



**Upper Tribunal  
(Immigration and Asylum Chamber)  
IA/27013/2015**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Field House**

**Decision & Reasons**

**On 4 September 2017**

**Promulgated**

**On 11 October 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE CHANA**

**Between**

**MR MD NAZRUL ISLAM CHOWDHURY  
(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: Mr S Staunton, Senior Presenting Officer

**DECISION AND REASONS**

1. The appellant appeals against the decision of First-tier Tribunal Judge Harrington promulgated on 5 December 2016 against the decision of the respondent dated 26 June 2015 refusing his application for further leave to remain as a partner under Appendix FM of the immigration rules and under Article 8 of the European Convention on Human Rights.
2. Permission to appeal was granted by first-tier Tribunal Judge PJM Hollingworth stating that it is arguable that in light of the credibility findings made by the Judge that insufficient weight was attached to the matrix of factors derived from the evidence provided by 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 arguable that the proportionality assessment has been affected given the juxtaposition between the contents of the immigration rules and consideration of whether there would be a breach of Article 8 outside the rules. 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. Judge Harrington in his decision, made the following findings which I summarise. The issues in this appeal are EX 1 and, 276 ADE of the immigration rules and Article 8 outside them. The appellant's course of study in the United Kingdom was hospitality and tourism. His visa was extended to study business management but his course was revoked in around October 2014. The appellant tried to find a different college but did not get the 60-day letter from the respondent. He tried other universities but they were too expensive. He stopped studying and has spent time with his wife and continues to study on his own using books that he has bought and on the Internet. His parents were upset and angry that his college had closed.
4. The appellant's parents do not accept his marriage as they had a plan for him to marry someone else. He spoke to them when he had his civil marriage and tried again a few days later but they have refused to forgive him. He has not spoken to his parents since the end of December 2014. He met his wife on 7 November at a birthday party. They could not live together before marriage due to their religion so they married on 12 November.
5. The appellant has family in the United Kingdom, his maternal uncle and cousin. They have been helping him with his living costs because he has been unemployed. His wife and his friends also help him with his living costs. He does not have anywhere to live in Bangladesh. His father will not accept him with his wife. If given permission to live in the United Kingdom he could easily get a job but if he goes back to Bangladesh after seven years, he has nowhere to go.
6. In this case there are none of the cultural, language or other difficulties caused by relocating to an unfamiliar country. Both the appellant and the sponsor grew up in Bangladesh, speak the language and have a familiarity with the culture. The appellant and his sponsor both allege that they no longer have meaningful contact with their family in Bangladesh and that their families including the sponsor's family in the United Kingdom would not assist them to integrate into Bangladesh.
7. It is not accepted that if the appellant and his sponsor will return to Bangladesh their entire families would 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. Therefore, there would be no reason why the support from the family would not continue.

8. The Judge however was far from convinced that support would be necessary to the appellant and his sponsor. The appellant and his sponsor are both young fit and able to work. The appellant has been able to relocate to the United Kingdom on his own and 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 this country to establish himself in Bangladesh. That may cause some disruption but it cannot be considered close to very significant obstacles or significant hardship.
9. For the appellant not to have face to face contact with his friends and family in the United Kingdom does not amount to very significant difficulties of very significant hardship. The medical issues of the sponsor also cannot be characterised as very significant difficulties or very significant hardship. The information available does not give details of treatment that the sponsor is receiving in the United Kingdom. There is also no evidence as to the prospects of success or the availability of treatment in Bangladesh and there are too many uncertainties to conclude that relocating to Bangladesh would make a significant difference to the prospects of the sponsor conceiving the child. It is accepted that there would be a disruption and some difficulties for the appellant and his sponsor in relocating to Bangladesh but they would not amount to insurmountable obstacles.
10. In respect of Article 8 of the European Convention on Human Rights it is accepted that the appellant has family life in the United Kingdom with the sponsor and a private life encompassing his friendships build up during his time in the United Kingdom. It is accepted that the decision of the respondent does interfere with the appellant's private and family life and that the interference is arguably sufficiently serious to potentially engage Article 8. However, the interference is a consequence of a lawful decision and accordingly, it is in accordance with the law. The question to be answered is whether the interference is proportionate.
11. On the issue of proportionality, the entirety of the circumstances of the appellant and the sponsor have been considered including provisions of section 117A of the Nationality Immigration and Asylum Act 2002. In all the circumstances of the appellant and his sponsor the decision is proportionate.
12. The respondent's public interest in maintaining effective immigration control and the economic well-being of the country must be given weight. The appellant's private life was established at a time he was in the United Kingdom precariously. The appellant's family life with his sponsor was established at a time when he only had limited leave to remain in the United Kingdom and he knew his leave was liable to be curtailed.
13. The appellant and his 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 would not have significant difficulty in integrating into Bangladesh. The sponsor can choose to return to Bangladesh with the appellant and if

