Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: IA/34948/2015**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 15 January 2018	**On 01 February 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE MCGEACHY

Between

MD RAFIZUL ALAM
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms H Price of Counsel, instructed by Prime Law Solicitors
For the Respondent: Ms K Pal, Senior Presenting Officer

DECISION AND REASONS

1. The appellant, a citizen of Pakistan, born on 1 November 1970, appeals with permission against a decision of Judge of the First-tier Tribunal Amin, who in a determination promulgated on 15 March 2017, dismissed the appellant's appeal against a decision of the Secretary of State to refuse to grant him leave to remain on both human rights grounds and on immigration grounds, under the long residence provisions. There has been no challenge to the judge's findings that the appellant did not qualify for leave to remain under the Immigration Rules.

2. In considering the appellant's claim under Article 8 the judge noted that the respondent had not accepted that the appellant had a relationship

with a child who was under 18 who was in Britain and was a British citizen, or had lived in the UK continuously for at least seven years preceding the date of application, and furthermore did not accept that his relationship with the sponsor was genuine and subsisting, or that they intended to live together permanently in the United Kingdom. Moreover, it was not considered there are any exceptional circumstances relating to the appellant or his wider family members that would warrant a grant of leave to remain.

3. The appellant claimed that he had private and family life with his partner, Ms Mozna Begum and her three children from a previous relationship. His initial claim was that he had stayed with her since 2008. The judge heard oral evidence from the appellant, Ms Mozna Begum and one of Ms Begum's daughters. In paragraph 16 onwards he set out his findings and conclusions. The appellant's evidence was that he had met Ms Begum in 2008 and that he had lived with her since then but then he changed his evidence to claim that he had started living with her in 2014. She has two children, the third of whom is 14 years old. There were no details of any way in which the appellant was involved with the upbringing of that child and that child was not named in his evidence. The judge found that that was a significant factor as the appellant had claimed that he has private and family life with his "step-children". There was a discrepancy in the evidence between the appellant and Ms Begum in that he had said that he had lived with her since 2008 when she had said that they had started living together in 2014. They asserted that they had entered into an Islamic marriage in 2014 but the judge said that there was no confirmation of that before him. Ms Price argued before me that the Islamic marriage certificate had been available to the judge but had not been placed before him.

4. The judge stated he did not find that the appellant was credible and stated that he had not seen any evidence of any money that the appellant had given to the children and said that neither he nor Ms Begum had made any mention of his providing any financial support to the family. He did accept, however, that the appellant and Ms Begum had been in a relationship since 2014 but stated that it was short and one he had believed was entered into for the purpose of stabilising his immigration status. He stated he did not believe that they had any intention of living together "in the near future".

5. He placed weight on the fact that when making an application in 2012 for leave to remain on human rights grounds the judge had not mentioned Ms Begum. He went on to say he did not accept the appellant had been supporting the children financially as he had claimed.

6. While he accepted that the removal of the appellant would interfere with the family and private life which he had with Ms Begum and her children he did not consider that removal was disproportionate. As he pointed out the appellant could not meet the requirements of the Immigration Rules and in any event the youngest child would not be expected to leave the United Kingdom as he has his mother in Britain and the appellant is not

the biological father. The judge said that even if he accepted that the appellant's relationship with his partner was genuine there were no insurmountable obstacles to family life with his partner continuing outside Britain. He referred to Section 117B of the 2002 Act and stated that he felt that the appellant fell far short of demonstrating that his circumstances were exceptional and/or compelling. He referred to the fact that the appellant had overstayed since 2003. He therefore dismissed the appeal on human rights grounds.

7. The grounds of appeal refer largely to the issue of family life and the relationship between the appellant and Ms Begum's children and their best interests. They also asserted that the judge had been wrong to say that there was no evidence that the appellant had supported the children.

8. Although permission was refused in the First-tier, Upper Tribunal Judge Gill granted permission in the following terms:-

> "It is arguable that Judge of the First-tier Tribunal Amin may have erred in law by overlooking potentially relevant evidence (for example, the evidence of the appellant and Mrs Begum in their witness statements that the appellant provided financial support) at para 20 where she said that "the appellant and Ms Begum have made no mention of providing any financial support to the family"."

