



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

Appeal Number: HU/06093/2018

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 15 February 2019**

**Decision & Reasons Promulgated  
On 18 March 2019**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE ESHUN**

**Between**

**HARPREET [M]  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr R Solomon of Counsel

For the Respondent: Ms L Kenny, Home Office Presenting Officer

**DECISION ON ERROR OF LAW**

1. The appellant has been granted permission to appeal the decision of First-tier Tribunal Judge Hussain in which he dismissed the appellant's appeal. On 26 January 2017 the appellant made a human rights claim in an application for indefinite leave to remain in the UK on the basis of having completed a continuous period of ten years' lawful residence and on the basis of her family life with her son [MM]. The respondent refused the application in a letter dated 20 February 2018. It is her appeal against the respondent's decision that was dismissed by First-tier Tribunal Judge Hussain.

2. The appellant is a citizen of India born on 17 May 1985. She arrived in the United Kingdom on 26 January 2007 and was granted leave to enter as a student. She was subsequently granted leave to remain as a student or a Tier 4 (General) Student Migrant until 7 June 2014.
3. Thereafter, her leave was extended by virtue of Section 3C of the Immigration Act 1971 because on 6 June 2014, she made an in-time application for leave to remain outside the Immigration Rules, which leave was extended until 4 July 2014, when she withdrew that application.
4. Also, on 6 June 2014, she made an in-time application for an EEA residence card. The application was refused on 7 December 2014. On 22 December 2014, she appealed the refusal which was dismissed by way of a determination promulgated on 26 June 2015. Following onward appeals, the Upper Tribunal set aside the decision of the First-tier Tribunal and remitted the appeal for rehearing. By a determination promulgated on 7 September 2016, the First-tier Tribunal dismissed her appeal.
5. FTTJ Hussain said in his decision that Mr Solomon of Counsel accepted that there was a gap in the continuity of the appellant's residence from 2015 onwards. I accept Mr Solomon's submission that he had not conceded that there was a gap in continuity of residence. What he had conceded was that there was a gap in her *lawful* residence. This was because her *lawful* (not *continuous*) residence ended in 2014. Although the appellant also made an in-time application for an EEA residence card on 6 June 2014, Section 3C of the Immigration Act 1971 does not apply to EU law residence applications. Thus, the concession made by Mr Solomon at the hearing below was that the appellant had lawful residence until 4 July 2014 but not thereafter.
6. The basis of the appellant's application was that as a single unmarried mother of a child of about 3 years of age, there would be very significant obstacles to her integration into Indian society. While she is receiving some financial support from her brother who lives in the UK with his partner, her brother would not be able to continue with that support were she to return to India.
7. Her mother lives in India. It appears from paragraph 13 of the decision that the appellant has been in touch with her mother since having the baby. Her mother calls her to check if she or the baby is unwell. Whilst her mother cares about them, she does not want them to return because she is concerned as to how society will treat them.
8. I find that the judge erred in law in failing to address how the appellant will be treated by the society were she to return to India. Whilst the judge at paragraph 31 was prepared to accept that as a general rule, despite the progress made in India, Indian society may not have as yet reached a position where having children outside of wedlock is the norm, the judge

failed to address this issue as to how the appellant would be treated by the society in India were she to return to India.

9. At paragraph 33 the judge accepted that societal attitudes generally towards women who conceive outside of marriage is likely to be a negative one, he did not accept that that operates without any exception and the exception is not isolated. However, the judge does not decide whether the appellant's circumstances are such that she would suffer the stigma of ostracization which goes to the consideration of whether there are very significant obstacles to the appellant's reintegration into society in India.
10. That was the basis of the appellant's reason for not wanting to return to India. I find that the judge failed to deal with this particular issue.
11. In considering Article 8 outside of the Rules, I find that the judge failed to consider the best interests of the child and failed to grapple with the cogent arguments set out by Mr Solomon in his skeleton argument. The judge at paragraph 27 said he had the benefit of a well-crafted skeleton argument that the Tribunal has come to expect from Learned Counsel Mr Solomon, but the judge I find failed to consider the well-crafted arguments set out in the skeleton argument.
12. For the above reasons, I find that the judge's decision discloses material errors of law such that this whole decision is set aside in order to be reheard.
13. The appellant's appeal is remitted to Harmondsworth for rehearing by a First-tier Judge other than FtJ Hussain.

No anonymity direction is made.

Signed

Date: 13 March 2019

Deputy Upper Tribunal Judge Eshun