

**Upper Tribunal
(Immigration and Asylum
Chamber)**
IA/31032/2013



Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House, London

On 24 June 2014

Determination

Promulgated

On 25 July 2014

Before

UPPER TRIBUNAL JUDGE ROBERTS

Between

**MRS SANTOSH
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mrs M Hayre

For the Respondent: Mr S Whitwell, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellant, Mrs Santosh was born on 20th January 1949 and is a citizen of India. She had appealed against the decision of the Respondent dated 15th July 2013 refusing her leave to remain in the UK as the dependent parent of her son and UK Sponsor Jagdeep Singh. The Respondent's refusal was based on paragraph 317 of HC 395 and in addition the Respondent made a decision to remove the Appellant by way of directions under Section 47 of the Immigration Asylum and Nationality Act 2006.

2. The Appellant's appeal to the First-tier Tribunal sitting at Hatton Cross was dismissed in a determination promulgated on 7th April 2014. The Appellant now appeals with permission to the Upper Tribunal.
3. The Appellant is now a 65 year old widow, living alone in India and it is claimed dependent upon her UK Sponsor for financial support. She has travelled to the UK on several occasions in the past to see the Sponsor and his family. For the purposes of this determination, she arrived in the United Kingdom on 12th June 2012 in possession of a Family Visit Visa valid from 15th July 2011 to 15th July 2016.
4. Shortly after her arrival, she made application for settlement as the dependent parent of her UK Sponsor. That is the application that was refused and the appeal against which was dismissed by the First-tier Tribunal (Judge Edwards).
5. I find that Judge Edwards' determination should be set aside for legal error and these are my reasons for so finding. The majority of the determination consists of what may be termed "standard paragraphs" setting out familiar jurisprudence, but making little attempt to apply that jurisprudence to the facts which the Judge has found.
6. It is asserted in the grounds seeking permission that the Judge,
 - (i) fails to properly consider all the material before him,
 - (ii) errs in his findings in relation to Article 8 ECHR.
7. I am bound to agree with that assessment. The refusal in this appeal was under paragraph 317 of the Immigration Rules. One of the core components under paragraph 317 is whether an Appellant can establish financial dependency on their UK Sponsor. The evidence of financial dependency in this appeal came from the Appellant's son who is her sponsor. In evidence he claimed that he not only gave cash to his mother when he visited her in India, but also that when she visited him in the UK, he sent her home with cash. This is what formed the financial dependency. Whilst the Judge refers to this in [13], I see no clear finding on that evidence. That evidence is a vital part of the Appellant's case and the Judge needed to make a proper reasoned finding on whether he had considered that evidence and whether that evidence was accepted or rejected.
8. Such a finding may well have enabled the Judge to come to a different conclusion on the Article 8 consideration. I find that the lack of a clear finding on this point alone is sufficient to render the determination unsatisfactory.
9. I am further satisfied that the Judge has adopted the wrong approach to the Article 8 issue. This application for leave to remain was made prior to 9th July 2012 and thus the refusal fell to be considered under what is termed "the old Rules".

10. I find that the First-tier Tribunal has failed to make proper findings regarding the Appellant's circumstances and how this may affect the application of Article 8 ECHR. These are issue which the First-tier Tribunal should have considered. The reasoning of the First-tier Tribunal is neither sufficiently adequate nor cogent enough to render this determination sustainable.
11. I set aside the determination of the First-tier Tribunal. Further I consider that this is an appropriate case to be remitted to that Tribunal (not Judge Edwards) to make fresh findings of fact and to apply the relevant jurisprudence under the Immigration Rules and Article 8, to those findings.

DECISION

12. The determination of the First-tier Tribunal which was promulgated on 7th April 2014 is set aside. The appeal is remitted to the First-tier Tribunal to remake the decision.

No anonymity direction is made

Signature
Judge of the Upper Tribunal

Dated