Upper Tribunal

(Immigration and Asylum Chamber) **Appeal Number: HU/10733/2019 (P)**

THE IMMIGRATION ACTS

Decided under rule 34 (P) **Decision & Reasons Promulgated**

On 3 August 2020 **On 10 August 2020**

Before

UPPER TRIBUNAL JUDGE KEKIĆ

Between

SUSMITA [G]

(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS

Representation (by way of written submissions)
For the appellant: Londonium Solicitors
For the respondent: Mr C Avery, Senior Home Office Presenting Officer

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Background

1. This appeal comes before me following the grant of permission to appeal to the appellant by First-tier Tribunal Judge Povey on 24 April 2020 against the determination of First-tier Tribunal Judge M B Hussain, promulgated on 3 December 2019 following a hearing at Taylor House on 16 October 2019. Permission was granted only on the judge's arguable failure to properly deal with the best interests of the appellant's child and the proportionality assessment. It was not granted on the judge's refusal to adjourn to await the outcome of the appellant's husband's application for leave.

2. The appellant is an Indian national born on 9 October 1987. She entered the UK as the dependant of a Tier 2 migrant on 10 March 2015 with leave until June 2017. An out of time application was then made for further leave on the same basis which was varied to a family/private life application. On 13 March 2019, that application was refused and certified as clearly unfounded. Following a judicial review claim, the respondent agreed to reconsider her decision. Although she refused the application again, there was no certification and the appellant exercised her right of appeal, which led to these proceedings.

3. The claim is essentially that the appellant's husband has an application pending for indefinite leave to remain, that they have a child born in August 2018 who needs to have further immunisations, that the appellant suffers from asthma and her health would deteriorate if she returned to India, that she has friends and relatives here and would find it difficult to obtain employment in India. The claim was put in an ppl to the respondent but no supporting evidence was made available to the Tribunal.

4. Two days before the appeal hearing, the appellant's representatives sought an adjournment. The request was based on the fact that the appellant's husband's application for leave was pending and that it was in the interests of justice to await the outcome of that application because if it were granted the appellant would then be able to make an application as the partner of a settled person. The application was refused on the following day but renewed before the judge at the hearing a day later. The judge refused to adjourn the appeal and the appellant's representative then withdrew from the proceedings. The appellant was present and was asked if she wished to give oral evidence but she simply requested that the matter be adjourned. The appeal then proceeded essentially without her participation.

5. The judge noted that the appellant and her husband had made various types of applications over the last few years. He noted that the appellant could not come within the requirements of the immigration rules because her husband did not have leave at the time she made her application, or indeed at the hearing. He considered that in order to succeed in her appeal, she would have to show that her circumstances were exceptional. He considered that it was difficult to see what harshness the appellant would be subjected to if she had to return to India. He considered that if her husband's application eventually succeeded, then it would be open to him to sponsor her return as a spouse. If it were refused then she, her husband and child could return to India as a family unit. He noted that the appellant had not advanced any evidence to show that her circumstances were exceptional and he, accordingly, dismissed the appeal.

Covid-19 crisis: preliminary matters

6. The matter would normally have been listed for a hearing at Field House but due to the Covid-19 pandemic and need to take precautions against its spread, this did not occur and directions were sent to the parties on 26 June 2020. They were asked to present any objections to the matter being dealt with on the papers and to make any further submissions on the error of law issue within certain time limits.

7. The Tribunal has received written submissions from both parties. I now consider the matter.

8. In doing so I have regard to the Tribunal Procedure (Upper Tribunal) Rules 2008 (the UT Rules), the judgment of Osborn v The Parole Board [2013] UKSC 61, the Presidential Guidance Note No 1 2020: Arrangements during the Covid-19 pandemic (PGN) and the Senior President's Pilot Practice Direction (PPD). I have regard to the overriding objective which is defined in rule 2 of the Tribunal Procedure (Upper Tribunal) Rules 2008 as being "*to enable the Upper Tribunal to deal with cases fairly and justly*". To this end I have considered that dealing with a case fairly and justly includes: dealing with it in ways that are proportionate to the importance of the case, the complexity of the issues, etc; avoiding unnecessary formality and seeking flexibility in the proceedings; ensuring, so far as practicable, that the parties are able to participate fully in the proceedings; using any special expertise of the Upper Tribunal effectively; and avoiding delay, so far as compatible with proper consideration of the issues (Rule 2(2) UT rules and PGN:5).

