



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

Appeal Number: HU/14416/2018

THE IMMIGRATION ACTS

**Heard at Bradford
On 7 May 2019**

**Decision & Reasons Promulgated
On 7 June 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

**NAGEENA [M]
(ANONYMITY ORDER NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Appearances:

For the Appellant: Mr M Patel, Solicitor of Highfields Solicitors

For the Respondent: Mr Diwnycz, Senior Presenting Officer

DECISION AND REASONS

1. The Appellant, a national of Pakistan, date of birth 11 May 1991, appealed against the Respondent's decision, dated 16 June 2018, to refuse leave to remain.
2. The appeal of the Appellant against that decision came before First-tier Tribunal Judge Hands (the Judge) who, on 30 January 2019, dismissed the

appeal on Article 8 ECHR grounds. Permission to appeal was given on 20 February 2019.

3. The judge set out significant elements of the evidence relied upon by the Appellant but in particular the existence of a child, with a Dutch or German national father in the United Kingdom on 27 April 2013 ([ZA]) who is a national of Pakistan. The judge was also informed of the addition to the Appellant's family in the UK of a child, [BY], date of birth 27 May 2018. The judge was told that the father of the child was a British national and that the child [BY] was a British national and in possession of a British national passport.
4. The Appellant was acting in person and it appears, this is no criticism of her current representatives, that her case was ill prepared in producing a statement from the father of the second child and relevant documentation to evidence that relationship and his involvement in the life of the second child.
5. To some extent it appears, against that factual background, that the Appellant's own evidence as recorded by the judge on the issue of the relationship with the father of the second child and the second child's nationality that the Appellant appears to have given somewhat contradictory evidence on the point as to whether or not she was, for reasons of the receipt of benefits and other entitlements, living with her current partner. Whether or not that was the reality of the position or to that extent the matter was misstated, it is evident that the judge took that contradiction into account significantly in terms of the reliability of the Appellant's account.
6. The judge noted (D26) that the Appellant did offer to produce the daughter's birth certificate but this would not have established the daughter's nationality and in that respect she was right, albeit there was evidently, if thought had been given to it, other documentation to demonstrate the relationship and nationality which had not been produced.

7. I find this is a difficult case because in many respects the judge did the best she could with the material that she was provided but the issue became more one of procedural fairness, in the sense that the Appellant whilst unrepresented had adduced aspects of evidence which were pertinent to the Article 8 claim which the judge did not, in fairness, on the information she had, given it the consideration it probably deserved.
8. I should emphasise that I do not reach any conclusion on the respective merits of the Appellant's case, but it seemed to me that this was a case where the absence of evidence properly advanced before the judge had given rise to an error of law in the proper consideration and weighing of the Article 8 claim. I bear in mind it was a family life issue being raised and the considerations which arise under Sections 117A and 117B of the NIAA 2002, as amended.
9. In the circumstances I concluded that the judge, whilst doing the best she could with the material she had, needed to have given at least consideration to giving the Appellant an opportunity to adduce the claimed evidence. Whether it would have made a material difference to the outcome, at this stage it would be inappropriate to express a view. It seemed to me that in the consideration of the Article 8 claim the matter did need to be more fully addressed. In those circumstances Mr Diwnycz fairly accepted that the Presenting Officer's note of submissions did indicate the real possibility that there may have been a measure of procedural unfairness. In the light of the overriding objective and the case of TK Burundi [2009] EWCA Civ. 40 the absence of relevant evidence³ was material to the fair assessment of the reliability of the Appellant's evidence. In the circumstances I conclude the Original Tribunal's decision cannot stand.

DECISION

The appeal is allowed to the extent that the matter is to be returned to the First-tier Tribunal to be remade.

DIRECTIONS

No findings of fact to stand.

Relist for hearing 2 hours.

Not before First-tier Tribunal Judge Hands, or First-tier Tribunal Judge E Simpson.

Urdu interpreter required.

Any further directions for the preparation of the case for the further hearing to be made in the First-tier Tribunal.

ANONYMITY ORDER

No anonymity order was sought nor in the circumstances does one seem necessary in the light of the Presidential Direction.

Signed

Date 24 May 2019

Deputy Upper Tribunal Judge Davey