



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

Appeal Number: PA/05861/2019 (P)

THE IMMIGRATION ACTS

**Decided on the papers without a
hearing
On Thursday 29 April 2021**

**Promulgated
On Friday 30 April 2021**

Before

UPPER TRIBUNAL JUDGE SMITH

Between

**D A
[Anonymity direction made]**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Anonymity

Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008

This appeal was brought partly on protection grounds. In addition, the Appellant is a vulnerable woman. Accordingly, it is appropriate that the Appellant's details be protected. Unless and until a tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify the Appellant or any member of her family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

DECISION AND DIRECTIONS

1. By a decision dated 18 September 2020, Upper Tribunal Judge Owens found an error of law in the decision of First-tier Tribunal Judge Rhys-Davies promulgated on 31 October 2019. By his decision, Judge Rhys-Davies dismissed the Appellant's appeal against the Respondent's decision dated 7 June 2019 refusing the Appellant's protection and human rights claims.
2. As Judge Owens noted at [13] of her decision, there was no challenge to Judge Rhys-Davies' decision dismissing the appeal on protection grounds. For that reason, Judge Owens set aside only that part of Judge Rhys-Davies' decision relating to Article 8 ECHR ([30] of Judge Owens' decision). She preserved certain facts which are set out at [31] of her decision.
3. The resumed hearing was listed to take place as a face-to-face hearing on 14 January 2021. As a result of the current restrictions due to the Covid-19 pandemic, the hearing was relisted and converted to a case management review ("CMR") before me. That hearing took place before me on 14 January 2021 via BT Meet Me. The parties confirmed to me on that occasion that it was agreed that the protection claim is not to be redetermined and Judge Rhys-Davies' findings in that regard stand.
4. As I noted in my decision following the CMR, the Respondent was directed by Judge Owens to file with the Tribunal and serve on the Appellant any evidence relating to previous decisions including that curtailing her leave based on the ETS allegation as well as any documents relied upon in relation to that allegation. I gave a direction that the Respondent comply with that direction within 28 days from the date when my decision was sent and to file and serve on the same date her skeleton argument. My decision was sent on 15 January 2021 and therefore the Respondent should have complied with that direction by 12 February 2021.
5. On 19 February 2021, following enquiries made by the Appellant's solicitor, the Respondent sought an extension of time for compliance with that direction until 5 March 2021. The extension was sought on the basis that Mr Walker who is representing the Respondent in this appeal had only just received the files relating to the Appellant. Some earlier files had gone missing and the Respondent confirmed therefore that she could not produce any evidence relating to the ETS allegation. It was indicated that the Respondent intended to enter into discussions with the Appellant's solicitor in relation to the other outstanding issues. I granted the extension sought.
6. On 1 April 2021, the Tribunal received a letter from Mr Walker on behalf of the Respondent which reads as follows:

“Following on from the Secretary of State’s letter of the 19th February 2021, and with the agreement of Duncan Lewis Solicitors, the following concession on behalf of the Secretary of State has been made.

The Secretary of State accepts that [DA] has 10 years continuous lawful residence in the UK, as required by paragraph 276B of the Immigration Rules, and any reference to paragraph 322(2) of the Immigration Rules that the Appellant’s presence in the UK was not conducive to the public good, on the basis of evidence that the Appellant had fraudulently obtained an ETS English Language test certificate, which showed an intention to use deception, cannot now be maintained by the Secretary of State.

Given that the Secretary of State is unable to provide cogent evidence of the alleged deception in this particular case, any allegations of suitability must fall away.

Therefore [DA] meets the requirements for Indefinite Leave on the grounds of long residence.

Duncan Lewis will I understand be withdrawing [DA]’s asylum application. Both parties are in agreement that there is no need for a further hearing, but request a short determination to ensure that given the current circumstances in place due to the COVID pandemic there will be minimum delay in the Secretary of State granting leave.”

7. I had anticipated that I would subsequently receive communication from Duncan Lewis confirming that the asylum application was withdrawn. However, on 22 April 2021, Duncan Lewis wrote asking for an update following the Respondent’s letter.
8. Having reviewed the file and having reminded myself of the terms of the error of law decision which set aside only that part of Judge Rhys-Davies’ decision which dismissed the appeal on Article 8 ECHR (thereby preserving the decision on protection grounds), and having noted the confirmation on behalf of the Appellant at the CMR that the appeal was not pursued on protection grounds, I formed the view that I do not need any formal withdrawal of the protection grounds in order to give a decision bringing this appeal to an end.
9. In light of the Respondent’s concession, I allow the appeal on human rights (Article 8 grounds).

DECISION

The Appellant’s appeal is allowed on human rights grounds on the basis that her removal would breach her Article 8 ECHR rights.

Signed L K Smith
Upper Tribunal Judge Smith

Dated: 29 April 2021