



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

Appeal Number: IA/24604/2014

THE IMMIGRATION ACTS

Heard at Bradford

On 5th January 2015

**Decision & Reasons
Promulgated**

On 30th January 2015

Before

UPPER TRIBUNAL JUDGE ROBERTS

Between

**MRS KATHLEEN MARGARET FAIRCHILD
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Tettey

For the Respondent: Mrs R Pettersen, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of South Africa born 16th March 1955. She is married to John Fairchild a British citizen and they have a daughter Lisa Fairchild born June 1984 also a British citizen. Lisa Fairchild has a learning disability which, I understand, resulted from complications suffered during birth.

2. For many years the Appellant, her husband and Lisa lived in South Africa together but approximately three years ago the family travelled to the United Kingdom. The Appellant entered on a visit visa; Mr Fairchild and Lisa of course are British citizens. Mr Fairchild's business in South Africa had ceased and he is now in receipt of Employment and Support Allowance. On 29th September 2013 the Appellant was granted limited leave to enter until 13th March 2014. On 11th March 2014 she applied for leave to enter as the spouse of her husband and the mother of Lisa. The Respondent refused the Appellant's application under the Immigration Rules and went on to consider whether the Appellant's private life under Article 8 would bring her within paragraph 276 ADE (1) of the Rules.
3. The Respondent maintained her decision to refuse entry and the Appellant appealed that refusal. The appeal came before the First-tier Tribunal. In a determination promulgated on 12th September 2014 the FtT dismissed the Appellant's appeal. The Appellant now appeals with permission to the Upper Tribunal.
4. Mr Tetley on behalf of the Appellant made submissions. The thrust of Mr Tetley's challenge to the FtT's decision, revolved around the inadequacy of the findings made by the Judge when dealing with the Article 8 issue before him. He submitted that it was imperative that the Judge make clear findings on what was material evidence. This he had failed to do. A glance of the record of proceedings and witness statements would show that material evidence had simply not been dealt with. To forego to deal with material evidence amounts to an error requiring the determination to be set aside and the decision remade.
5. Mrs Pettersen for the Respondent sought to defend the determination. She accepted that the Judge's findings could be described as brief but said he had come to the correct decision because the Appellant was never going to be able to meet the Immigration Rules. She said the Judge had recognised that there are credibility problems for the Appellant concerning the fact that she had entered on a visit visa when it was clearly always her intention to remain here permanently.

Finding on Error of Law

6. I am satisfied that the determination of Judge Hindson contains an error such that the decision must be set aside and remade. I say this because in my judgment the determination is deficient in its reasoning on material matters concerning the Article 8 proportionality assessment. Having correctly identified and referred to the case of *Gulshan*, the Judge set out in his determination the following,

"Only if there are arguably good grounds for granting leave to remain outside the Rules is it necessary, for Article 8 purposes, to go on to consider whether there are compelling circumstances not sufficiently recognised under the Rules."

He then said at [23],

“In the circumstances of this case, I do not find that there are arguably good grounds for granting leave outside the Rules.”

7. It is hard to see what factors the Judge took into account when coming to this conclusion. Mrs Pettersen did say that it could be inferred that the factors which the Judge took into account were the same ones as those set out in [18] and [19]. I disagree. One of the central planks to the appellant’s case is that she is the principal carer for Lisa who is disabled. The Judges conclusion may or may not be the correct one, but it is difficult to see by what analysis or reasoning he arrived at it. Despite Mrs Pettersen’s spirited attempt to save this determination, it is trite law that an Appellant is entitled to know why he won or lost his appeal and what evidence the Judge is accepting and what he is rejecting. I am satisfied that the FtT Judge’s determination is legally unsustainable because it is silent on those matters.
8. I considered how this appeal may best be disposed of. In the circumstances, since there is a lack of fact finding it seems to me that the appropriate course is to remit this appeal to the FtT for a full rehearing, for that Tribunal to conduct a full fact finding exercise. Therefore no findings of fact are preserved.

Notice of Decision

The determination of the First-tier Tribunal which was promulgated on 12th September 2014 is set aside. None of the findings of fact shall stand. I direct that the appeal should be heard again in the First-tier Tribunal by a Judge other than Judge Hindson.

No anonymity direction is made.

Signed

Date

Judge C Roberts

Judge of the Upper Tribunal