Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: VA/02795/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 10 June 2015	**On 25 June 2015**

Before

UPPER TRIBUNAL JUDGE O'CONNOR
DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

MRS NABILA IQBAL
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

ENTRY CLEARANCE OFFICER – ABU DHABI

Respondent

Representation:
For the Appellant: No appearance or representation
For the Respondent: Ms Fijiwala – Senior Presenting Officer

DECISION AND REASONS
Delivered orally on 10 June 2015

Introduction

1. The appellant is a citizen of Pakistan born on 4 February 1977. Neither her legal representatives, her sponsor, nor any other family member attended before the Upper Tribunal on the appellant's behalf. We have been provided with no explanation as to why that is so. The Upper Tribunal received an adjournment application on the day prior to the hearing

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indicating that the sponsor was not available to appear at the hearing. There was no reference to the inability of the appellant's legal representatives to attend the hearing. Judge Kopieczek refused this application for three reasons:

(i) there was no explanation as to why the sponsor had travelled outside the United Kingdom knowing that the appeal hearing was pending ;

(ii) that the application for an adjournment was made at a late hour without satisfactory explanation and; most significantly,

(iii) the Upper Tribunal has not yet made a decision on the issue of whether to set aside the First-tier Tribunal's determination – there being no necessity to hear further evidence from the sponsor at this stage of the proceedings.

.2 That refusal was communicated to the appellant's solicitors on the day prior to the hearing. Whether they received that response or not, it was their duty to attend the hearing today. There has been no further application for an adjournment.

.3 In all the circumstances, having taken into account the overriding objective in the 2008 Procedure Rules, it is our conclusion that it is appropriate to proceed to determine this appeal absent any representation on behalf of the appellant.

Error of Law

.4 It is prudent first to briefly set out the appellant's family circumstances. The appellant was married to a Mr Ahmed, a British citizen, in an Islamic ceremony in November 2009. Mr Ahmed is also married to Mrs Ahmed, a British citizen; that marriage taking place, as far as we can understand from the papers, as long ago as 1996. This relationship is continuing.

.5 The appellant and Mr Ahmed had two children together as of the date of the entry clearance officer's decision and those children are British citizens. There is now a third child of the relationship, the birth of this child post-dating the decision under challenge. Mr Ahmed also has four children with his British citizen wife, Mrs Ahmed. He currently resides with Mrs Ahmed in the United Kingdom, making visits to Pakistan to see the appellant and his children there.

.6 On 21 April 2014 the appellant applied for entry clearance as a family visitor, making reference to Article 8 ECHR at the same time. This application was refused in a decision of 11 May 2014 pursuant to paragraph 41 of the Immigration Rules. The appellant lodged an appeal to the First-tier Tribunal, such appeal being heard by First-tier Tribunal Judge Veloso on 13 January 2015. Having heard detailed submissions from the parties Judge Veloso concluded that the appellant's appeal was to be limited to human rights grounds, a conclusion which has not been the subject of challenge before this Tribunal, and she thereafter dismissed the appeal in a determination promulgated on 26 January 2015.

.7 When doing so the judge provided the following reasons in paragraphs 28 to 31 of her determination:

> "28. I find that the appellant has established a family life with the sponsor, who is the father of her three children. The respondent does not dispute that the appellant and the sponsor have two (now three) children together. The couple underwent an Islamic marriage in 2009 and have been living separately since, interspaced by visits from the sponsor. Mrs Ahmed stated in evidence that she has travelled to Pakistan and visited the appellant many times; her last two trips were in 2009 and 2010. On at least her last visit in 2010 she travelled accompanied by her children.
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> 29. On balance I am not satisfied that the respondent's decision has consequences of such gravity as potentially to engage Article 8. The appellant is the sponsor's second wife. The sponsor is living with his first wife, Mrs Ahmed. The appellant's grounds of appeal argue that she is living in Pakistan and has no intention to come to the United Kingdom to permanently live in the United Kingdom because she is settled in her home country, where she has a house, a servant, a driver and job opportunities should she chose to take these up. She merely wants to come and visit. I find that there is no reason the sponsor could not travel to Pakistan to visit her, which is what he has been doing since 2009 and was in fact the reason for his absence in Court today. The same applies to Mrs Ahmed and the children.
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> 30. With regards to the appellant's two (now three) children I find that as British citizens (anticipated to be granted to the third child) they have the right to enter the United Kingdom as they wish. They are able to see their step-family by being accompanied by their father, the sponsor, who can travel to Pakistan where he is presently staying and can being them back to the United Kingdom. The step-family can equally travel to Pakistan to visit them there.
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> 31. Having found against the appellant in answer to question two of Razgar, I do not need to consider the remainder of the test."

.8 Designated Judge Zucker granted the appellant permission to appeal in a decision of 15 April 2015, reference being made in particular to the decision of this Tribunal in Mostafa (Article 8 entry clearance) [2015] UKUT 112 (IAC).

.9 The appellant's grounds can be summarised in the following terms:

()i The First-tier Tribunal erred in failing to consider the circumstances of the appellant's husband, both in the United Kingdom and in Pakistan;

()ii The First-tier Tribunal failed to take into account the fact that (a) the appellant has had three children since her husband's UK based family last visited Pakistan and (b) the cost of the tickets for the family of six to travel to Pakistan would be very expensive and not affordable;

()iii The First-tier Tribunal came to an incorrect conclusion on the evidence presented in support of the appeal and any other judge would have found it proportionate for the appellant to be allowed to travel to the United Kingdom as a visitor;

()iv The First-tier Tribunal was wrong in suggesting the appellant's children could travel to the United Kingdom with the appellant as they were British citizens; and,

()v The First-tier Tribunal failed to consider the circumstances of the case in its entirety and another judge would have allowed the appeal.

.10 The first, second and fourth of these grounds amount to no more than disagreement with findings of fact made by the First-tier Tribunal in paragraphs 28 to 30 of its determination, which we have set out above. The Tribunal, having given careful consideration to the evidence before it, concluded that there was no reason why the appellant's husband and indeed his UK based wife and children could not, if they so chose, travel to see the appellant and her children in Pakistan. These were conclusions which the Tribunal was plainly entitled to come to given the evidence before it.

.11 In coming to such conclusions the Tribunal clearly had in mind both the costs of the flights (paragraph 12 of the determination) and the fact that the appellant now has three children in Pakistan (paragraph 28 of the determination).

.12 The third and fifth of the aforementioned grounds of appeal relate to the issue of proportionality - as indeed does the reference to the decision in Mostafa in the grant of permission.

.13 The First-tier Tribunal did not consider the issue of proportionality because it found Article 8 was not engaged. There is no legal error in the taking of such an approach – a conclusion reinforced by the recent decision of this Tribunal in Adjei (visit visas – article 8) [2015] UKUT 00261 (IAC). In such circumstances it is clear that the aforementioned grounds are without merit.

.14 In summary, we find that when the First-tier Tribunal's determination is read as a whole both its findings of fact and its conclusion that Article 8 is not engaged, were open to it on the available evidence. It did not fail to pay regard to any material piece of evidence, nor did it take into account any irrelevancies. The reasons it gives for its conclusions are sufficient to allow the appellant to understand why the appeal was dismissed.

.15 We are led, therefore, to the inevitable conclusion that the First-tier Tribunal's determination does not contain an error of law capable of affecting the outcome of the appeal and for this reason we dismiss the appeal before the Upper Tribunal.

.16 On a final note, we observe that in our view, given all that we have read, it is plain that as of the date of the ECO's decision the appellant did in fact meet the requirements of paragraph 41 of the Immigration Rules. This conclusion though is not a matter which is of relevance to our decision on the issue of whether the First-tier Tribunal's determination contains an error of law. For the reasons set out above, we find that it does not and it must therefore remain standing.

Notice of Decision

The appellant's appeal is dismissed. The First-tier Tribunal's determination does not contain an error on a point of law capable of affecting the outcome of the appeal and it is to remain standing.

No anonymity direction is made.

Signed:

Upper Tribunal Judge O'Connor
Date: 12 June 2015