she did, the parties would not face very significant difficulties of very significant hardship doing so.

14. The sponsor could also return to the United Kingdom to visit her family and friends. If the sponsor chose to remain in the United Kingdom, she could communicate with him through modern means of communication and family visits to Bangladesh. The appellant's friends and wider family in the United Kingdom can keep in touch with him by telephone and other modern means of communication. 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 survive, but these factors do not tip the balance.
15. In his grounds of appeal, the appellant states the following which I summarise. By way of background, it was EX 1 and Article 8 appeal before the First-tier Tribunal Judge to determine. The respondent accepted that the appellant is in a genuine and subsisting relationship with his settled spouse in the United Kingdom. The respondent refused the application on the bases there would be no insurmountable obstacles to family life continuing outside the United Kingdom. Therefore, there were two legal issues for the First-tier Tribunal Judge to consider and he made an error in his initial approach when recording issues under appeal at paragraph 2-4 where it is stated that it was an appeal under Article 8 alone.
16. At paragraph 24 the Judge made a further error when concluding that the respondent refused the appeal based on Article 8 alone. This was not the case as can be seen in the respondent's refusal letter. Since the introduction of Appendix FM on 9 July 2012 including EX 1, there has been many guideline cases which makes it clear that firstly the decision maker must consider the immigration rules which in this case is EX1 and if not satisfied as endorsed in the case of **SS Congo [2015] EWCA Civ 387** where the Court of Appeal said that that the appeal must be first heard under the immigration rules and then go to the second ground under Article 8 to see whether there are compassionate grounds to succeed.
17. At paragraph 25, the Judge made adverse credibility findings. With respect, this is not based on correct recording of the evidence in relation to if the appellant worked. At paragraph 26, the Judge considered if the appellant could work on return to Bangladesh. The finding was not based on detailed reasons that the appellant gave. It was the Judge who asked many direct questions to the appellant. In one such question as to whether he could do a labour job on his return to Bangladesh which is when his inability to lift heavy things was mentioned. The appellant gave evidence that if given permission to stay in the United Kingdom, he could undertake a job as a waiter in a restaurant of which there is a high demand in the United Kingdom.
18. At paragraph 27, in terms of his teaching job on return to Bangladesh the Judge ignored this evidence that in the last nine years the curriculum has changed and a new government new job is not possible after the age of 30 years.

19. At paragraph 28 the Judge failed to balance reasons with other key evidence given by the appellant. This was that his mother is aged and suffering from illness diagnosed with cancer which was one of the reasons they travelled to Bangladesh to see his mother. His sponsor came to the United Kingdom as a spouse in 1986 and ever since that time, the United Kingdom has been her home country. Her two children do not go to Bangladesh as they were born in the United Kingdom and work here. They do not have a family home in Bangladesh and their relatives are not able or willing to help them on return.
20. If the Judge had applied the test in EX 1, a different decision would have been made. The Judge at paragraph 30 explained the correct approach in law but at paragraph 28 applied paragraph 276 ADE (iv) test which was not identified as an issue to be considered. In terms of section 117 A and B the Judge took a correct approach. He failed to consider the fact that the appellant demonstrated knowledge of English and since his marriage his wife has been supporting him without recourse to public funds. On the evidence, he was able and willing to undertake employment.
21. 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**

