



**Upper Tribunal  
(Immigration and Asylum Chamber)  
HU/05513/2015**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Field House**

**Decision & Reasons**

**On 26 May 2017**

**Promulgated**

**On 20 June 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE ESHUN**

**Between**

**MD K A**

**(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr I Khan, Counsel  
For the Respondent: Mr S Whitwell, HOPO

**DECISION ON ERROR OF LAW**

1. The appellant has been granted permission to appeal the decision of First-tier Tribunal Judge Brown dismissing his appeal against the decision of the respondent made on 28 August 2015 to refuse him leave to remain on the basis of his private and family life.
2. In a further Rule 24 response dated 24 May 2017 and notwithstanding the contents of the earlier response from the respondent of 4 May, the respondent now did not wish to oppose the appellant's application for

permission to appeal. In order to avoid putting the parties to any additional costs, the respondent invited the Tribunal to determine the appeal with a fresh oral (continuance) hearing.

3. Mr Whitwell accepted that the judge erred in law in his decision at paragraphs 27 to 29 in considering the appellant's human rights appeal as at the date the respondent made her decision. I find that whilst the judge may have decided that at the date of the respondent's decision the appellant could not comply with the Immigration Rules 276ADE, the judge failed to assess the appellant's evidence in the wider context of Article 8 outside of the Immigration Rules.
4. Consequently I find that the judge erred in law in requiring the appellant to make a fresh application for leave to remain now that the appellant and Ms A are legally married.
5. Accordingly I set aside the determination in order for it to be remade.
6. The appeal is remitted to Taylor House for rehearing by a First-tier Tribunal Judge other than Judge T Brown.

### **Directions**

7. Time estimate - two hours.
8. Witnesses - 2, the appellant and his wife.
9. The appellant will require an interpreter in the Bengali Sylheti dialect.

### **Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date: 19 June 2017

Deputy Upper Tribunal Judge Eshun