



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

Appeal Number: IA/25287/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 4 September 2017**

**Decision & Reasons Promulgated
On 14 September 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHANA

Between

**MR MD TAZUL ISLAM
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr T. Shah, Solicitor

For the Respondent: Ms S. Staunton, Senior Presenting Officer

DECISION AND REASONS

1. The appellant appeals against the decision of First-tier Tribunal Judge Khan dated 5 January 2017 against the decision of the respondent dated 14 July 2015 refusing the appellant further leave to remain in the United Kingdom under Article 8 of the European Convention on Human Rights. First-tier Tribunal Judge Harrington in the decision dated 5 December 2016 dismissed the appellant's appeal.

2. Permission to appeal was granted by First-tier Tribunal Judge PJM Hollingworth stating that it is arguable that the Judge, in light of the credibility findings made by him that insufficient weight was attached to the matrix of factors derived from the evidence provided on behalf of the appellant. It is arguable that the Judge attached insufficient weight to the availability or otherwise of family support on return to Bangladesh. It is also arguable that the proportionality assessment has been affected given the juxtaposition between the content of the immigration rules and the consideration of whether there would be a breach of Article 8 outside them. It is arguable that the Judge fell into error in construing the question of leave in the context of the effect of the service or otherwise of a notice of curtailment.
3. In his decision, Judge Harrington made the following findings which I summarise. The appellant entered the United Kingdom on 15 November 2009 with valid leave as a student and remained with valid leave until 30 September 2015. On 2 April 2015, whilst he still had valid leave, the appellant applied further leave to remain as the partner of [RI], a Bangladeshi national present and settled in the United Kingdom.
4. All the evidence has been considered, in particular the medical evidence in relation to the sponsor. This shows that the fertility enquiries are at a fairly early stage and it is far from clear what, if any, treatment she would receive on the NHS and what the prospects of success of such treatment would be. The medical evidence shows that the sponsor's irregular menstrual cycle is a long-standing difficulty and one of which she was aware when she chose to marry the appellant. It is further noted that there is no evidence from objective sources as to the medical provision, including costs, in Bangladesh.
5. Insurmountable obstacles mean the very significant difficulties which would be faced by the applicant and their partner in continuing their family life together outside the United Kingdom and which could not be overcome would entail very serious hardship for the applicant or their partner. Both the appellant and sponsor allege they have no longer any meaningful contact with their family in Bangladesh and that their families, including the sponsor's family in the United Kingdom, to integrate into Bangladesh. The Judge accepted that the sponsor's family home has been sold as this is consistent with her relocating to the United Kingdom and that the appellant's parents may be somewhat unimpressed with them marrying without their consent. However, if the appellant and sponsor were return to Bangladesh, their entire families would not simply stand by and watch them fall into destitution. It is noted that the sponsor claims to be very close to her family in the United Kingdom and the appellant claims to be financially assisted by his family in the United Kingdom and I can see no reason why the support would not continue.
6. The Judge stated that he was far from convinced that support would be necessary. The appellant and sponsor are both young, fit and able to work.

The appellant has been able to relocate to the United Kingdom on his own, find accommodation and when he was permitted to do so, to find employment. He can use the same skills together with the education that he has received in the United Kingdom to establish himself in Bangladesh. This will cause some disruption but it is not considered that it would come close to very significant difficulties of very significant hardship. Leaving their friends and family behind in the United Kingdom, does not amount to very significant difficulties of very significant hardship and they can make new friends in Bangladesh.

7. About the fertility issues of the sponsor, on the information, would not amount to very significant difficulties or very significant hardship. The information does not give details of the treatment the sponsor is receiving in the United Kingdom or the timescales of prospects of success of the availability or cost of treatment in Bangladesh. It is therefore concluded that relocating to Bangladesh would not amount to insurmountable obstacles, for this reason. They would also not be very significant obstacles to the appellant's integration into Bangladesh. Whilst the appellant has been in the United Kingdom for more than six years, he grew up in Bangladesh and would be able to integrate into that country on return.
8. The circumstances of the appellant are not so compelling that they amount to a breach of his or his sponsors Article 8 rights. The appellant fails under paragraph 276 ADE or Appendix FM. The interference with the appellant's and the sponsor's private and family life which is potentially engaged, is a lawful decision and the interference is a necessary consequence of the respondent's acting to control immigration for the public well-being and economic welfare of the country and this is a legitimate aim.
9. The interference is also proportionate and on the issue of proportionality, the entirety of the circumstances of the appellant and the sponsor balanced against the provisions of section 117A-D of the Nationality Immigration and Asylum Act 2002 has been considered. There is a strong public interest in maintaining effective immigration control. The appellant's private life was established at the time he was in the United Kingdom precariously so little weight is given to it. The appellant's family life with the sponsor was established at the time when he only had limited leave and at a time when he knew his leave was liable to be curtailed.
10. The appellant and sponsor chose to marry, incredibly quickly, knowing that they may not be able to live together in the United Kingdom and they must bear some responsibility for the consequences of their actions. The appellant will not have significant difficulty in integrating into Bangladesh. The sponsor can choose to return to Bangladesh with the appellant and if she did so the parties would not face very significant difficulties or very significant hardship. If she were to return to Bangladesh with the appellant, she would be free to return to the United Kingdom to visit her