9. I have had careful regard to the submissions made and to all the evidence before me before deciding how to proceed. The respondent has raised no objection to the matter being

considered on the papers. The appellant fails entirely to address the directions; her submissions essentially amount to a request for an adjournment on the same grounds as made twice before.

10. A full account of the facts are set out in the papers on file and the issue to be decided is straightforward. There are no matters arising from the papers which would require clarification and so an oral hearing would not be needed for that purpose. I have had regard to the fact that the appellant was given the opportunity to present her case at an oral hearing which she did not take advantage of and that she also had a further opportunity to do so by way of written submissions to the Upper Tribunal but chose not to do so. I am satisfied that I am able to fairly and justly deal with this matter on the papers before me and I now proceed to do so.

Submissions

11. The appellant's submissions are dated 10 July 2020 and the respondent's are dated 14 July 2020.

12. As indicated above, the appellant's submissions unhelpfully amount to no more than a repeated adjournment application. It is maintained that determination of the appeal should be delayed for three months until the appellant's husband's appeal is determined (it would thus appear that his application for indefinite leave to remain has been refused by the respondent). It is maintained that the appellant has been living in the UK for five years and her daughter was born here and is now 23 months old. It is argued that if the appellant's husband wins his appeal then their child would be able to apply for British nationality and the appellant would be able to apply for leave as the spouse of a settled person. It is maintained that this appeal cannot be fairly determined until the outcome of the other appeal is known.

13. The respondent's submissions are made without sight of the appellant's submissions. The appellant's appeal is opposed. It is pointed out that the hearing had proceeded without any evidence of submissions from the appellant whose representative withdrew from the proceedings. It is submitted that the appellant nevertheless had the opportunity to make her case to the Tribunal but chose not to do so. There being no evidence before the Tribunal with respect to the article 8 claim relied on, the judge could not have reached a different conclusion. The brevity of the findings were entirely due to the conduct of the appellant. The appeal should be dismissed.

Discussion and conclusions

14. I have considered all the evidence, the grounds for permission and the submissions made by both parties.

15. It is indeed unfortunate and regrettable that the only assistance the appellant's representatives have provided her with are repeated adjournment applications. The last one, made in the written submissions of 10 July 2020, do not even take account of the fact that the application for an adjournment had already been refused twice before and that permission to appeal was not granted on that point. There is no attempt to identify any error of law in the determination and no attempt to put forward any submissions on the nature of the article 8 claim relied upon.

16. No bundle of documents was submitted to the Tribunal for the purposes of the appeal. There is no evidence of the child, no evidence of the appellant's claimed asthma, no evidence of why that would be an issue now given that she has lived in India with the condition for the vast majority of her life, no evidence of her domestic circumstances and no information whatsoever of the friends and relatives she claimed to have in the UK.

17. Mr Avery is entirely correct to point out that the brevity of the judge's findings were due to the appellant's conduct and, I would add, that of her representatives. There was no effort at all to comply with earlier directions for the submission of supporting documents for the appeal hearing and there has been no engagement at all by the appellant and her representatives with the appeals process.

18. Whilst on the face of it, the judge erred by not considering the appellant's child's best interests and other article 8 matters, he had in fact no evidence before him on which to make any meaningful findings. The burden is on the appellant to make out her case. She has failed woefully to do so.

19. The judge considered the issue of the impact of any potential future grant of leave to the appellant's husband and properly found that were he to be successful in his attempts to obtain leave, he would be able to sponsor an entry clearance application for the appellant and the child to return. No reasons have been put forward for why this could not be done. It is also unclear why the appellant and the child were not included as dependants in his application when this had been the case previously.

20. On the evidence before him, the judge could not have reached any other conclusion. Specific reference to the child and to article 8 would not have led to a different outcome given the absence of any evidence before him as to a private/family life enjoyed by the appellant; far less, of any exceptional

circumstances pertaining. As it stands, the challenge is without any merit, particularly where permission was not granted for any argument on the issue of an adjournment.

Decision

21. The decision of the First-tier Tribunal does not contain any errors of law and it is upheld. The appeal is dismissed.

Anonymity

22. No applicant for an anonymity order has been made at any stage and I see no reason to make one.

Signed

R. Kekić

Upper Tribunal Judge

Date: 3 August 2020