spouse. Upper Tribunal Judge Finch in a decision promulgated on 15 November

2019 set aside the decision of Upper Tribunal Judge Martin and remade the appeal in favour of her spouse allowing the appeal on article 8 grounds.

13. In a reply from the respondent dated 17 June 2020, it has now been conceded by the respondent that the decision of the FtTJ involved the making of a material error of law and should be set aside. The reply noted that Judge Finch was not able to link the appeal before her and the present appeal for the reasons set out at paragraphs 4 and 5 of her decision.
14. Having considered the papers and in the light of the decision of the Upper Tribunal to allow the appeal of the appellant's spouse, and considering the submissions made previously by counsel on behalf of the appellant, and the submissions made on behalf of the respondent in which it is conceded that the decision of Judge Malik involve the making of a material error of law, I am satisfied that the decision should be set aside. It had been procedurally unfair and irregular to not accede to the adjournment request in order to await the outcome of the appellant's husband's appeal in the light of his appeal which was against the refusal of his application for indefinite leave to remain. There would have been a short period of delay in the light of the hearing taking place in November 2019 and thus the proper approach would have been to adjourn the hearing to await the outcome given the relevance for this appellant. I therefore set aside the decision of the FtTJ.
15. As to the remaking of the appeal in the light of the present evidence that the appeal of the appellant's spouse has been resolved in his favour having been allowed on article 8 grounds, the outcome of the present appeal should be an order allowing the appeal on article 8 grounds as conceded on behalf of the respondent.

Decision:

16. Accordingly, the decision of the First-tier Tribunal involved the making of an error on a point of law and is set aside, and the decision is remade as follows - **the appeal is allowed on article 8 grounds.**

Upper Tribunal Judge Reeds

Dated: 6 July 2020

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 appellants and to the respondent.

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.
3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.
4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.
5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.
6. The date when the decision is "sent" is that appearing on the covering letter or covering email