



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

Appeal Numbers: HU/06340/2016
HU/06344/2016

THE IMMIGRATION ACTS

Heard at Field House

On 13 April 2018

**Decision &
Promulgated
On 23 April 2018**

Reasons

Before

DEPUTY UPPER TRIBUNAL JUDGE HILL QC

Between

**MR BISWAJEET KUMAR BARUA
MRS RUPNA BARUA
(ANONYMITY DIRECTION NOT MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Ms S Aly, Counsel instructed by Adam Bernard Solicitors
For the Respondent: Ms Z Ahmad, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal from the decision of First-tier Tribunal Judge Connor promulgated on 4 April 2017. The judge was dealing with an appeal from the Secretary of State's refusal to grant leave to remain in respect of these two adult appellants.
2. The grounds of appeal took as their primary focus case management decisions on the judge's part not to adjourn the matter and no permission has been granted in respect of those allegations. However, in granting

permission to appeal on 22 January 2018, Upper Tribunal Judge Allen said this:

“Although no application for international protection had been made by the appellants, the issue of fear of persecution and ill-treatment on return was raised in the original application, and arguably therefore required to be considered when the judge addressed the extent to which paragraph 276ADE(1)(v) had been met.”

3. The decision in this instance is fully reasoned and sets out the background, the appellants’ case, the respondent’s case, the matters dealing with refused adjournment, the evidence, and closing submissions. The judge said, in Findings, Analysis and Conclusion at paragraph 54, that the appellant’s claim under Article 2 and 3 is a new matter and the appellants should make a protection claim which can be considered by the respondent.
4. In relation to paragraph 276ADE, however, the test to be applied is whether “there would be very significant obstacles to the applicant’s integration into the country to which he would have to go if required to leave the UK”. In a lengthy analysis the judge considered “significant obstacles” very fully in relation to family life considerations. However issues relating to fear of persecution, were not factored into the analysis, notwithstanding that as a matter of fact, these may have a bearing on “significant obstacles”. It is conceded by Ms Ahmad for the Secretary of State that there is nothing in the wording of 276ADE to suggest that “significant obstacles” should be read down and limited purely to family life considerations.
5. That the broader consideration of fear of persecution was not brought to bear in the overall 276ADE consideration, amounts to a material error of law. The analysis under Section 276ADE should have included the fear of persecution issues which were raised both in the letter which accompanied the application and in the evidence which was put before the First-tier Tribunal, none of which was dealt with by the judge. It is therefore inevitable that this determination must be set aside.
6. The proper course is the decision to be set aside and remitted for a fresh hearing in the First-tier Tribunal. The first appellant is in the room here with me. His wife is outside with childcare responsibilities. I want it to be made clear to them, and I hope that their counsel will reinforce it, that there is a distinct likelihood that when the matter is looked at afresh, precisely the same conclusion will be reached. They should not raise their hopes of a different outcome.

Notice of Decision

- (1) The decision of the First-tier Tribunal is set aside.
- (2) The matter is remitted to Hatton Cross for a fresh hearing by a judge other than First-tier Tribunal Judge Connor.
- (3) No findings of fact are preserved.
- (4) No anonymity direction is made.

Signed *Mark Hill*

Date

20 April 2018

Deputy Upper Tribunal Judge Hill QC