IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2019-000006

First-tier Tribunal No:
HU/14823/2019

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 11 August 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

MS A K R
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Khan, Solicitor
For the Respondent: Mr Tan, Senior Home Office Presenting Officer

Heard at Manchester Civil Justice Centre on 25 July 2023

DECISION AND REASONS

1. The Appellant is a national of India, date of birth 8 August 1987, who on 23 November 2017 applied for leave to remain on human rights grounds.

2. The Respondent refused her application in a decision dated 16 July 2019 because she had not demonstrated there were very significant obstacles as defined by paragraph 276ADE(i)(vi) HC 395 and there were no exceptional circumstances which merited a grant outside the Immigration Rules. The Appellant appealed this decision on 30 August 2019.

3. The case was listed before Judge of the First-tier Tribunal Thapar (hereinafter referred to as the FTTJ) on 11 November 2019 and in a decision promulgated on 11 December 2019 the appeal was dismissed.

4. Permission to appeal was sought on behalf of the Appellant by her representatives on 15 December 2019. These grounds argued there had been procedural unfairness because the FTTJ relied on the decision of on Guzman Barrios (domestic violence-DLR-Art 14 ECHR) Colombia [2011] UKUT 00352 which had not been mentioned by either party or the FTTJ at the hearing and consequently the Appellant's representatives had been unable to address the FTTJ about why it should be distinguished from the facts of this case.

5. Permission to appeal was granted by Judge of the First-tier Tribunal Foudy on 17 May 2020 who found it arguable there was an error in law for the reason given in the grounds of appeal.

6. Mr Khan relied on the grounds of appeal and submitted that natural justice dictated there had been unfairness and therefore a material error in law.

7. No Rule 24 response had been filed but at today's hearing Mr Tan opposed the application and submitted that whilst the case of Barrios had not been referred to at the hearing the FTTJ had clearly applied the principles of A v SSHD [2016] CSIH 38 and had simply referred to Barrios by way of parallel. The FTTJ reminded himself that the Appellant was admitted outside of the Immigration Rules and following the decision in A v SSHD it was clear there was a distinction between persons who were admitted with discretionary leave as against those admitted under the Refugee provisions.

8. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (512008 /269) an Anonymity Order is made. Unless the Upper Tribunal or Court orders otherwise, no report of any proceedings or any form of publication thereof shall directly or indirectly identify the original Appellant. This prohibition applies to, amongst others, all parties.

DISCUSSION AND FINDINGS

9. The ground of appeal in this case was narrow and concerned whether there had been a procedural unfairness.

10. At the FTT hearing the Appellant's Representative relied on the case of A v SSHD but the FTTJ rejected the analogy put forward giving her reasons for doing so in paragraph [11] of her decision.

11. In short, the FTTJ had distinguished the facts of the appeal from the facts of A v SSHD because that case involved the spouse of a person who had been granted refugee status whereas this Appellant had been granted

entry clearance as a spouse outside of the Immigration Rules. The FTTJ placed reliance on the thoughts of Upper Tribunal Judge McKee in Barrios.

12. At today's hearing both representatives referred me to the decision on A v SSHD and both made observations on the case of Barrios. Mr Tan referred to paragraph [66] of A v SSHD which states:

> "The aim of the measure in question is said to be that the spouses of those settled in the UK should be treated differently from the spouses of those without that status. The rationale for doing so is that the former are likely to have a reasonable expectation of settlement in the UK, and thus to have cut or loosened their ties with their country of origin in that expectation, whereas the spouses of the latter could have no such expectation, and would be less likely to cut or loosen those ties. In asserting that rationale, the respondent equiparates the position of refugees with those granted work or study leave. We do not accept, as a matter of fact, that this is a sound equiparation**.** A person admitted to the country as a student or for work is very clearly someone admitted on a limited and temporary basis, entirely at the discretion of the state. The status of refugee, as has been pointed out, is declaratory. Once it has been determined to exist the state has no discretion, in terms of its international and humanitarian obligations, but must grant asylum.
>
> The worker or student enters the country by choice; the refugee out of necessity.
>
> The circumstances in which refugee status may be lost are extremely limited and can in no reasonable way be compared to the situation applying to a worker or student. Once refugee status is acknowledged, international obligations require the state to facilitate assimilation and naturalisation, again a situation quite different from that of a worker or student.
>
> Accordingly, whilst we accept that it is not reasonable for the spouses of students or workers to have any reasonable expectation of having their future and a permanent home in the UK, and that such spouses are less likely to cut or loosen their ties with their country of origin than the spouses of British Citizens or persons with settled status, we cannot accept that this applies equally to the spouses of refugees.
>
> One can readily see that the spouse of a worker or student can have no reasonable expectation of having their future life or a permanent home in the UK, and that they would not be expected to cut or loosen their ties with their country of

> origin. The same cannot be said of the spouse of a refugee. A refugee is not in this country as a matter of choice or selection in the way that a student or worker may be: they have been admitted to the country because they have a well-founded fear of persecution in their own country.
>
> The idea that the spouse of such a person might be any less likely "from the outset to loosen or cut their ties with their country of origin" seems to us to be fanciful. Such an approach ignores several aspects of the reality of the position of a refugee."

13. I have considered the decision of Barrios and am satisfied that the principles considered in that appeal (which predated the decision of A v SSHD) took the current case no further as those same principles were applied in A v SSHD.

14. The Court made it clear in A v SSHD that there is a difference between someone granted discretionary leave as against someone granted leave as the spouse of a refugee. The court referred to the latter status as being declaratory whereas someone who had been admitted on a limited and temporary basis left the court with a discretion as to how that person should be treated.

15. The FTTJ assessed the Appellant's position applying the principles set out in A v SSHD and whilst reference was made to Barrios I am satisfied that there was no error in law because the principles set out in Barrios are reiterated and applied in A v SSHD. Mr Khan conceded as much at the hearing before me.

16. I am satisfied the FTTJ did not err by referring to the case of Barrios and whilst Mr Khan did not specifically address me on article 8 ECHR I am satisfied that the FTTJ considered all factors when considering the position both under paragraph 276ADE HC 395 and outside the Rules under Article 8 ECHR.

Notice of Decision

There is no error in law. The First-tier Tribunal's decision shall stand and the appeal is dismissed.

Deputy Judge of the Upper Tribunal Alis
Immigration and Asylum Chamber
1 August 2023