



IAC-FH-AR-V3

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

Appeal Number: IA/19887/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 16 October 2015**

**Decision & Reasons Promulgated  
On 20 November 2015**

**Before**

**UPPER TRIBUNAL JUDGE ALLEN**

**Between**

**MOHAMMAD MAHIDUL ISLAM  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr B Lams, Counsel, instructed by The Legal Resource Partnership

For the Respondent: Mr T Melvin, Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an error of law hearing in the first instance in respect of the appellant's appeal against the decision of the First-tier Judge dismissing his appeal against the decision to remove him as an illegal entrant. I will not go into the background in any great detail. Essentially there were four matters raised in the grounds and the grant of permission is limited to the challenge in respect of two of those and wisely I think Mr Lams concentrated his submissions on those two points. So I do not think I need to

say anything more about those except to note in passing that the judge found in circumstances which are not open to challenge that the requirements of the Immigration Rules were not satisfied in this case.

2. So it comes down really to whether it is shown that there is an error or there are errors of law in the judge's assessment of Article 8 other than within the Rules and perhaps on this point it is helpful to turn to paragraph 25 of the determination.

"As to Article 8 I accept that the appellant is currently in a relationship with Ms Tran. After considering the letters of support contained within the appellant's bundle I am also satisfied that he has a number of friends in the United Kingdom. I am aware that the threshold for engagement in respect of Article 8 is not particularly high. I have decided that the appellant's relationship with Ms Tran and the fact that she is of different religion to him could potentially amount to exceptional circumstances and so I am satisfied there are good reasons to consider Article 8 in accordance with MM (Lebanon) and/or went on to set out the five Razgar questions and to address those."

3. The two particular points of concern as set out by Mr Lams in the grounds and reasserted today are that there is no consideration thereafter of the implications of the fact that Ms Tran is a Buddhist and how she would manage as a Buddhist married or in a relationship to a Muslim, which is the appellant's religion, in Bangladesh, which is his country, and also the fact that although it was said by the judge that it was unlikely that the requirements of the Rules would be met if a fresh application was made now, this is the second point today, in effect the evidence shows that Ms Tran was earning comfortably over the £18,600 limit and it is said that is a matter that had to be factored into the evaluation of Article 8 outside the Rules, this having been identified by the judge as a relevant issue that these matters or particular matters that he referred to could amount to exceptional circumstances.
4. I think that perhaps slightly turning Mr Melvin's submissions on their head, I find it difficult to see how these matters could not be relevant in assessing Article 8 outside the Rules and it is not a case where it can possibly be said that everything that can be of relevance in this case is a matter that can be dealt with and is dealt with under the Immigration Rules. The judge herself identified the particular matter and the matter on which Mr Lams has placed most weight, that of the difficulties that the Buddhist partner of a Muslim in Bangladesh might face. This a matter that was ignored by the judge although there was clearly evidence before her concerning difficulties in this regard, that is a matter that clearly needed to be addressed if a consideration of exceptional circumstances was to be full and proper, and to a lesser extent although still relevantly part of the exercise that needed to be addressed was the fact that Ms Tran's earnings are such as to mean that the requirements of the Rules in that respect at least could be met and that factors into the Chikwamba point mentioned by Mr Lams and as part of the overall evaluation of Article 8 outside the Rules.
5. So as a consequence I find there are errors of law in this decision with regard to both grounds 2 and 3 as developed today and therefore the decision to that extent will have to be remade.

**Notice of Decision**

The appeal is allowed and is remitted to the First-tier Tribunal for the decision on Article 8 outside the Rules to be remade.

No anonymity direction is made.

Signed

Date

Upper Tribunal Judge Allen