



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

Appeal Number: HU/07049/2017

THE IMMIGRATION ACTS

Heard at Field House

On 18 January 2019

Decision & Reasons

Promulgated

On 15 February 2019

Before

UPPER TRIBUNAL JUDGE ALLEN

Between

**PALWINDER [K]
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Reynolds instructed by MT UK Solicitors

For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a national of India. She appealed to a Judge of the First-tier Tribunal against the decision of the Secretary of State dated 6 June 2017 in which she was refused further leave to remain in the United Kingdom on the basis of family and private life.
2. The judge dismissed the appeal. An issue arose subsequently with regard to reliance placed by the appellant on the fact that there was by the time of the hearing a child affected by the Secretary of State's decision, i.e. the sponsor's daughter with whom he had recently made contact. The judge

considered the evidence with regard to the daughter and concluded that it was not shown that she had any link to the sponsor or that as a consequence she was unable to continue family life outside the United Kingdom. The grounds of appeal centred on the judge's treatment of the evidence concerning the child. At an error of law hearing before me on 22 June 2018, it was argued on behalf of the respondent that at least as advanced at the hearing before the judge was a new matter within the meaning of section 85(5)(vi) of the Nationality, Immigration and Asylum Act 2002.

3. Following a hearing on 5 September 2018 I ruled that the matter was a new matter and as consent had not been given by the Secretary of State for the Tribunal to consider it the matter could go no further.
4. I subsequently requested and received written submissions from both sides as to the proper disposition of the appeal. I found both sets of written submissions helpful but decided that it would be valuable to hear the parties addressing each other's arguments and developing the points made in the written submissions at an oral hearing which was the purpose of the hearing today.
5. In his submissions Mr Reynolds argued that the complexion of the case was changed by the fact of the relationship with the child and the Home Office was now aware of that. He argued that it was necessary for there to be a direction for a de novo hearing on all matters with emphasis on the relationship between the appellant and the sponsor and the child. He noted that the alternative possibility would be a fresh application, but argued that a de novo hearing would be the most economical outcome for all concerned.
6. Mr Melvin in his submissions argued that on remittal a First-tier Judge would face the same problem as before this judge and that the decision was made on the basis of one set of facts and they were now different and it was a new matter. It was difficult to get around this and it seemed that a fresh application was the only way forward.
7. Mr Reynolds had no further points to make by way of response.
8. I am grateful to the representatives for the written and oral submissions.
9. In the written submissions put in on behalf of the appellant it was argued, on the point made by Mr Reynolds, that there should be a de novo hearing. It was argued in the written submissions that the judge's decision fell to be set aside on the basis of lack of jurisdiction. It was argued that it would be unsafe to leave the residual and unappealed findings in the First-tier Tribunal intact because although some of those issues could clearly be demarcated from the appealed issue, it was argued that other unappealed issues, for example EX.1, could not be so demarcated.

10. In the written submissions put in on behalf of the respondent and as developed by Mr Melvin today, it was argued that the decision of the judge should stand, since there was no challenge to her findings under Appendix FM and paragraph 276ADE and there was no indication that any further evidence was to be called.
11. I reserved my decision.
12. In her decision the judge did not accept that the appellant had provided reasonable excuses for not attending the interviews offered to her in May and July 2016. As regards the evidence of income, the judge was not satisfied that the specified evidence was submitted and that as a consequence the financial requirements of the Rules were not met. She was satisfied that the couple had a genuine and subsisting marriage. As regards the issue of EX.1 and insurmountable obstacles to family life continuing outside the United Kingdom, she was satisfied that there were no such obstacles. She then went on to say that the only obstacle which could be insurmountable was the question of the sponsor's daughter, but, as noted above, did not accept that the necessary link was made out and that EX.1 did not apply.
13. As regards the appellant's claim on the basis of private life under paragraph 276ADE, the judge found that she could not succeed and that there were not very significant obstacles to her integration back into life in India.
14. In the grounds of appeal, and to setting out a number of extracts from leading authorities, the argument focused on the issue of the sponsor's daughter and it was argued that the judge had erred in the conclusion she came to in respect of a relationship between the sponsor and his daughter contending that it was arguable that the findings in relation to the sponsor's relationship with his daughter were perverse. Permission was granted on the basis of the grounds.
15. I am satisfied that the judge's lack of jurisdiction to address the new matter which was the issue concerning the child and her relationship with her father, is clearly severable from the other findings in the decision. That was in essence the only matter of appeal, and the other findings of the judge are unappealed and are in my judgment sound. Although I understand the pragmatism that lies behind the argument for remittal to the First-tier Tribunal, it comes up against the difficulty identified at the hearing, that any judge to whom the matter was remitted would be confronted with the same difficulty as this judge was confronted with which is the new matter argument in respect of the relationship between the sponsor and his daughter. The claim would therefore be no further forward in terms of being able to advance arguments in that respect. As a consequence the pragmatic solution is not viable and in any event as a matter of law I do not consider that the matter could be remitted to the First-tier Tribunal bearing in mind the points made above, i.e. that the

issue in respect of which the judge lacked jurisdiction is clearly severable from her other findings which are sound and are unchallenged. It may well be that the appellant will wish to make a fresh application based on the relationship between the sponsor and his daughter, but that is a matter for her and those advising her. As matters stand I conclude that there is no error of law in the judge's decision in respect of the points other than the new matter, and as a consequence the appeal is dismissed.

16. No anonymity direction is made.



Signed

Date 4 February 2019

Upper Tribunal Judge Allen

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.



Signed

Date 4 February 2019

Upper Tribunal Judge Allen