



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: HU/10063/2017

THE IMMIGRATION ACTS

Heard at Newport

On 16 November 2018

**Decision & Reasons
Promulgated**

On 13 December 2018

Before

**MR C M G OCKELTON, VICE PRESIDENT
DEPUTY UPPER TRIBUNAL JUDGE J F W PHILLIPS**

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

RAZAN [S]

Respondent

Representation:

For the Appellant: Mr C. Howells, Senior Home Office Presenting Officer.

For the Respondent: Dr N. [S]

DETERMINATION AND REASONS

1. The respondent, whom we shall call “the claimant”, is probably stateless: she has identity documents furnished by the Palestinian authority. She appealed to the First-tier Tribunal against the refusal of her application for Entry Clearance as a spouse: her husband, Dr [S], is a British Citizen, as are their children. The refusal was on the grounds that the application was not accompanied by the required specified documents.

2. First-tier Tribunal Judge James allowed the appeal in a determination which is characterised in the Secretary of State's grounds of appeal with considerable justice as "hopelessly confused". The judge found that the Rules were not met and that "the appeal fails on this point". The judge then referred to a "discretion in regards to article 8 and potential points raised ... which the respondent had failed to exercise". The judgment continues:

"Therefore the Appellant's appeal is allowed to the extent that the Respondent has failed to exercise her discretion, and the consequent effect of that decision is to vitiate the entirety of the Respondent's decision, which as it stands is unlawful. I find that the Respondent's decision in relation to the Appellant remains outstanding with the Respondent and she awaits a lawful decision on her application. I allow the appeal to this limited extent."

3. In the next paragraph, however, the judge writes:

"Thus [sic] in summary the Appellant's documentation submitted in support of her appeal fully addresses and counters the Respondent's objections."

4. And finally:

"The Appellant has discharged the burden of proof upon her and the reasons given by the Respondent do not justify the refusal of entry clearance. Therefore the Respondent's decision is not in accordance with the law and the applicable Immigration Rules.

Appeal allowed."

5. So far as we can see, the appeal is determined both against the claimant and in her favour on the basis of the Immigration Rules; it is allowed to a limited extent on the basis of a discretion unknown to the law and at the same time allowed outright; the reasons for allowing the appeal are not permissible grounds of appeal following the coming into force of the appeals provisions of the Immigration Act 2014, and the only permissible ground, that the decision was a breach of the claimant's human rights, is not discussed, nor is any conclusion reached upon it. It is extremely regrettable that the claimant and her family have been misled by a decision of such incompetence.
6. The position, as we endeavoured to explain to Dr [S], is as follows. By failing to send the required documents with her application, the claimant did not meet the requirements of the Immigration Rules and could not expect a decision in her favour. She was entitled to argue that in these circumstances the refusal of Entry Clearance was a disproportionate interference with her rights protected by art 8 but did not really do so: the grounds of appeal are concerned mostly with attempting to show that the requirements of the Rules could have been satisfied. In determining any question of whether the interference was proportionate the Tribunal was and would be bound to take into account that the relevant features of the

Rules are there in order to enable applications to be processed efficiently and it is extremely difficult to see how it would be disproportionate to maintain a negative decision on this application when the claimant had and has the opportunity at hand to make a new application that would be effective in securing her what she seeks by complying with the Rules.

7. For the reasons we have given, Judge James erred in law. We set the decision aside. The Entry Clearance Officer's decision was justified if not mandated by the Rules and for the reasons given in the previous paragraph the claimant has failed to show that the resulting interference with her Convention rights is disproportionate. We therefore substitute a decision dismissing her appeal.

C. M. G. OCKELTON
VICE PRESIDENT OF THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER
Date: 26 November 2018.