Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/02392/2020

THE IMMIGRATION ACTS

Heard at Manchester (via Microsoft Teams)	**Decision & Reasons Promulgated**
On 6 July 2021	**On 23 July 2021**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

MAH JABEEN ABDULLAH
(Anonymity direction not made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr T Mahmood instructed by Zenith Solicitors.
For the Respondent: Mr Whitwell a Senior Home Office Presenting Officer.

DECISION AND REASONS

1. The appellant appeals with permission a decision of First-tier Tribunal Mensah (the Judge) promulgated on 19 November 2020, in which the Judge dismissed the appellant's appeal on human rights grounds.

2. The appellant is a citizen of Pakistan born on 5 November 1987.

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3. The Judge records the hearing being conducted remotely with no appearance by a representative for the respondent and the Judge only receiving submissions from counsel for the appellant.

4. Those submissions are noted by the Judge in her Record of Proceeding as being:

> 'This was a float. It was listed for a CVP. It was converted to a telephone hearing as no live evidence being given and submissions only by Counsel, at counsel's request. The Home office have confirmed through my clerk Abdullah, they are content for the appeal to be dealt with in their absence.
>
> Checked who was present? Only Counsel
>
> [No interpreter needed as confirmed in the Directions of Judge Monaghan dated 29.07.2020]
>
> Criminal offence to record and publish in public or in private these proceedings or any court communication explained.
>
> Counsel submission:
>
> Appellant's statement 4th paragraph dated 14.10.2019 confirms this was her 3rd application for visa extension. She had not passed the English language test. She made it clear in the online application she was applying for the extension because couldn't pass English language. In the Rules allows for extension on that basis but Mr Mahmoud couldn't say which rule. If didn't meet rule he argued the Respondent could have granted discretionary leave as they had a British child and now have two British children. He asked me to allow the appeal.'

5. The Judge in the determination at [7] considers paragraph 284 of the Immigration Rules to see whether there is provision for an extension of stay as a spouse in the United Kingdom in which it was noted that to benefit from such an extension an applicant will be required to provide the relevant English-language certificate or fall within one of the available exceptions. The Judge notes that the rule permits an extension for up to 2 years provided the criteria in paragraph 284 are met. The Judge considers guidance provided by the Secretary of State before concluding at [10 – 13]:

> "10. The Appellant has been granted two periods of 30 months so far and has still been unable to pass the English language test. In the Appellant's witness statement, she says she is working hard to pass but gives no further details. There is no evidence before me and there was no evidence before the Respondent upon which it could be said there were exceptional compassionate circumstances that prevent the Appellant passing the test or any physical or mental condition that would also prevent the same.
>
> 11. The Appellant and her husband have two British children aged two years and one born in June 2020. They all say in their witness statements is that they are all living happily in the United Kingdom. They failed to file any evidence upon which I can properly assess whether it would not be reasonable to expect the children to leave the United Kingdom. Mr Mahmood had no submission on the point. I am not able to simply assume what is or is not reasonable. Therefore, the Appellant has failed to show she falls within EX.1 in relation to her position as a parent. The same situation applies to her position as a partner. No obstacles have been raised, never mind insurmountable obstacles as required.
>
> 12. Given they have completely failed to address the relevant issues with evidence. I also find there are no exceptional circumstances which warrant departure outside the Rules. The Respondent's decision is entirely proportionate on that basis. The Appellant has not filed a shred of evidence

> to show she faces very significant obstacles to integration in Pakistan under 276 ADE and does not meet any of the other criteria and again no exceptional circumstances are raised. I find the appeal fails under both family and private life considerations."

6. The appellant sought permission to appeal, asserting the reasoning of the Judge for not accepting the appellant's case is inadequate and insufficient when all documents in support of the application had been submitted. It is asserted the appellant did not apply for ILR only an extension for extra time to pass English language test which the appellant had had difficulty doing as a result of a difficult pregnancy. The Grounds assert removal will be disproportionate and that the respondent could have put the appellant on a 10-year route which it is suggested was a normal response to those who have British children. The Grounds assert the Judge did not consider exceptional and compelling circumstances properly and failed to undertake a structured approach to the proportionality assessment.

7. Permission to appeal was granted by another judge of the First-tier Tribunal on 29 December 2020 on the basis it is arguable the Tribunal erred in failing to carry out the article 8 proportionality assessment, taking into consideration the appellant's young children and the difficult pregnancy with her second child. The grant states that that was the only ground that was arguable.

Error of law

8. Before the Upper Tribunal Mr Mehmood repeated the claim that the appellant had not applied for ILR but only for an extension of her leave to enable her to pass the English language test, after which a settlement claim would be made.

9. Whilst that is not disputed, there is no appeal against refusal under the Immigration Rules and the only basis on which the appellant could challenge the refusal was on human rights grounds.

10. The grounds of appeal to the First-tier Tribunal specifically assert that article 8 had not been "applied in its intended spirit". This was clearly a human rights appeal before the Judge.

11. The Judge notes the fact the appellant applied for an extension but the fact the appellant had indicated in the application that she required an extension to enable her to pass English language test does not mean that the Secretary of State was bound to grant such an extension, especially in circumstances where two previous extensions had been granted.

12. The refusal letter dated 6 February 2020 sets out reasons why the appellant's application failed, noting the application of 14 October 2019 was a human rights claim applying for leave to remain under Appendix FM on the basis of family life with the appellant's partner. The refusal gives clear reasons as to why the appellant was not entitled to a grant of leave under either the 5-year or 10-year route. The Judge clearly reviewed all the available evidence, applicable law, and sets out her findings, which are supported by adequate reasons.

The Judge was not entitled to speculate, and on the basis of the limited evidence made available no legal error material to the decision has been made out in the decision to dismiss the appeal.

13. If the appellant wishes to seek leave to remain on any other basis, i.e. as a parent, it will be necessary for her to provide sufficient evidence with the application to enable an informed decision to be made or, if an appeal against a decision arises, to provide sufficient evidence to enable a judge to assess the merits of a claim as a whole. The difficulty for the Judge in this appeal is that the evidence was very limited as noted in the decision under challenge.

Decision

14. There is no material error of law in the Immigration Judge's decision. The determination shall stand.

Anonymity.

15. The First-tier Tribunal made no order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed……………………………………………….
Upper Tribunal Judge Hanson

Dated 7 July 2021