family and friends. If the sponsor chose to remain in the United Kingdom, privatising her United Kingdom family and friends, she could stay in touch with the appellant by telephone and other modern means of communication and could visit him in Bangladesh. The appellant can speak English and has been largely financially independent since arriving in the United Kingdom, albeit slightly precariously as he is reliant on others to assist him, but these factors do not tip the balance.

11. In his grounds of appeal, the appellant states the following which I summarise. The appeal before the first-tier Tribunal Judge was pursuant to EX1 and Article 8. The respondent accepted that the appellant has a genuine and subsisting relationship with his spouse who has a right of abode. The respondent refused the application on the basis that there would be no insurmountable obstacles to family life continuing outside the United Kingdom.
12. The Judge at paragraph 29 and 37 of the decision said that he is prepared to accept that the sponsor's family home has been sold and he accepts that the appellant has family life in the United Kingdom with the sponsor and a private life, encompassing his friendships, built up during his time in the United Kingdom. He accepts the decision of the respondent does interfere with the private and family life and that the interference is arguably sufficiently serious to potentially engage Article 8.
13. The Judge having accepted the appellant's relationship is genuine and subsisting failed in her assessment of the second limb test of insurmountable obstacles. The appellant and sponsor were credible witnesses and no adverse credibility findings were made by the First-tier Tribunal Judge subsequent to her questioning the appellant in the absence of the respondent.
14. The Judge erred by speculating on the support available for the sponsor's and the appellant's return to Bangladesh. At the hearing, the Judge cross-examined the sponsor in relation to this issue. The sponsor in his evidence said that his family would not assist him as they are busy with their own lives. The sponsor's father was retired and her sisters have their own family to take care of. The Judge erred by failing to take into account the sponsor's oral evidence. The Judge speculated that they can rely on family support on their return to Bangladesh.
15. The Judge erred in proportionality assessment under paragraph 117A-D. The appellant clearly illustrated a strong command of English as he did not require an interpreter and that he had initially supported himself and was supported by his partner.
16. The Judge erred in her assessment at paragraph 41 and the application of section 117 (4) is flawed. The appellant was residing in the United Kingdom lawfully when he started his family life. He had not been served with a notice of curtailment by the respondent, therefore his leave to

remain was still intact at the time when he established his family and private life in the United Kingdom. The Judge stated that the appellant only had limited leave. The appellant's type of leave does not form part of the assessment under section 117 (4) a rather his lawfulness to be resident in the United Kingdom was significant. Therefore, the Judge failed to give due weight to the appellant's family life in considering proportionality under Article 8. It is submitted that the correct approach may have tipped the balance in favour of the appellant. In addition, the Judge listed other factors in his proportionality assessment which was irrelevant at this was in relation to insurmountable or very significant difficulties test.

7. At the hearing, I heard submissions from both parties as to whether there is an error of law in her decision.

Decision as to whether there is an error of law in the decision

12. It is clear from reading the entirety of the decision that the Judge was aware of the issues in the appeal. In respect of EX 1, the Judge considered whether there are insurmountable obstacles to the appellant's family life with the sponsor continuing outside the United Kingdom. The Judge considered the definition of insurmountable obstacles in EX 2. That was the correct test to be applied. The Judge give cogent reasons for finding that there would not be insurmountable obstacles to the appellant returning to Bangladesh with his sponsor, if that was her wish.
13. He correctly identified that both the sponsor and the appellant grew up in Bangladesh, speak the language and have familiarity with the culture. He also considered that the sponsor had lived in Bangladesh just two years ago and found it inconceivable that in just two years she has lost friends in Bangladesh albeit, he was prepared to accept that contact may have become less frequent. The Judge was entitled to find that the sponsor who has only been in the United Kingdom for two years would be able to integrate into Bangladesh rapidly. This was further strengthened by the sponsor's inability to give her evidence in the English language and she had to use an interpreter.
14. The complaint made against the Judge is that he speculated that the appellant's family in Bangladesh, who were unimpressed with him marrying without their consent, would watch them fall into destitution in Bangladesh. On the evidence, the Judge was entitled to find that the appellant who is very close to his family in the United Kingdom and who has been financially assisted by them in this country would see them destitute in Bangladesh. The judge was entitled to view that if the appellant's family assisted him in the United Kingdom, they would if necessary, assist him in Bangladesh. There is no perversity in this assumption.
15. However, the more and definitive and important consideration for the Judge was that the appellant and her sponsor will not be needed to be