9. At the hearing of the appeal before me Ms Price stated that the judge had erred in not finding that there was a subsisting relationship. She referred to various documents in the bundle dating from 2014 which included an electricity bill addressed to both the appellant and Ms Begum. She also referred to the Muslim marriage certificate dated 10 January 2014 and stated that it had not been submitted to the court because the respondent had not been represented at the hearing. She stated that given the fact that Ms Begum had a child here there were insurmountable obstacles to the relationship carrying on abroad. Moreover, there was evidence of financial support in the statements of the appellant and Ms Begum and the judge had erred in his conclusion that there was not financial support and overall had erred in his consideration of the proportionality of the decision. Having accepted that the appellant had private and family life here he should have found there were insurmountable obstacles to the relationship carrying on abroad, particularly given the fact that there was a child under 18 years of age. She referred to the judgment of the Supreme Court in **Agyarko [2017] UKSC 11,** where at paragraph 15 it was pointed out that where an applicant is in Britain unlawfully he is entitled to remain only temporarily. The significance of that consideration depended on what the outcome of immigration control might otherwise be. That decision drew a distinction between somebody who would be deported as a foreign criminal and someone who, even if they had been residing in Britain unlawfully, would have been entitled to leave to enter because they met the requirements of the Rules.

10. Ms Price went on to argue that there was evidence now in existence indicating that Ms Begum was in receipt of benefits such that would mean

that the appellant would not be required to meet the financial requirements of the Rules.

11. In reply Ms Pal referred to the various discrepancies in the case and stated there was evidence that Ms Begum did not speak English and therefore it was not clear how she had been able to give the statement which supported the appellant's claim. She stated that the judge had erred in that she should have said that this was merely an issue of his private life but she asked me to find that there was no material error of law in the determination.

Discussion

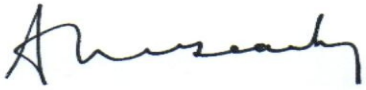
12. I consider that there is no material error of law in the determination of the immigration judge. The reality is that he was entitled to refer to discrepancies in the evidence regarding how long the appellant had lived with Ms Begum. More importantly, however, he was entitled to place weight on the fact that when the appellant had made a human rights application in 2012 there had been no mention of Ms Begum as being a reason why the appellant should have been allowed to remain on human rights grounds. Such an assertion would surely have been made whether or not the appellant was living with Ms Begum or merely, as is now argued, was in a relationship with her which eventually culminated in their marriage and living together in 2014. Moreover, the reality is that this is an appellant who has built up his private life at a time when he did not have leave to remain in Britain and under the provisions of Section 117B that is an important factor to take into account. The appellant would not meet the requirements for leave to enter. There is nothing to indicate that he could meet the English language requirement and clearly there is nothing to indicate that he would meet the maintenance requirements. I am aware that there are letters from Ms Begum's doctor suggesting that the appellant is her carer and that therefore he is a necessary support for her here. But there was nothing before the judge to indicate that she was incapable of managing her own life here. I consider the judge was correct to find that there is nothing exceptional and compelling in this case which would mean that the removal of the appellant would be a disproportionate interference with his rights under Article 8 of the ECHR and that the appellant should be allowed to remain here outside the Immigration Rules.

13. I would add that if it is the case that the appellant would qualify for leave to remain as a spouse because the maintenance requirement would be waived because of Ms Begum's health then that is a matter which, along with the marriage certificate, should be put to the respondent. If the appellant wishes to make such an application or indeed to get married and then make such an application then that would be a matter for him. As it stands I consider that the judge reached findings of fact and conclusions which were fully open to him on the evidence and therefore I find that his determination stand.

Notice of Decision

The appeal is dismissed on human rights grounds and under the Immigration Rules.

No anonymity direction is made.

Signed  Date: 18 January 2018

Deputy Upper Tribunal Judge McGeachy