



Upper Tribunal
Immigration and Asylum Chamber

Appeal Number: IA/34765/2015

THE IMMIGRATION ACTS

Heard at Field House
On 22 March 2018

Decision & Reasons Promulgated
On 23 March 2018

Before

Upper Tribunal Judge Kekić

Between

Fizzah [A]
(anonymity order not made)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation

For the Appellant: Mr E Nicholson, Counsel instructed by Marsans Solicitors
For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

Determination and Reasons

Details of appellant and basis of claim

1. The Secretary of State challenges the decision of First-tier Tribunal Judge T Jones to allow this appeal (although it is not specified whether this is under or outside the rules) by way of a determination promulgated on 21 July 2017. For convenience, I refer to the parties as they were before the First-tier Tribunal.

2. The appellant is a national of Pakistan born on [] 1981. She entered the UK for studies in 2007 although full details have not been provided in any of the representations made by her solicitors or in the respondent's decision letter. The latter and the grounds of appeal refer to her entering on 3 September 2011 as the dependant of a PBS migrant whom she married in Pakistan in December 2007 and who subsequently obtained indefinite leave to remain and is now, it would seem, a British national. The appeal was brought by the appellant against the respondent's refusal of 19 November 2015 to grant her indefinite leave to remain as a victim of domestic violence. A supplementary letter was issued on 8 February 2017 in response to further information supplied by the appellant's representatives. The appellant completed her post graduate studies in 2009 and divorced her husband in December 2013. Her application for leave was made some two years later.
3. The judge heard oral evidence from the appellant. He found that she did not meet the requirements of E-DVILR.1.2. because she had not held limited leave as the partner of a British citizen or a person settled in the UK. However, he found that pursuant to paragraph 276ADE(1)(vi), there would be very insurmountable obstacles to re-integration because she had been through a lot in terms of the marriage, was ostracised by her family and fearful of repercussions should her circumstances be known to people in Pakistan. He also found that removal would be disproportionate because she had a supportive aunt and sister and the opportunity for employment.
4. The respondent sought permission to appeal and this was granted by First-tier Tribunal Judge Martins on 8 January 2018 on the basis that the judge had arguably misdirected himself when assessing the appellant's ability to re-integrate on return to Pakistan.

Appeal hearing

5. At the hearing, I heard submissions from the parties. The appellant was present.
6. Mr Walker submitted that the respondent's case was that the judge's findings about insurmountable obstacles was inadequately reasoned. There were the omissions in paragraphs 41 and 42 that I had pointed out and there had been no proportionality assessment. It followed that there were material errors by the judge and the entire decision should be set aside.
7. In response, Mr Nicholson relied on his Rule 24 response. He submitted that the judge had carefully considered all the evidence and there was no challenge to the credibility of the appellant (at paragraph 39). Although the appellant's former husband had not been a British national/settled person at the date of the application, he had indefinite leave to remain at

the date of the decision. Mr Nicholson questioned why there should be a rule allowing spouses of settled persons or British nationals to seek leave to remain as victims of domestic violence but not for spouses of refugees or points based migrants. He submitted a case such as this, where there was evidence of domestic violence, should succeed outside the rules.

8. Mr Nicholson submitted that the reliance of the respondent on country guidance cases of divorced women in Pakistan had to be seen in the context of the appellant's evidence of being terrified of honour killings on return. He argued that the respondent had not maintained that such a state of terror was not capable of meeting the test of 276ADE(vi) and that the judge had been entitled to allow the appeal on that basis.
9. Mr Nicholson submitted that the judge's decision should only be set aside if it was impossible to understand his reasoning. Despite the missing words in the paragraphs referred to, his meaning was clear. It was possible that these were errors of punctuation. Nevertheless, the judge goes on to rely on private life established in the UK and considers the life which would await her in Pakistan. He submitted that the respondent's grounds did not consider the findings on 276ADE or on article 8. The judge accepted that the appellant was genuinely fearful of repercussions against her should she return and he found these matters to be very compelling. The reasoning was not inadequate. The findings were compliant with Razgar [2004] UKHL 27. The respondent's grounds were not sufficient to deprive the appellant of the Tribunal's positive decision. There was no error of law.
10. Mr Walker replied. He submitted that the judge had not analysed the arguments put forward on country guidance.
11. That completed the submissions. At the conclusion of the hearing I reserved my determination which I now give with reasons.

Consideration

12. I have considered the oral and documentary evidence before me and the submissions made by the parties.
13. The judge's findings and conclusions are contained at paragraphs 37-42 of the determination. It is true that they could have been more detailed and more carefully prepared. I refer, in particular, to the plainly incomplete sentences at paragraph 41 and 42 (second and first sentences of the respective paragraphs). However, as Mr Nicholson emphasised, the issue is whether this meant that his conclusions were impossible to follow and were inadequately reasoned.
14. The judge heard oral evidence and fully accepted the appellant's account. Whether or not those fears are objectively well founded is not the issue.

The judge believed the entire account. He accepted that the appellant's marriage had broken down due to domestic violence, that she feared becoming the victim of an honour killing on return to Pakistan and that she had been closely supported through a traumatic time by her sister and aunt on whom she had come to rely. Those findings have not been challenged by the respondent and however generous the judge may have been in his overall findings, (made despite the appellant's class, education, previous occupation, urban background and very delayed application for leave), I must concur with Mr Nicholson's submission that they support his conclusion that there would, in those circumstances, be very significant obstacles to the appellant's re-integration on return.

15. Although there has not been an analysis of the country guidance case put before the judge (this appears to be part of the sentence(s) missing from paragraph 41), it is difficult to see how they could have impacted on the outcome given the judge's findings as to the credibility of the appellant and acceptance of her account. He has also, as Mr Nicholson pointed out in his Rule 24 response, taken account of the public interest considerations when reaching his conclusions. Having accepted all the appellant's evidence, it was open to the judge to find that there were very compelling matters which warranted a decision in her favour on article 8 grounds in addition to the positive finding under the Immigration Rules inferred from paragraph 41.
16. The judge has provided adequate reasoning for his conclusions. The fact that another Tribunal may not agree with his generous findings is not the test.

Decision

17. The First-tier Tribunal did not make errors of law and the decision to allow the appeal stands.

Anonymity Order

18. The First-tier Tribunal Judge did not make an order for anonymity. I was not asked to make one and, in any case, see no reason for doing so.

Signed:



**Dr R Kekić
Judge of the Upper Tribunal**

22 March 2018