



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: OA/06365/2014**

THE IMMIGRATION ACTS

**Heard at Field House
On 26th August 2015**

**Decision & Reasons Promulgated
On 3rd September 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE DOYLE

Between

Ms RABIA SULTAN MOHAMMAD

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr P Saini (counsel), instructed by Starck Uberoi, solicitors & advocates.

For the Respondent: Mr P Nath, Senior Home Office Presenting Officer.

DECISION AND REASONS

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.

2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Khan promulgated on 16 April 2015, which dismissed the Appellant's appeal.

Background

3. The appellant was born on 15 February 1958 and is a citizen of Afghanistan. The appellant applied for entry clearance to come to the UK as a dependent of her son, who has leave to remain in the UK until 3 July 2018. On 13 May 2013, the respondent refused the appellant's application.

The Judge's Decision

4. The appellant appealed to the First Tier Tribunal. First Tier Tribunal Judge M A Khan ("the Judge") dismissed the appeal against the respondent's decision, finding that the appellant could not fulfil the requirements of Appendix FM of the Immigration Rules and that there was no reason to consider any rights that the appellant might have in terms of Article 8 ECHR out-with the Immigration Rules.

5. Grounds of appeal were lodged and on 13 July 2015, First Tier Tribunal Judge Frankish gave permission to appeal, stating *inter alia*:

"The sponsor records that he is a married man with five children but he, himself, is an only child (paragraph 7). While not necessarily material in itself that the FTTJ refers (paragraph 10) to the sponsor's sisters giving evidence, that point combined with the fact that the medical evidence is considered (paragraph 23) only as to the issue of where the appellant might be located, amounts to an arguable error"

The Hearing

6. Before I heard from Mr Saini, counsel for the appellant, Mr Nath for the respondent conceded that the determination promulgated on 16 April 2015 contained a material error of law. He explained that the evidence before the First Tier Tribunal included documentary medical evidence and accepted that that medical evidence, although referred to briefly at [23] of the determination, has apparently not been considered by the Judge. He conceded that there is no analysis of the medical evidence and no findings of fact in relation to the medical evidence. Mr Nath conceded that the inadequacy of the findings in relation to the medical evidence amounts to a material error of law and conceded the appeal, asking that the case be remitted to the First Tier Tribunal to be heard of new.

7. Mr Saini reminded me that there were seven separate grounds of appeal but accepted that, as it was now common ground that the determination contains a material error of law, there was no need to address me further. He also asked that the case be remitted to the First Tier Tribunal to be determined *de novo*.

Analysis

8 In MK (duty to give reasons) Pakistan [2013] UKUT 00641 (IAC), it was held that (i) It was axiomatic that a determination disclosed clearly the reasons for a tribunal's decision. (ii) If a tribunal found oral evidence to be implausible,

incredible or unreliable or a document to be worth no weight whatsoever, it was necessary to say so in the determination and for such findings to be supported by reasons. A bare statement that a witness was not believed or that a document was afforded no weight was unlikely to satisfy the requirement to give reasons.

9 The Judge's determination promulgated on 16 April 2015 contains a material error of law. It is beyond dispute that documentary medical evidence was placed before the judge and that he has carried out no analysis of that evidence, nor has he stated whether he accepts or rejects that evidence. The medical evidence is a central issue in this case and it is evidence on which no findings in fact have been made. The judge does not demonstrate that account has been taken of the evidence presented to the First Tier Tribunal, nor does the judge adequately set out what evidence he accepts and what evidence he rejects, nor the reasons for either accepting or rejecting that evidence.

Finding of Material Error

10. The failure of the First Tier Tribunal to properly set out and weigh the evidence before it constitutes a material error of law. The judge has manifestly made inadequate findings in fact. This is a material error, since had the judge made findings in fact on the basis of the medical evidence placed before him, the outcome might have been different. That, in my view, is the correct test to apply.

11. I therefore find that a material error of law has been established and the judge's determination cannot stand and must be set aside in its entirety.

Remittal to the First tier Tribunal

12. Under Part 3 paragraph 7.2(b) of the Upper Tribunal Practice Statement of the 25th of September 2012 the case may be remitted to the First Tier Tribunal if the Upper Tribunal is satisfied that:

(a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or

(b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal.

13. In this case none of the findings of fact are to stand and the matter will be a complete re hearing.

14. I consequently remit the matter back to the First-tier Tribunal, before any First-tier Tribunal Judge (IAC) other than First Tier Tribunal Judge M A Khan.

Decision

15. The making of the decision of the First-tier tribunal is tainted by a material error of law.

16. I set aside the decision.

17. I remit the case to the First-tier Tribunal for determination of new.

Signed

Date 1st September 2015

Deputy Upper Tribunal Judge Doyle