



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

Appeal Number: HU/08372/2018

THE IMMIGRATION ACTS

Heard at Manchester Civil Justice Centre

**Decision & Reasons
Promulgated**

On 8 February 2019

On 28 February 2019

Before

**DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL**

Between

**MR FRANCIS XAVIER
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms N Najma, Counsel instructed by Walker Prestons Solicitors

For the Respondent: Mr A Tan, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is the widow of appellant Mr Francis Xavier who sadly died on 17 May 2018 of organ failure. She has permission to challenge the decision of Judge Moxon of the First-tier Tribunal (FtT) sent on 5 October 2018 dismissing her appeal against a decision made by the respondent on 22 March 2018 refusing leave to remain. The appellant is aged 70 and she and her late husband entered the UK on 13 January 2016 with entry clearance as visitors.
2. The appellant's written grounds had two main components. It was first of all contended that the judge materially erred in law in (1) failing to consider appropriately whether there was family life between the appellant and her adult son-in-law aged 33. Ms Najma indicated at the outset of the hearing that no reliance was now placed on this ground. I

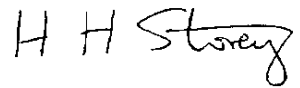
consider that a prudent step since the judge clearly did consider very carefully whether the relationship between the appellant and adult son in law amounted to family life within the meaning of Article 8 and gave sound reasons for concluding at paragraph 34 that it did not. Nor did the appellant's grounds challenge key findings of fact made by the judge which concerned her family situation (and care situation) in Pakistan.

3. The appellant's second ground contended that the judge failed to give any proper consideration to the appellant's family life with her grandchildren if she was removed to Pakistan and gave inadequate consideration to the best interests of the child. Despite Ms Najma's excellent submissions in support of this ground, I am not persuaded that it establishes a material error of law.
4. Ms Najma, when amplifying the appellant's written grounds, is right to say that the judge did not conduct any express assessment of the best interests of the appellant's grandchildren. The only reference to them is a cursory one in paragraph 40:

"40. Contact can be maintained between the Appellant and those in the United Kingdom by letter, telephone call and by utilising modern technology and the Sponsor can continue to regularly visit. Whilst I understand her departure would be of upset to her grandchildren, they can nevertheless maintain contact".
5. Ms Najma is also right to say that where children are concerned, regard has to be had to their best interests. However, in the appellant's case the application made to the respondent for leave to remain had not relied on any family life ties with the grandchildren, nor had the appellant's grounds of appeal referred to them. For the appeal hearing, no evidence was produced that particularised her relationship with her grandchildren. The witness statement evidence simply said that her relationship with them was "very close". In the context of a case in which it is conceded that the judge was entitled to find that there was no family life between the appellant and her adult son in law, it was incumbent on the appellant to produce evidence to support her claim to nevertheless have a family life with his children. It has nowhere been suggested that the grandchildren's best interests are not served by receiving care from their own parents. The appellant had not been a part of their lives until coming to stay in their house as a visitor. In short, there was simply an insufficient evidential basis for the judge to consider that the best interests of the grandchildren would be significantly affected by the appellant's departure.
6. For the above reasons I conclude that the decision of the judge is free of material error of law and accordingly it must stand.
7. No anonymity direction is made.

Signed

Date: 25 February 2019

A handwritten signature in black ink that reads "H H Storey". The letters are cursive and connected, with a distinct loop at the end of the word "Storey".

Dr H H Storey
Judge of the Upper Tribunal