



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: IA/19551/2014

THE IMMIGRATION ACTS

**Heard at Glasgow
on 20 January 2015**

**Determination issued
on 21 January 2015**

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

SADIA ASIF

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

Appellant: present, not represented

For the Respondent: Mrs M O'Brien, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant appeals against a determination by First-tier Tribunal Judge Ferguson, dated 3 and issued on 4 September 2014, dismissing her appeal against refusal of leave to remain on the basis of her private and family life in the UK.
2. In her grounds of appeal to the FtT the appellant said that her husband had an appeal pending against refusal of leave on the basis of 10 years lawful residence. On 18 June 2014 the FtT issued directions to the appellant and to her solicitors, advising that the case would be decided

“on the papers” (as requested) and requiring “any further written evidence or submissions” to be received by 16 July 2014.

3. The determination finds that the appellant has not made out her Article 8 grounds. At paragraph 9 the judge says that she might have had a case if her husband had been granted leave, but no evidence to that effect was submitted.
4. The grounds of appeal to the Upper Tribunal say that evidence was submitted to the FtT by letter dated 15 and received on 17 July 2014, showing that the appeal by the appellant’s husband was to have an oral hearing on 16 July 2014. This communication is on the file now before the UT. It appears that the FtT did receive it on 17 July 2014 but it was not linked to the file until after Judge Ferguson’s decision had been issued.
5. There is also on file a letter from the appellant’s solicitors dated 31 July and received by fax on 5 September 2014 enclosing a copy of a determination by First-tier Tribunal Judge Lloyd-Smith in the case of the appellant’s husband, IA/18859/2014, promulgated on 22 July 2014. His appeal was allowed under the Immigration Rules.
6. The determination does not make any mistake on the basis of the information which was before the judge. The FtT was asked in the first place to deal with the two appeals separately. No reason has been given for deciding to proceed in that way. The same solicitors appear to have been instructed by husband and wife throughout. The date of the hearing of the husband’s appeal was advised one day late. The outcome was advised only after the determination now under appeal had been promulgated. The unfortunate situation which has come about was contributed to by the appellant’s side.
7. However, the communication dated 15 and received on 17 July 2014, although late, should have been placed before the Judge, and that should have had the result that this appeal was not determined in isolation from the husband’s appeal. I find that there has been inadvertent procedural error by the First-tier Tribunal such as constructively to be held as error of law. The determination is **set aside**.
8. Mrs O’Brien advised me that the appellant’s husband has not yet received a grant of leave, but that the respondent has taken no appeal against the outcome in his case.
9. In all the circumstances the most apt course would be for the respondent to make a fresh decision, based on the up-to-date position. The determination which I substitute is that the appeal, as brought to the FtT, is **allowed** to the extent that the respondent’s decision was **not in accordance with the law**.

A handwritten signature in black ink that reads "Hugh Macleman". The signature is written in a cursive style with a large, stylized initial 'H'.

20 January 2015
Upper Tribunal Judge Macleman