IAC-BH-PMP-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/45177/2014

THE IMMIGRATION ACTS

Heard at Bennett House, Stoke	**Determination Promulgated**
On 16th July 2015	**On 10th September 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE GARRATT

Between

NUSRAT SHAHAZ
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms K Dasani, of Counsel instructed by Ashwood Solicitors Ltd
For the Respondent: Mr A McVeety, Senior Home Office Presenting Officer

DECISION AND DIRECTIONS

1. Before the Upper Tribunal; the Secretary of State becomes the appellant. However, for the sake of consistency and to avoid confusion I shall continue to refer to the parties as they were before the First-tier Tribunal.

2. On 5th May 2015 Judge of the First-tier Tribunal Colyer gave permission to the respondent to appeal against the decision of Judge of the First-tier Tribunal J S Law who allowed the appeal against the decision of the respondent to refuse leave to remain on the basis of family and private life applying the provisions of Appendix FM and paragraph 276ADE of the Immigration Rules.

3. The grounds of application by the respondent contend that the judge failed to provide adequate reasons for concluding that the appellant meets the requirements of the Immigration Rules and that it would be disproportionate under Article 8 to remove her.

4. In particular, the grounds submit that the appellant and her partner were fully aware that when she entered the United Kingdom her stay was precarious, there being inadequate evidence to support the conclusion that the appellant had the intention to return to Bangladesh when she arrived, especially since the judge had concluded that she could not meet the requirements for entry clearance as the partner of her sponsor if she applied from Bangladesh.

5. The grounds also contend that, despite the absence of medical evidence, the judge concluded that there were concerns about the appellant's health yet did not reach conclusions about whether or not she could receive any medical treatment required in Bangladesh.

6. As to the appellant's children, the judge's conclusion that they were too young to return to Bangladesh was not supported by reasons for it being unreasonable or unduly harsh for them to relocate to Bangladesh. Although the judge found that the youngest child is undergoing medical observation there was no evidence to substantiate that or any consideration of the medical treatment which could be obtained in Bangladesh. The judge had therefore failed to identify any exceptional circumstances which would make the appellant's removal unjustifiably harsh on her, her children or her partner.

7. The grounds also submit that the approach to Article 8 was flawed in failing to give consideration to the provisions of Section 117B of the Nationality, Immigration and Asylum Act 2002 (as amended). In particular the Tribunal had no regard to whether or not the appellant speaks English or is financially independent. The grounds argue that the appellant's circumstances merely amount to an ordinary family life claim which has no exceptional features.

8. Judge Colyer thought that all of the grounds were arguable.

9. At the hearing before me Ms Dasani argued that the grounds were no more than a disagreement with the reasoned conclusion of the judge. She contended that the judge had not placed disproportionate weight on the interests of the British children. She also contended that there was some evidence to support the existence of a blood disorder for the youngest child in the form of NHS letters to be found in the bundle. Taking that into account and the fact that the oldest child was about to enter school she thought that there were compelling reasons for the appellant not having to return to Bangladesh and reapply to join her family in the United Kingdom. Ms Dasani conceded, however, that the judge had not made any reference to Section 117B of the 2002 Act, although she emphasised that the judge had clearly applied the five stage tests recommended in *Razgar* [2004] UKHL 27 and so was entitled to conclude that the respondent's decision was disproportionate. She also claimed that the appellant spoke English and was supported by her "husband".

10. Mr McVeety confirmed that the respondent relied on the grounds. He contended that the points made by Ms Dasani were not incorporated into the grounds. Reference to

the factors set out in Section 117B was essential even if the Section itself was not referred to specifically. He also argued that the judge had failed to question the evidence of the sponsor's income of between £5,000 and £6,000 per annum which would suggest that the parties could not be financially independent. Further, although the judge had found that the parties could not meet the requirements of the Rules that could not, in itself, be an exceptional reason.

11. Both representatives suggested to me that, if an error on a point of law was found, the matter should be remitted to the First-tier Tribunal for a fresh hearing.

Conclusions

12. The decision of the First-tier Judge was not adequately reasoned in the material areas of the credibility of the appellant's claim to have intended to return to Bangladesh after her visit with her oldest child and, in relation to the health of the appellant's youngest child, born in the United Kingdom. Although the judge refers (paragraph 17) to the respondent's allegation of deception in relation to the appellant's intentions, he gives no reasons for the conclusion that the claims by the appellant and sponsor, that it was always intended that the appellant would return, were credible. Cogent reasons were required in respect of that issue particularly when it is borne in mind that the appellant and her oldest child purportedly intended a short visit but in circumstances where she could become re-associated with her former partner who is the father of that child.

13. The judge's conclusions about the medical condition of the youngest child is also flawed because, on the one hand, the judge points out that there were no Medical Reports relating to the condition of the youngest child yet, on the other, believes there would have been medical concerns arising from the child's birth. Not only is that conclusion speculative but is also wrong when the NHS correspondence is taken into consideration with its reference to a blood disorder as opposed to a birth problem. Additionally, even if the judge had shown that he had taken into consideration that correspondence, he should have been alert to the fact that, in the letter of 23rd March 2015, the blood disorder was stated to be "not in anyway detrimental" to the youngest child's health. Thus, the judge's conclusion that the medical condition of the youngest child gives rise to exceptional circumstances shows a material error on a point of law.

14. Finally, the judge fails to make any reference, either directly or by implication, to the provisions of Section 117B of the 2002 Act in relation to the public interest considerations applicable in all cases if private and family life is raised. There is no consideration by the judge of the test set out in Section 117B(6)(b) of whether or not it would be reasonable to expect a child to leave the United Kingdom. Whilst the judge does refer to the respondent's obligations under Section 55 of the Borders, Citizenship and Immigration Act 2009 and the five stage test set out in *Razgar,* this does not overcome the errors to which I have referred relating to the credibility of the evidence and the statutory test for the public interest which had to be applied.

15. As any re-making of the decision will require a re-examination of the evidence and fresh credibility findings it is appropriate that this appeal should be heard afresh by the First-tier Tribunal. This accords with the principles set out in paragraph 7.2(b) of

the Practice Statements for the Tribunal issued by the Senior President of Tribunals on 25th September 2012.

Decision

The decision of the First-tier Tribunal shows material errors on points of law. The decision is set aside and the appeal is remitted to the First-tier Tribunal for hearing afresh.

Anonymity

Anonymity was not requested before the Upper Tribunal nor was a direction made in that respect by the First-tier Tribunal.

DIRECTIONS

1. The appeal is to be heard afresh by the First-tier Tribunal sitting at the Manchester Hearing Centre on a date to be specified by the Resident Judge.
2. The appeal should not be heard by Judge of the First-tier Tribunal J S Law.
3. A Bengali interpreter will be required for the hearing.
4. The time estimate for the hearing is three hours.

Signed Date

Deputy Upper Tribunal Judge Garratt