



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-006197

On appeal from: HU/50930/2022

THE IMMIGRATION ACTS

Directions Issued:
On 11 September 2023

Before

UPPER TRIBUNAL JUDGE GLEESON
DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

MOMINA RAFIQUE MIR
(NO ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Rudolph Spurling of Counsel, instructed by Shah Law Chambers Ltd

For the Respondent: Ms Julie Isherwood, a Senior Home Office Presenting Officer

DECISION OF THE UPPER TRIBUNAL
PURSUANT TO RULE 40(3)(a) OF
THE TRIBUNAL PROCEDURE (UPPER TRIBUNAL) RULES 2008

1. The appellant appeals with permission from the decision of the First-tier Tribunal dismissing her appeal against the respondent's decision on 8 February 2022 to refuse her application for leave to remain on human rights grounds. She is a Pakistani citizen.
2. On 15 September 2017 the appellant entered the UK as a Tier 4 (student) migrant. That leave expired on 21 November 2018 and she has had no valid leave since then, despite making a number of unsuccessful applications to regularise her status. The respondent did not consider that the appellant fell

within paragraph 276ADE of the Immigration Rules HC 395 (as amended), nor that she had demonstrated any exceptional circumstances for which leave to remain should be granted outside the Rules.

3. First-tier Judge Groom dismissed the appeal, but in so doing, she failed to make a finding on family life, asserted to exist between the appellant and her UK family members, including her nieces and nephews, or on her Article 3 ECHR medical issues, both of which were 'front and centre', as Mr Spurling puts it, in his skeleton argument. There were five expert reports before the First-tier Tribunal:
 - **Dr Livia Holden** - country expert (08 October 2020)
 - **Dr Mariam Kashmiri** - psychiatrist (examined appellant 31 July 2019)
 - **Ms Chaanak Raeoef** - psychologist (05 March 2020)
 - **Dr Abdul Hameed Latifi** - psychiatrist (16 April 2022)
 - **Ms Diana Harris** - independent social worker (20 May 2022)
4. It is common ground that the First-tier Tribunal did materially err in law in failing to deal, adequately or at all, with the family life issue or the expert evidence. Both representatives agree that this is a case where the decision of the First-tier Tribunal must be set aside and remade.
5. We are satisfied that the decision of the First-tier Tribunal can properly be set aside without a reasoned decision notice. Further oral evidence will be required, to bring the family and health situations up to date, as the last hearing was now 11 months ago. It is not appropriate to retain this appeal for remaking in the Upper Tribunal.
6. Pursuant to rule 40(3) of the Tribunal Procedure (Upper Tribunal) Rules 2008, no reasons (or further reasons) will be provided unless, within 7 days of the sending out of this decision, either party indicates in writing that they do not consent to the appeal being disposed of in the manner set out at (5) above.

Decision

7. We set aside the decision of the First-tier Tribunal, with no findings of fact or credibility preserved.
8. This appeal will now proceed to the stage in which the First-tier Tribunal will remake the decision to allow or dismiss the appeal on the basis described in the grant of permission.

Judith A J C Gleeson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

Dated: 21 August 2023

Practice Statements for the Immigration and Asylum Chambers of the First-tier Tribunal and the Upper Tribunal, 13 November 2014

9 Transfer of proceedings

9.1 Where:-

- (a) the Tribunal (“the original Tribunal”) has started to hear an appeal but has not completed the hearing or given its determination; and
- (b) the Chamber President decides that it is not practicable for the original Tribunal to complete the hearing or give its determination without undue delay, the Chamber President may direct the appeal to be heard by a differently constituted Tribunal (“the new Tribunal”).

9.2 Where an appeal has been transferred under paragraph 9.1:-

- (a) any documents sent to or given by the original Tribunal shall be deemed to have been sent to or given by the new Tribunal;
and
- (b) the new Tribunal will deal with the appeal as if it had been commenced before it.

9.3 Without prejudice to paragraph 9.1, the Chamber President may transfer proceedings in the circumstances described in Practice Direction 3 (procedure on appeal); and paragraph 9.2(a) shall apply in the case of such a transfer as it applies in the case of a transfer under paragraph 9.1.

Practice Directions: Immigration and Asylum Chambers of the First-tier Tribunal and the Upper Tribunal, as amended by the Senior President of Tribunals on 13 November 2014

3.4 If the Upper Tribunal nevertheless decides that it cannot proceed as described in paragraph 3.1(c) because findings of fact are needed which it is not in a position to make, the Upper Tribunal will make arrangements for the adjournment of the hearing, so that the proceedings may be completed before the same constitution of the Tribunal; or, if that is not reasonably practicable, for their transfer to a different constitution, in either case so as to enable evidence to be adduced for that purpose.

3.5 Where proceedings are transferred in the circumstances described in paragraph 3.4, any documents sent to or given by the Tribunal from which the proceedings are transferred shall be deemed to have been sent to or given by the Tribunal to which those proceedings are transferred.

3.6 Where such proceedings are transferred, the Upper Tribunal shall prepare written reasons for finding that the First-tier Tribunal made an error of law, such that its decision fell to be set aside, and those written reasons shall be sent to the parties before the next hearing.