



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/21346/2013

THE IMMIGRATION ACTS

Heard at Bradford
On 20th January 2014

Determination Promulgated
On 23rd January 2014

Before

UPPER TRIBUNAL JUDGE D E TAYLOR

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

SAIMA BIBI

Respondent

Representation:

For the Appellant: Mr Diwnycz, Home Office Presenting Officer
For the Respondent: No appearance

DETERMINATION AND REASONS

1. This is the Secretary of State's appeal against the decision of Judge Hemingway made following a hearing at Bradford on 31st October 2013.

2. The claimant entered the UK on 10th May 2012 as a visitor. During that period she met her sponsor, a British citizen, whom she since married.
3. She applied for a variation of her leave to remain on the basis of her marriage but was refused because paragraph E-LTRP.2.1 prevents persons coming to the UK as visitors seeking to switch into different categories.
4. It was not argued that the claimant could meet the requirements of the Rules. The argument was put on Article 8 grounds. The judge found the oral and documentary evidence to be entirely credible and that the claimant had entered into a genuine relationship. Her husband was a self-employed taxi driver earning in the region of £18,000 to £19,000 per annum after tax which is of course approximately the level required by the Immigration Rules for the maintenance rules to be satisfied.
5. The judge stated that he attached significant weight to the importance of demonstrating that people who come to the UK as visitors ought to return rather than seeking to switch status here. On the other hand, she was in a genuine, loving and subsisting relationship and it was not submitted that it would be reasonable to expect the sponsor to relocate to Pakistan on a permanent basis, particularly since the claimant's family was hostile to the marriage. The claimant does not have a bad immigration history because she genuinely came to the UK as a visitor and her subsequent application was as a consequence of unexpected events. He said that the fact that the Sponsor was earning between £18,000 to £19,000 lessened the importance to be attached to the economic wellbeing aspect of the legitimate aim in assessing proportionality. On that basis he allowed the appeal.

The Grounds of Application

6. The Secretary of State sought permission to appeal on the grounds that the Tribunal had misdirected itself in law and it was only where there were exceptional circumstances which would mean that removal would result in unjustifiably harsh consequences should the appeal have succeeded on Article 8 grounds. Secondly, the Tribunal had failed to provide adequate reasons for finding that removal would be disproportionate.
7. Permission to appeal was granted by Upper Tribunal Judge Renton on 27th November 2013. Judge Renton stated that exceptionality was not a legal test but it was arguable that in assessing the weight to be attached to the public interest the judge failed to take into account the fact that the relationship upon which she relied was formed when her immigration status was precarious.

The Hearing

8. The Appellant did not appear. Mr Diwnycz did not concede the appeal but merely restated his grounds and made no further submissions.
9. This is a thoughtful and well reasoned decision. The judge plainly had in mind the Respondent's interests which he set out in full. However he made a series of

unassailable and unchallenged factual findings, in particular that this is a genuine relationship, that the claimant's family threatened to beat her if she returned to Pakistan, and that it would not be to the UK's economic detriment were the claimant to be granted leave, given the earnings of her husband. Weighing all of these factors together, he was entitled to find that the interference with her Article 8 rights, in all these circumstances, would be disproportionate. That was a judgment for him to make and there is no legal basis for setting it aside.

Decision

10. The original judge did not err in law. The decision stands. The claimant's appeal is allowed.

Signed

Date

Upper Tribunal Judge Taylor