



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

Case No: UI-2023-000984

First-tier Tribunal No:  
HU/00797/2022

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

4<sup>th</sup> March 2024

**Before**

**UPPER TRIBUNAL JUDGE HANSON**

**Between**

**MRS ROZINA BEGUM**  
**(NO ANONYMITY ORDER MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: See below.

For the Respondent: Ms Young, a Senior Home Office Presenting Officer.

**Heard at Phoenix House (Bradford) on 23 February 2024**

**DECISION AND REASONS**

1. In a determination promulgated on 15 February 2023 a judge of the First-tier Tribunal dismissed the appellant's appeal against refusal of her application for leave to remain on human rights grounds, finding that the decision would not be unlawful under Section 6 of the Human Rights Act 1998.
2. A material legal error was found in the decision and that determination set aside by a Deputy Upper Tribunal Judge. Following a rather convoluted history the matter comes back before me today for the purposes of the Upper Tribunal substituting a decision to either allow or dismiss the appeal. The necessary transfer order has been made.
3. In relation to the issue of representation, a large number of emails were exchanged shortly before the hearing containing a request that the appellant, her husband, and her barrister, Mr Stedman, be permitted to attend remotely. The Tribunal agreed as the hearing centre at Bradford could accommodate the request and no issues appeared to arise that required face-to-face attendance.

4. On the morning of the hearing, however, a further email was received from the appellant stating she was not coming to the hearing as she was unwell. Nothing further was said and no supporting medical evidence provided.
5. A further development is the receipt of a letter from the appellant's husband to which reference is made below.
6. When Mr Stedman joined the hearing he was made aware of the information now available to the Tribunal. He stated he was not surprised the appellant had emailed stating she was not attending the hearing as that accorded with his instructions.
7. After further discussion, to ensure the Tribunal was absolutely clear in relation to the extent of Mr Stedman's ability to appear in the proceedings, he confirmed that his instructions, confirmed by email, are that he was not instructed to participate any further in the hearing after having advised of the appellant's situation, although was not instructed to withdraw the appeal and had no instructions to apply for an adjournment.
8. The appeal was allocated three hours of Tribunal time. Parties had been served with notice specifying the date time and place of hearing and the Tribunal has done its best to accommodate those seeking to attend remotely.
9. In relation to the interests of justice, I consider that it is in both the interests of justice and fairness to proceed to hear the appeal in the absence of the appellant. There was no application to adjourn. It is the appellant's appeal, and she has indicated, in terms, that she does not want to continue with the appeal. I set out below the remaining basis upon which the appellant sought to maintain her argument, prior to today, and the reason there is no merit in the same. As this is now no longer an appeal with any realistic prospects of success, little will be served by not proceeding which would be contrary to the overriding objective.

#### Discussion and analysis

10. The reasons for refusal letter dated 15 December 2021 notes the appellant made a human rights claim for leave to remain in the UK under Appendix FM on 15 February 2021.
11. That application was refused as the appellant did not meet the eligibility English language requirement to be found in paragraph E-LTRP.4.1 to 4.2, as she had applied for a second period of leave under the 5 - year partner route of Appendix FM which required her to demonstrate she has passed an English language test in speaking and listening at a minimum Level A2.
12. The appellant accepts in her witness statement that she has not achieved this level of competence in the English language. In light of that I find the refusal on this basis is properly made out and in accordance with the law.
13. The decision maker went on to consider paragraph EX.1. of Appendix FM, noting the appellant has a genuine subsisting relationship with her partner, but that the Secretary of State had not seen any evidence there are insurmountable obstacles in accordance with paragraph EX.2. to family life continuing outside the UK, leading to refusal pursuant to paragraph EX.1. (b).
14. The appellant's case was that even if she could not succeed on the 5 year route, as she accepted she did not have the English language certificate, she should be entitled to a grant of leave on the 10 year route on the basis there are insurmountable obstacles to her and her husband continuing their family life in Pakistan. The appellant refers to her husband's medical needs, claiming his ill health, age, and time in the UK of over 50 years, will prevent him from being able to live a normal life in Pakistan, and that the refusal is disproportionate.
15. The further evidence referred to on the day of the appeal is a letter from the appellant's husband, dated 22 February 2024, in the following terms:

I, Mr Lalmar Khan (D.O.B 17/12/1946) of 167 St. Larence Road, Tinsley, Sheffield, S9 1SF.

Wish to inform the presiding judge who will hear the appeal of my former wife Mrs. Rozina Begum. That my marriage has irretrievably broken down and that I no longer wish to support Rozina's application to remain within the United Kingdom.

Nor do I support her with her wish to appeal the first-tier tribunal was to be overturned.

Rozina has absconded from the marital home on Monday, 19 February 2024 and has taken my benefit money that is used to feed me and she has also taken gold jewellery that does not belong to her.

I no longer support her application and for her to return to her home country of Pakistan immediately.

I am making this statement of my own free will, under no pressure or duress and I fully understand the implications of this letter.

16. The actions of the appellant in not attending, in light of the circumstances as a whole, are therefore explained. There is now no genuine, subsisting relationship with Mr Khan and I make a finding of fact to that effect. The appellants claim she needs to stay in the UK to meet his medical needs that he will not be able to meet the same in Pakistan is no longer relevant. As the marriage has broken down and the appellant has left the marital home, the breakdown being irretrievable on the evidence, there is no longer evidence of family life recognised by Article 8 ECHR or anything to support the appellant's contention.
17. Whilst the appellant may have formed a private life in the United Kingdom, having been here for five years, there is insufficient evidence to identify the nature of that private life in relation to quality and/or content.
18. I am satisfied the Secretary of State has made out her case that any interference with the private life is proportionate. The weight to be given to the private life has to be that set out by section 117B Nationality, Immigration and Asylum Act 2002 in light of the fact that although the appellant had five years leave as a spouse her status was not settled. During that period the private life has been formed.
19. On the basis the material now available to me, I find the Secretary of State has established that any interference in the appellant's rights protected by Article 8 ECHR is proportionate. I find the appellant cannot succeed under Appendix FM of the Immigration Rules in light of there being no evidence that she has the necessary English language qualification, and that the marriage has broken down in any event, on the facts.
20. On that basis I dismiss the appeal.

### **Notice of Decision**

21. Appeal dismissed.

**C J Hanson**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**2024**

**23 February**