



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

Appeal Number: HU/14160/2019

THE IMMIGRATION ACTS

**Heard at Field House by Video Decision & Reasons Promulgated
Link**

On 16 September 2020

On 13 October 2020

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

ASMA FAISAL YAZDANI
(anonymity direction not made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Z Malik of Counsel, instructed by Whitefield Solicitors Ltd

For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Although Mr Tufan was here to represent the Secretary of State there is in this case a very detailed skeleton argument for the respondent provided by one of his colleagues and served on the Secretary of State and the Tribunal that Mr Tufan not I knew about before the hearing. If I have failed to read something in the file I apologise to the parties but I do not think it is in my file even now. The importance of that document is it makes a concession and it makes the concession in unequivocal terms that the appeal has been determined unsatisfactorily and has to be redetermined.

2. The appeal concerns a person who is a citizen of Pakistan, who has lived in the United Kingdom for some time and has sought to remain on the basis of her private and family life, essentially the relationship with her adult children and grandchildren. The fundamental difficulty in the case identified by Mr Malik in his grounds and conceded by the Secretary of State in the skeleton argument is there is what at the very least appears to be an inconsistency where the First-tier Tribunal accepts on one hand that “private and family life” has been established and then it goes on to conclude that this is not a case where private and family life within the meaning of **Kugathas** has been established and so, to use a slightly imperfect phrase, Article 8(1) is not engaged.
3. To be plain, it is not clear to me exactly what the judge meant here. At the very very least there is an undesirable use of similar phrases with different meanings which makes the Decision and Reasons hard to follow. The Secretary of State has conceded that it is unsatisfactory and Mr Tufan did not seek to go behind that. There is also a concession that there are no clear and proper findings about the best interests of the minor children involved.
4. Mr Malik, understandably, says that the decision must be set aside. He asks for the case to be heard again in the First-tier Tribunal. He is quite open about the reasons. He says that the legislation provides for a rehearing; if there is not a rehearing then, in what he was flattering enough to suggest was an unlikely, unless I made a mistake of considerable significance it would not be possible to appeal the matter further and he wishes to preserve his client’s appeal rights. That is not necessarily a compelling argument but it is a perfectly proper argument and I respect him for his straightforwardness.
5. Mr Tufan was disadvantaged by not being instructed adequately by the Secretary of State. That is not in any way his fault but it is not the first time I have been assisted by a Presenting Officers who did not have the full file and so was not in a position to make any concessions or examination of the evidence or really informed submissions today. There has to be hearing on another occasion and, mindful of that, I am inclined to give more weight to Mr Malik’s primary submissions than I might otherwise have done.
6. I set aside the First-tier Tribunal’s decision by the agreement of the parties because it is unsatisfactory in the way I have indicated and I direct that the case be heard again in the First-tier Tribunal. No findings are preserved. The case is to be heard afresh.

Notice of Decision

The appeal is allowed. The decision of the First-tier Tribunal is set aside. The appeal will be heard again in the First-tier Tribunal.

Jonathan Perkins

Signed
Jonathan Perkins
Judge of the Upper Tribunal

Dated 7 October 2020