



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

Appeal Number: IA/01212/2016

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 26 October 2017**

**Decision & Reasons Promulgated  
On 7 November 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE APPEYARD**

**Between**

**MR JUBED AHMED  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr T. Shah, Legal Representative.

For the Respondent: Mr. L. Tarlow, Home Office Presenting Officer.

**DECISION AND REASONS**

1. The appellant is a Bangladeshi citizen who made application to the respondent for leave to remain on the basis of family life and also on the basis of his private life in the United Kingdom. His application was refused on 18 February 2016 under both Appendix FM and paragraph 276ADE of the Immigration Rules (HC 395 as amended).

2. The appellant appealed that decision and following a hearing, and in a decision promulgated on 7 July 2017, Judge of the First-tier Tribunal Cameron dismissed the appellant's appeal.
3. The appellant sought permission to appeal which was granted by Judge of the First-tier Tribunal Kelly on 9 August 2017. His reasons for so doing are:
  - (1) "The appellant seeks permission to appeal in time, against the decision of First-tier Tribunal Judge Cameron, promulgated on 7<sup>th</sup> July 2017 to dismiss the appeal against refusal of his application for leave to remain on private and family life grounds.
  - (2) The grounds assert that the Tribunal's Article 8 analysis - with particular reference to the reasonableness of the appellant's infant daughter leaving the United Kingdom - was legally flawed. Most of the particulars of this ground are simply a quarrel with the judgment of the Tribunal that it would not be unreasonable to expect the child to leave the UK. It is however arguable that the Tribunal erred by
    - (i) having regard to the possibility of the child remaining in the UK with her mother given that the test in Section 117B(6) is arguably one that is based upon the hypothesis of the child in the UK leaving upon whether this course of action is being proposed or is likely to occur,
    - (ii) failing to identify any one count availing public interest reasons rendering it reasonable to expect the child to leave the UK (especially given the Tribunal's findings that the appellant's immigration history was unremarkable),
    - (iii) treating the question of 'reasonableness' as a matter of evidence and thus for the appellant to prove 'on a balance of probabilities' rather a neutral question of judgment that is based upon the established facts [paragraph 69 and 70 of the decision]."
4. Thus, the appeal came before me today.
5. Mr Shah relied upon the grounds seeking permission to appeal which he went on to amplify at some length. In particular the fact that it was found the appellant did not deploy deception for his TOEIC test. However, Mr Shah asserts that the judge failed to give adequate consideration to the appellant's family and private life in the United Kingdom and that there were insurmountable obstacles upon his return. His relationship with his British spouse is not disputed and is accepted as being genuine and subsisting. The grounds then go on to detail the insurmountable obstacles that were argued within the appeal. Further that it would be unreasonable for the appellant's daughter Zaynab to leave the United Kingdom to continue her relationship with her father because her mother would be unable to join them in Bangladesh. Her mother would be unable to go

because she cannot leave her elderly parents. He argued that the First-tier Tribunal Judge had failed to give due consideration to the fact that the appellant would not be able to provide an adequate home for his daughter as he does not have any support network in Bangladesh and that his daughter enjoys being in the United Kingdom with her parents, grandparents, aunts and uncles. Further that the judge erred in law and procedure for failing to consider Article 8 family life with blood relatives and did not take into account various authorities which are referred to within the appellant's bundle. In responding to Mr Tarlow's submissions he added that this was an appeal in relation to family life as opposed to private life and at the time that the appellant commenced his relationship with his wife he did have leave to remain as a student. He had to acknowledge though, thus the judge found at paragraph 60 of his decision, that both the appellant and his wife must have been aware that that did not give him a right to remain in the United Kingdom indefinitely.

6. Mr Tarlow submitted that the grounds seeking permission to appeal were no more than a disagreement with the judge's findings which were open to be made on the evidence. The judge has made findings that were open to be made taking into account all relevant issues and has not materially erred as asserted.
7. Contrary to Mr Shah's submissions it is not incumbent upon the judge to cite every case that touches upon the issues within the appeal. The principles therefrom have though been followed and reference is made to key authorities.
8. The grounds seeking permission to appeal amount to a disagreement with findings that were open to be made on the evidence. This is a carefully written decision where the judge has taken all factors into account before coming to conclusions that were open to be made. It was open to the judge, as he did at paragraph 46 of his decision, to be satisfied that the appellant did have a sufficient level of English language and that he had undertaken courses in the past in English. Further that on the balance of probabilities the judge found the appellant did undertake the test himself and had not used deception. Thereafter the judge has carried out a full and thorough balancing exercise taking into account the impact of removal upon the immediate and extended family of the appellant and his wife. It was open to the judge at paragraph 69 to find that there were no insurmountable obstacles to the appellant's wife returning to Bangladesh notwithstanding her ties to the United Kingdom. Further that there was no requirement that the appellant's wife and child leave the United Kingdom and if his daughter remained in the United Kingdom with her mother then she would continue to receive care from her and the extended family. The judge has taken into account all other factors including the assistance the appellant has received in the United Kingdom from his wife's family and also the fact that he too has family in his country of origin. At paragraph 77 of his decision the judge has subsumed within his Article 8 analysis the best interests of the appellant's child. The judge has recorded that the appellant spent his formative years in Bangladesh and acknowledges that

within the United Kingdom he will have established a substantial family and private life. However, he also finds that the appellant's position has (paragraph 85) always been precarious.

9. I find that the appellant's grounds seeking permission to appeal disclosed no material error of law. They are a disagreement with findings which were open to be made on the evidence and which have been adequately reasoned.

### **Decision**

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision.

No anonymity direction is made.

Signed

Date 6 November 2017.

Deputy Upper Tribunal Judge Appleyard