22. The complaint against the Judge is that he did not consider the appellant's appeal under the right immigration rules. At paragraph 24 the judge stated that the appeal was based on the appellant's family and private life in the United Kingdom under Article 8 of the European Convention on Human Rights even though the respondent in her reasons for refusal letter considered the claim under EX 1 (b). It is suggested that had the Judge considered the appellant's appeal under the EX 1 of the immigration rules, it would have made a material difference to the outcome of the appeal. However, I note that the Judge stated that the issues in this appeal are EX 1 and, 276 ADE of the immigration rules and Article 8 outside them. Therefore, the Judge was aware that he must apply EX 1 to the appeal.
23. The judge in his decision stated that he does not find that there are insurmountable obstacles in the way of the appellant and his wife resettling in Bangladesh and found that the appellant does not meet the requirements of paragraph 276 ADE (vi) of the immigration rules. It is argued by the appellant that the Judge should have considered his appeal under EX 1 which requires a genuine and subsisting relationship with a British citizen sponsor the respondent has not disputed.
24. It is correct that the respondent did not deny that the appellant is in the genuine and subsisting relationship with a partner who is a British citizen and settled in the United Kingdom. Therefore, for the purposes of EX 1 (b), the Judge should have applied the "insurmountable obstacles test which means, "the very significant difficulties which would be faced by the applicant or their partner in continuing their family life together outside the

United Kingdom and which could not be overcome or would entail very serious hardship for the applicant or their partner.”

25. Throughout the decision, this is the test applied by the Judge to the facts of the case. The Judge gave proper and cogent reasons for finding that the appellant's return to Bangladesh with his wife would not amount to insurmountable obstacles or as he said very significant difficulties or very significant hardship. The Judge did consider the appellant's evidence in its entirety before reaching his conclusion that there were no insurmountable obstacles to family life continuing in Bangladesh.
26. The Judge did consider that the appellant has been in this country for nine years but said that does not mean that the appellant cannot return to Bangladesh, the country of his origin. He also said that the appellant's wife originates from Bangladesh and therefore there would be no problems of culture and language. He also considered that the appellant does not have a home to return to but said that the appellant has used a great deal of resourcefulness and settled in the United Kingdom and he can find a job in Bangladesh even without assistance from relatives.
27. He also considered the appellant's wives relatives and two adult children in the United Kingdom but said that the children were adults and her relationship with her children and family can continue from outside the United Kingdom. He also considered the appellant's wives uterine fibroids for which she underwent an operation. The Judge said that there was not sufficient evidence to show that she could not continue with her treatment, if any, in Bangladesh. The appellant's grounds of appeal merely amount to a quarrel with the decision made by the Judge.
28. In respect of Article 8, the Judge correctly stated that the respondent's public interest in maintaining effective immigration control and the economic well-being of the country must be given weight. The appellant's private life was established at a time he was in the United Kingdom precariously. The appellant's family life with his sponsor was established at a time when he only had limited leave to remain in the United Kingdom and he knew his leave was liable to be curtailed. Even if his leave was not due to be curtailed, he was in this country as a student and did not leave the country when he was no longer studying. He disingenuously claims that he continued to study by buying his own books. The Judge correctly noted that the appellant and his wife married very quickly when they knew that the appellant had no immigration status and must be held responsible for their actions. The appellant's presence in the country has always been precarious because he is subject to immigration control the Judge was entitled to give it limited weight.
29. Even if there has been a confusion as to the correct immigration rule as to whether it was 276 ADE or EX 1, the Judge applied the correct test, gave correct reasons and ultimately came to the right conclusion. I find a differently constituted Tribunal will not come to a different result. Any perceived error is not a material error in the circumstances of this appeal. I

find no perversity in the decision of the First-tier Tribunal such as it should be set aside.

30. In his grounds of appeal, the appellant states that his wife is not working due to the operation that she had for fibroids which is why she is not able to support his application to return to Bangladesh as her spouse. That is not reason enough for the appellant to be granted leave to remain in this country because it is open for the appellant's wife to join him in Bangladesh or remain in the United Kingdom. His wife also has the choice to find employment such as to enable her to sponsor the appellant from Bangladesh, as her spouse.
31. The Judge considered all the evidence in this appeal and was entitled to find that the appellant does not meet the requirements of the immigration rules or any exceptions therein and Article 8 of the European Convention on Human Rights.

### **Notice of Decision**

The appellant's appeal is dismissed.

No anonymity direction is made.

Signed by

Dated this 8<sup>th</sup> day of October 2017

A Deputy Upper Tribunal Judge  
Ms S Chana

### **TO THE RESPONDENT** **FEE AWARD**

The appellant's appeal has been dismissed and therefore there can be no fee award.