supported by anyone on their return to Bangladesh as there were two independent adults. The Judge found that if the appellant could relocate to the United Kingdom on his own and find accommodation and when permitted to do so found employment and he could use the same skills to settle back in Bangladesh. The Judge was entitled to find that the appellant has been educated in the United Kingdom which will help him to establish himself in Bangladesh.

16. There is no perversity to this conclusion that the appellant and the sponsor who are adults and self-reliant in this country, can become self-reliant in Bangladesh. The appellant did work in the United Kingdom and can work in Bangladesh. The Judge was entitled to find that the appellant and the sponsor are adults and will make their own way in life as they have done in the United Kingdom. The only reason that the appellant required support from his family in the United Kingdom was because he was not allowed to work. The appellant will be able to work in Bangladesh and will be able to find employment with the education that he has received. I find that there is no material error of law in the Judge's conclusion that the appellant should not require support on his return to Bangladesh.
17. The Judge noted that the appellant's first study course in this country was in hospitality and tourism after which he extended his student visa to study business management. He noted however that the appellant's course was revoked in around October 2014, the appellant did not attend any other college and said that he was spending time with his wife and was studying at home using the books he bought, the library and on the Internet. This illustrated to the Judge that the appellant continued to live in this country even when he was not studying at an institution.
18. The Judge was entitled to find that the appellant and the sponsor may find it difficult to relocate to Bangladesh but that does not mean that these difficulties constitute insurmountable obstacles or very significant difficulties. Both the appellant and the sponsor are Bangladeshi nationals and they will be returning to their country of origin even though they wish to remain in the United Kingdom. The Judge rightly pointed out that the appellant and the sponsor's desire to live in the United Kingdom and continue their family life in this country is not reason enough under the immigration rules.
19. In respect of Article 8, the complaint made against the Judge is that he took into account irrelevant factors and misunderstood the evidence that the appellant always had leave to remain in the United Kingdom as a student and there was no curtailment notice issued against him. He said that he had established his family and private life at a time when he had leave. The point to be made here is that, although the respondent did not curtail his leave, for whatever reason, the appellant had not been studying in this country since 2014 but claims he was studying at home. I do not understand student visas are granted to those who want to study at home with their own books and on the Internet.

20. The appellant's leave has always been precarious even if he had leave to remain in this country as a student by the respondent. The appellant has always been subject to immigration control which means that his leave remains precarious. Therefore, the appellant did establish a relationship with the sponsor when his immigration status was precarious. He also married his spouse five days after he met her. He met the sponsor on 7 November and they married on 12 November just after five days. Both must have known that the appellant, who was subject to immigration control, might not get further leave to remain in the United Kingdom. The Judge rightly pointed out that they must bear responsibility for the consequences of their actions. There is no material error of law for the Judge to consider this as going against the appellant.
21. The other complaint made against the Judge is that there was a notice of curtailment issued to the appellant, when there was no such notice. It is alleged that the Judge erroneously took this account in evaluating proportionality. The Judge was aware that the appellant has not studied in this country since 2014 and wrongly assumed there must have been a curtailment notice. Even if there was no curtailment notice, it is not a material error of law such as to change his final decision on all the evidence in the appeal.
22. The Judge took into account all the evidence in this appeal and was entitled to find that the appellant is not captured by EX 1. He was also entitled to find that the respondent's decision does not breach the appellant's or his sponsors right to a family and private life in the United Kingdom and that there are no exceptional circumstances in the appellant's appeal where he should be granted leave to remain under Article 8, when he cannot meet the requirements of the immigration rules. He then took into account the public interest as he was bound to do and found that the public interest trumps the interests of the appellant.
23. The appellant's grounds of appeal are no more than a quarrel with the Judges findings on the evidence and the conclusions that he reached. The First-tier Tribunal Judge's decision must be upheld as it is free of material error.

Notice of Decision

The appellants appeal is dismissed under the immigration rules and Article 8 and the First-tier Tribunal's decision is upheld.

No anonymity direction is made.

Signed by
2017

Dated this 13th day of September

A Deputy Upper Tribunal Judge

Ms S Chana

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal so the can be no fee order made.