



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: OA/06511/2013

THE IMMIGRATION ACTS

Heard at Field House
On 18th March 2014

Determination Promulgated
On 28th March 2014

Before

UPPER TRIBUNAL JUDGE POOLE

Between

SYED HUSSAIN AHMED
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No Appearance
For the Respondent: Mr S Whitwell, Home Office Presenting Officer

DETERMINATION AND REASONS

1. In this appeal I will refer to the parties in the order and description by which they appeared before the First-Tier Tribunal.
2. The appellant is a citizen of Bangladesh and is male. He was born 7 June 1962.

3. The appellant originally applied for entry clearance to United Kingdom as a visitor for the purpose of marriage. The application was made and considered under paragraph 56(D) of the Immigration Rules. The appellant had been sponsored by his fiancée. The application was refused because the respondent did not consider that the requirements of the appropriate paragraph had been satisfied. No right of appeal exists in respect of such application and decision save for a limited right under Section 84(1)(c) of the Nationality, Immigration & Asylum Act 2002. This being that the decision is unlawful as being incompatible with the appellant's rights under the Human Rights Convention. The appellant exercised his right to appeal by reference thereto.
4. The matter came before Judge of the First-Tier Tribunal Lobo sitting at Taylor House on 16 December 2013. An oral hearing was held. The sponsor and her daughter attended and gave evidence. The respondent was not represented.
5. In a determination dated 2 January 2014 the judge reached findings by reference to the evidence before him and allowed the appeal "on human rights grounds".
6. The respondent sought leave to appeal. Two grounds of appeal were listed firstly failure to give reasons or adequate reasons for findings on a material matter and secondly a material misdirection in law.
7. In amplification of the grounds the respondent indicated that the judge had failed to give adequate consideration as to why the appellant and sponsor could not marry in Bangladesh given that they were two consenting adults and could additionally continue their married life in that country.
8. In respect of the second ground the judge had failed to consider whether there were any insurmountable objects to family life continuing outside the United Kingdom and that the judge had failed to consider the Article 8 provisions introduced into the Rules and that the judge had failed to properly consider the case of **MF (Nigeria) v SSHD [2013] EWCA Civ 1192**. There were no exceptional circumstances in this case.
9. In granting leave to appeal another Judge of the First-Tier Tribunal found as follows:-
 3. "It is arguable that the judge has not fully reasoned his decision to allow the appeal under Article 8.
 4. The grounds show an arguable error of law.
 5. All grounds are arguable".
10. Thus the matter comes before me in the Upper Tribunal. There was no appearance on behalf of the appellant. I note that a few days prior to the hearing an application had been made on behalf of the appellant for the case to be adjourned. The application was made because the appellant's named representative was unable to attend the hearing as she had recently given birth to a baby. That application had been placed before a Judge of the Upper Tribunal who had refused the application upon the basis that the appellant is outside the country and the representative, Miss Hoque, had merely assisted the appellant and was not a legal representative.

11. The application form was not renewed before me. However I do note that whilst clearly Miss Hoque was not a legal representative she has been named throughout as being the appellant's representative in the United Kingdom and it would have been appropriate for her to attend if she could. However as no application for adjournment was before me and Mr Whitwell was not in a position to make an application I decided to proceed with the appeal.
12. Mr Whitwell lied upon the application for leave. He produced the case of **Shahzad (Article 8: Legitimate Aim) [2014] UKUT 0085 (IAC)**. He referred in particular to paragraphs 31 and 25 of that reported decision. He submitted that the findings of the judge with regard to the inability to marry in Bangladesh were not open to him. There was a localised problem which might have prevented marriage. He asked me to find an error of law. I reserved my decision.
13. I have noted the contents of **Shahzad**, I am of course aware that this case was not heard by the Upper Tribunal until after the date of promulgation of Judge Lobo's determination. Indeed **Shahzad** was not promulgated until a month after the respondent's application for leave was submitted. Despite that I have considered the parts of that decision to which I have been referred.
14. From the determination it is clear that the judge of course realised that in essence the application was for a Visit Visa for a specific purpose. The decision as a result of that application did not carry a right of appeal under the Rules. The appellant had claimed a breach of his human right and via Section 84(1)(c) he was given a right of appeal to the First-Tier Tribunal.
15. The judge had before him the evidence of the sponsor together with the respondent's bundle and some supporting documentation. The judge made clear findings from the evidence before him. The facts and evidence were fairly concise and I am satisfied that the judge gave adequate reasons for the findings that he made. It was not necessary for him to go into any great detail because the issues were limited. I am satisfied therefore that the judge did give adequate reasoning and I do not consider that the respondent has made out the first of the two grounds alleging error.
16. I consider the judge correctly directed himself with regard to the law as he found it at the time of the hearing. He correctly takes into account **MF (Nigeria)** from the Court of Appeal. He could not have anticipated the findings of **Shahzad** although it is arguable that consideration should have been given to guidance in **Gulshan (Article 8 - New Rules - Correct Approach [2013] UKUT 640 (IAC)**, however I do not consider that an examination of that case would have resulted in the judge coming to any other conclusion. The judge was aware, as am I that in essence this was a Visit Visa Appeal with limited leave being the result of any successful application certainly no permanent or even lengthy settlement in the intention of the parties to the engagement. The judge came to a conclusion with regard to the ability to marry in Bangladesh. That conclusion might well be open to criticism that in reaching findings I do not consider that the judge ailed in law. He was entitled to reach the conclusions that he did. The respondent's argument in respect of Ground 2 is therefore not successful.

17. In all the circumstances the judge's decision must stand.
18. The respondent's appeal is dismissed.

Signed

Date

Upper Tribunal Judge N Poole