



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/05537/2017

THE IMMIGRATION ACTS

Heard at Field House
On 23 August 2018

Decision & Reasons Promulgated
On 03 September 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE MANUELL

Between

MRS KAZHAL SARDAR JAMAL
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R K Rai, Counsel (instructed by Caulker & Co)

For the Respondent: Mr C Avery, Home Office Presenting Officer

DETERMINATION AND REASONS

Introduction

1. The Appellant appealed with permission granted by First-tier Tribunal Judge Lambert on 31 July 2018 against the determination of First-tier Tribunal Judge Blake dismissing the appeal of the Appellant who had sought leave to remain in the United Kingdom on protection and Article 8 ECHR grounds. The decision and reasons was promulgated on 26 June 2018.

2. The Appellant is a national of Iraq born there on 9 February 1994. Her protection appeal was dismissed and there was no challenge to that dismissal. The judge went on to find that the Appellant (who had married an Iraqi man) could return to Iraq with their recently born British Citizen child and reintegrate there without facing very significant obstacles. There were no exceptional circumstances. The proportionality balance for Article 8 ECHR purposes was against the Appellant. The appeal was accordingly dismissed.
3. Permission to appeal was granted because it was considered arguable that the judge had erred by taking into account the fact of the birth of the Appellant's child, a post decision event which had not been considered by the Secretary of State for the Home Department. The Secretary of State had not consented to a the raising of a new matter.

Submissions

4. Mr Rai for the Appellant was not responsible for the grounds on which permission to appeal had been sought and frankly and properly indicated the difficulties he faced. Although the grounds complained that the judge had proceeded without the Secretary of State for the Home Department's consent, the determination correctly showed that counsel for the Appellant had forcefully contended that the appeal should not be adjourned. The judge had acceded. The Appellant had given extensive evidence of the new matter. Nonetheless a procedural irregularity remained exactly that and could not be waived given that there was a statutory requirement which had not been followed: see Quaidoo (new matter: procedure/process) [2018] UKUT 00087 (IAC) and Mahmud (s.85 NIAA 2002 - 'new matters') [2017] UKUT 00488 (IAC).
5. Although possibly not the most attractive of submissions, the Appellant contended that there had been serious procedural error such that the appeal determination should be set aside and the appeal reheard before another judge. The determination was unlawful.
6. Mr Avery for the Respondent submitted that there was plainly no material error of law. The fact was as the determination showed there had been no objection by the Home Office Presenting Officer at the hearing. Nor should there have been, as the Home Office's published policy is to facilitate hearings and only to object to new matters where there was a genuine element of surprise. Here there was none. Effectively consent had been given and the judge had proceeded on that basis.
7. In reply, Mr Rai again acknowledged the difficulty. He requested leave to amend the grounds to challenge the judge's best interests assessment. That was refused by the tribunal as it was an application made far too late, and there was simply no obvious basis for suggesting that the experienced judge had erred in

the assessing the best interests of a child under one year of age who would be remaining with its parents.

No material error of law finding

8. In the tribunal's view the grant of permission to appeal was made erroneously. It simply did not lie in the Appellant's mouth to complain of receiving exactly that which it had requested, subject to that request having been lawful. Moreover and in any event, there was no evidence that the Home Office had in fact objected to the practical, cost and time saving approach which the experienced judge had taken. The tribunal agrees with Mr Avery's submissions. The Home Office's own policy was followed. Consent was not withheld. There is, in short, nothing in the grounds of appeal which merited a grant of permission to appeal.
9. Judge Blake's decision to proceed and to deal with the obvious fact of the birth of the Appellant's child was not opposed by the Respondent. That is indicated by the exchanges with the Home Office Presenting Officer noted by the judge. If the Home Office position had not been one of effective consent, the Home Office Presenting Officer would have had to have withdrawn from the hearing and sought permission to appeal when the determination was promulgated. That was the most suitable remedy as applying for judicial review would hardly have been practical or cost effective. But the tribunal finds that the judge proceeded on the basis of Home Office consent.
10. Judge Blake's determination was full and careful, setting out the procedural history, the evidence and submissions in detail. The Appellant and her husband were found to be unreliable witnesses on many contested issues. The appeal had no merit. The blameless British Citizen baby's best interests were properly considered: see [135] of the determination which is unimpeachable.
11. Thus the tribunal finds that there was no error of law in the decision challenged. The onwards appeal is dismissed.

DECISION

The appeal is dismissed

The making of the previous decision did not involve the making of a material error on a point of law. The decision stands unchanged.

Signed

Dated 23 August 2018

Deputy Upper Tribunal Judge Manuell