



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

Appeal Number: HU/15177/2017

THE IMMIGRATION ACTS

**Heard at: Field House
On: 12 February 2020**

**Decision Promulgated
On: 2 March 2020**

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

WAHIDA BEGUM

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr MA Muid Khan, of Lincoln's Chambers Solicitors

For the Respondent: Ms J Isherwood, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, a national of Bangladesh born on 15 February 1985, appeals, with permission, against the decision of the First-tier Tribunal dismissing her human rights appeal.

2. The appellant entered the UK on 6 September 2015 with entry clearance as the Tier 2 Dependant Partner of Toufiqul Alam Suhel, valid until 14 June 2016. On 14 June 2016 she made a human rights claim on the basis of her family life in the UK. Her application was refused on 2 November 2017 and she appealed against that decision.

3. In the meantime, the appellant's husband, Toufiqul Alam Suhel, made an application for indefinite leave to remain on the basis of five years as a Tier 2 migrant which was refused on the basis of allegations of fraud and deception in relation to an English language certificate obtained through the Educational testing Service (ETS). He lodged a judicial review claim to challenge the decision and the claim was stayed behind lead cases involving the same issues. A Consent Order was sealed on 10 June 2016 in which it was agreed that the appellant's husband would submit a further application for leave to remain, which would operate to continue his valid leave, and that the respondent would not make a decision on that application until the outcome of the judicial review. The appellant's husband then made an application on 14 June 2016 for indefinite leave to remain as a Tier 2 migrant and under Article 8. That application was refused on 15 December 2016 under paragraph 322(5) of the immigration rules in relation to the ETS allegation, but the decision was subsequently withdrawn on 20 January 2017. The appellant's husband made further human rights submissions on 16 February 2018. Those matters remain outstanding.

4. The appellant's appeal was listed for hearing on 7 August 2018 but was adjourned at the request of the respondent as well as the appellant in order to await the outcome of the appellant's husband judicial review claim which was still pending in the Court of Appeal. There then followed a number of case management review hearings and a further adjournment of a hearing, all of which postponed the substantive consideration of the appeal on the basis of the appellant's husband's outstanding judicial review claim in the Court of Appeal.

5. The appeal was then listed once again for a substantive hearing in the First-tier Tribunal on 20 August 2019. A further written adjournment application was made on the same basis as previously, on 15 August 2019, but the appellant's representatives were informed that the request had been received too late to be considered.

6. The matter then came before First-tier Tribunal Judge Sweet on 20 August 2019. Judge Sweet noted the absence of the appellant and her legal representative and, in the absence of a renewal of the adjournment request before him, decided to make a decision in the appeal. He dismissed the appeal on the basis of the respondent's refusal letter and the appellant's failure to provide a detailed update on the current state of her husband's appeal.

7. The appellant sought permission to appeal Judge Sweet's decision on the basis that her solicitors had told her not to attend the hearing as it was adjourned and that, contrary to the judge's statement, her solicitors had provided an update of the status of her husband's appeal.

8. Permission was granted by the First-tier Tribunal and the matter came before me.

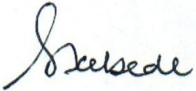
9. Ms Isherwood confirmed that the appellant's husband's judicial review was still pending in the Court of Appeal. She also confirmed that it had previously been agreed that the appellant's appeal and her husband's appeal should be linked. In the circumstances she agreed that Judge Sweet should not have proceeded to make a decision in the appeal and that his decision should be set aside and the matter remitted to the First-tier Tribunal to be linked with her husband's if his application was eventually refused and appealed.

10. In light of Ms Isherwood's concession, I set aside the First-tier Tribunal's decision and agreed to remit the matter.

DECISION

11. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law. The decision is set aside. The appeal is remitted to the First-tier Tribunal to be dealt with afresh, pursuant to section 12(2)(b)(i) of the Tribunals, Courts and Enforcement Act 2007 and Practice Statement 7.2(a), before any judge aside from Judge Sweet.

12. Unless otherwise agreed, the appellant's appeal is not to be listed until a decision is made in her husband's application for leave to remain and, in the event that his application is refused and he appeals that decision, the appeals are to be linked.

Signed 
Upper Tribunal Judge Kebede
2020

Dated: 13 February