



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-003485

First-tier Tribunal No: HU/54601/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:

25th October 2023

Before

DEPUTY UT JUDGE FARRELLY

Between

Ms SHAHIDA BANO
(anonymity order not made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr Jay Gajjar, Counsel, instructed by Law Lane Solicitors

For the Respondent: Mr Avery, Senior Home Office Presenting Officer

Heard at Field House on 3rd August 2023

DECISION AND REASONS

Introduction

1. The appellant, is a national of Pakistan, born in 1957. She came to the United Kingdom on 19 July 2009 on a visit Visa. She had permission to remain until 16 June 2010.
2. On 22 December 2009 she applied to remain as a dependent. This was refused and her appeal was unsuccessful. She was served with a notice as an over stayer. She made a series of applications which were unsuccessful.
3. On 28 July 2020 she made a further application for leave based upon article 8 and article 3, the latter relating to medical issues. She lives with her son, Mr Naushad Irshad and his wife and their four children. Her application was refused and her appeal before First-tier Tribunal Judge Shiner was dismissed.

4. Permission to appeal to the Upper Tribunal was granted by Upper Tribunal Judge Kamara on the basis it was arguable the judge made a factual error in finding the appellant had not paid the litigation debt whereas there was evidence of at least part payment. Furthermore, it was arguable that it was irrational to have dismissed her appeal given the acceptance she had a strong attachment to her grandchildren, three of whom were autistic, and it was in their best interest for her to remain.
5. The respondent made a rule 24 response, opposing the appeal. It states that the determination at paragraph 43 acknowledged the claim that the litigation debt was being paid off but states that there was no evidence to confirm this. There was evidence in the bundle (95/96) of payment but there was no clear indication this was towards the litigation debt. Regarding the best interests of the children, the judge referred to the section 55 obligation pointing out their best interests were the primary but not the only consideration (67-69).
6. At hearing Mr Gajjar, Counsel set out the grounds of challenge. The appellant's son is an engineer and it was said he had been making regular payments towards the litigation debt. I was referred to the positive findings in respect of the children. There was no challenge to the judge's findings in relation to article 3 and the appellant's health and in respect of private life. Mr Avery continued to oppose the appeal as per the rule 24 response.

Consideration

7. Regarding the litigation debt, this is a discretionary consideration in relation to suitability under the rules. The litigation costs have been put at £795 and relate to costs in relation to earlier proceedings connected with her immigration status. The judge at paragraph 70 of the determination recorded:

In any event the Appellant has failed in respect of the rules because I am satisfied she has not paid the litigation debt which she owes. I heard no evidence in this regard... I find that S-LTR. 4.4 is engaged and the Appellant should fail under the rules for this reason as well...
8. Mr Gajjar, Counsel, refers to pages 95 and 96 of the appellant's appeal bundle in the First-tier Tribunal and suggests the judge made a factual error in stating there was no evidence of payment of the debt. He refers to a note of a transaction dated 22 October 2021 whereby £50 was paid from Shakespear Martineau LLP under the heading 'H Moore-Recovered debt'.
9. Mr Gajjar did not appear in the original appeal. His grounds of appeal at paragraph 8 refer paragraph 43 of the judge's determination that the appellant's Counsel had conceded there was no evidence that some of the debt had been paid. Mr Gajjar describes such a concession as a matter of regret and suggests, notwithstanding this, the judge had a duty to give the evidence anxious scrutiny.
10. The judge in the original appeal took pains to confirm that all the documentation was available. The respondent was represented by a presenting officer. At paragraph 35 of the determination the judge referred to the submission that there was no evidence the litigation debt had been paid. The appellant was represented by Counsel. Paragraph 43 of the Determination records his submission that the litigation debt was being paid off but there was no evidence to support this. At paragraph 70 the judge recorded the appellant had failed to pay off the litigation debt and there was an absence of any evidence of her settling that debt.

11. It is clear from the determination the judge was aware of the issue about the judgement debt and the discretion under the rules on suitability in relation to this. The appellant's case, through her Counsel's submission, was that it was being paid off but there was no evidence to support this.
12. I can find no material factual mistake on the part of the judge in respect of this issue. The judge refers to the absence of any evidence in respect of her settling that debt. The reference in the appellant's bundle to a payment of £50 , cannot clearly be attributed to the judgement debt and in any event would only be part payment. Consequently, I find no material error of law on this issue.
13. In relation to the second ground, the section 55 obligation and the best interests of the children, Mr Gajjar argues the judge's refusal of the appeal was irrational in light of what was said at paragraph 62 of the determination:

62. I accept that the Appellant as lived with the Children all of their lives they are therefore likely to have a strong attachment to her... It was not argued before me that that relationship was sufficient to establish a protected family life under article 8... I accept that three of the Children are autistic... The appellant leaving the household will adversely affect those children more as consequence.... Nonetheless I judge that it is in all of the Children's best interest for the Appellant to remain in the household. I take that factor into account as my primary but not only consideration.

14. I see nothing irrational in the judge acknowledging the best interests of the children would be for the appellant to remain in the household. The judge correctly points out whilst their interest is a primary consideration it was not the only consideration . This is in line with Lady Hale's judgement at of TZ Tanzania [2011]UKSC 4 :

This did not mean(as it would do in other contexts) and identifying their best interests would lead inexorably to a decision in conformity with those interests. Provided that the tribunal did not treat any other consideration as inherently more significant than the best interests of the children, conclude that the strengths of the other considerations outweighed them. The important thing therefore, is to consider those best interests first.

Conclusion

15. I find this to be a very carefully prepared and evenly balanced Determination which takes account of all the claims advanced. I do not find the judge erred factually in relation to the judgement debt. Regarding the children, the judge acknowledged three of the children are autistic and set out the medical evidence in relation to their needs. The judge acknowledged they required stability and certainty and routine beyond that of a child without autism. Because of this the appellant leaving the household the children will be affected all the more by her leaving. However, as the judge correctly points out their interests are not the only consideration. It is clear the judge looked at all the considerations.

Decision

I find no material error in the decision of First-tier Tribunal Judge Shiner dismissing the appellant's appeal. Consequently, that decision shall stand.

Francis J Farrelly
Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber