



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/13152/2015

THE IMMIGRATION ACTS

Heard at Glasgow
on 29 August 2017

Decision and Reasons Promulgated
On 30 August 2017

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

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(Anonymity direction made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representative:

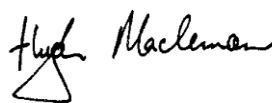
For the Appellant: Ms D Friel, of McGlashan MacKay, Solicitors

For the Respondent: Mrs M O'Brien, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant appeals against a decision by First-tier Tribunal Judge Bradshaw, promulgated on 19 January 2017, dismissing her appeal against refusal of leave to remain on human rights grounds.
2. The main point of the grounds of appeal to the UT is that the Judge erred in his consideration of whether it was reasonable to expect the appellant's three British children to leave the UK / EU.

3. Permission was granted on the view that the grounds were arguable, in light of *SF and others* (Guidance, post 2014 Act) UKUT 00120 (IAC).
4. *SF and others* was reported after the decision of the FtT, but it turns on a guidance document which was in force at the time of the FtT hearing. Neither party drew it to the FtT's attention.
5. The policy does not require a grant of leave in the circumstances of this case, but it does require the case to be looked at on a different basis. Judge Bradshaw thought the decision of the respondent was proportionate because it left open the reasonable option of the appellant, her husband and their three children moving to Pakistan to carry on family life there (¶78). However, the policy concedes that the effect of EU law is that such a case must be approached on the assumption that it would be unreasonable to expect the children to leave with their mother.
6. It had to be decided whether it was proportionate to expect the appellant to leave, due to her adverse immigration history, notwithstanding that it would be unreasonable to expect the children also to do so, because they could remain with their father. The possibility of separation had to be justified.
7. In the FtT, the evidence and submissions did not focus on the correct issue.
8. That was through no fault on the part of Judge Bradshaw. Judges are expected to know and apply the law, even where the assistance they should have from parties is lacking. They are not deemed to know policies of the SSHD which, like this one, are separate from the immigration rules.
9. Representatives, on both sides, were under a duty to bring the policy to the Judge's attention. Failure to do so has resulted in a procedural mishap. The effect is so fundamental that the decision has to be set aside.
10. Although neither party has yet applied to bring further evidence, the need to look at the case in a new light is such that the remaking should give them both the chance to do so.
11. The decision of the FtT is **set aside**. None of its findings are to stand, other than as a record of what was said at the hearing.
12. The nature of the case is such that it is appropriate in terms of section 12(2)(b)(i) of the 2007 Act and of Practice Statement 7.2 to **remit the case to the FtT** for an entirely fresh hearing.
13. The member(s) of the FtT chosen to consider the case are not to include Judge Bradshaw.
14. The FtT made an anonymity direction. Anonymity has been preserved herein.



29 August 2017
Upper Tribunal Judge Macleman