



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

Appeal Number: HU/08471/2017

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 21 December 2018**

**Decision & Reasons  
Promulgated  
On 08 January 2019**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE MONSON**

**Between**

**MR SHEBUL MIAH  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr M Mustafa, Solicitor, Kalam Solicitors

For the Respondent: Mr David Clarke, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant appeals from the decision of the First-tier Tribunal (Judge D. Ross sitting at Taylor House on 21 March 2018) dismissing his appeal against the decision of the respondent to refuse to grant him leave to remain on the grounds of family and private life established in the UK since his illegal entry in 2004. Judge Ross found that the appellant could not meet the substantive requirements of Appendix FM as his wife did not earn enough. The Judge also found that the appellant did not meet the terms of paragraph 276ADE and that EX.1 did not apply as family life could continue in Bangladesh, and there were no compelling circumstances which would justify a grant of leave outside the Rules.

**The Reasons for the Grant of Permission to Appeal**

2. The appellant applied for permission to appeal on five grounds. On 9 October 2018 First-tier Tribunal Judge Parkes gave his reasons for granting

the appellant permission to appeal on Grounds 1 and 2, but refusing the appellant permission to appeal on the remaining grounds:

“The grounds argue that the Judge did not adequately engage with the sponsor’s medical evidence. Having referred to the evidence, no findings were made. The Appellant had also applied under the 10 year route and relied on insurmountable obstacles to the sponsor’s living elsewhere which had not been approached in a practical manner. It is also argued that the Judge had not engaged with paragraph 276ADE, article 8 and misapplied the reasonableness test.

Grounds 3, 5 and 6 (there is no Ground 4) have no merit. If the Appellant’s circumstances do not meet the insurmountable obstacles test then there would be no basis for going further and finding compelling circumstances not addressed in the Rules. Grounds 1 and 2 amount to the same thing - the Sponsor’s medical conditions are insurmountable obstacles to relocation. With hesitation I grant leave on these 2 grounds only, as it is arguable that the Judge did not adequately engage with the evidence, but it is not clear that her medical needs cannot be met adequately in Bangladesh - if the evidence does not show that, then the Appellant will still not succeed.”

### **The Hearing in the Upper Tribunal**

3. At the hearing before me to determine whether an error of law was made out, Mr Mustafa developed Grounds 1 and 2. He characterised the appeal as raising a narrow issue. He submitted that the Judge had failed to engage with relevant documentary evidence - in particular, a serious incident report relating to the loss of the partner’s baby on 26 January 2016 due to foetal abnormalities, and the partner having to undergo a total abdominal hysterectomy. The Judge had also not addressed a recent letter from the partner’s GP dated 11 April 2018, in which the GP stated that the partner suffered from low mood and was taking anti-depressant medication for this. Mr Mustafa submitted that the Judge had not addressed the issue of the partner’s depression in the context of EX.1. He submitted that, if the Judge had engaged with the fact that the appellant’s partner was traumatised and suffering depression, he could have found that there were insurmountable obstacles to the couple’s relocation to Bangladesh.
4. Mr Clarke submitted that no error was made out. In order for the Judge to find that there were insurmountable obstacles to relocation on medical grounds, he would also have needed to find that appropriate treatment and medication would not be available to the partner in Bangladesh. The serious incident report was completely irrelevant, as it concerned an internal investigation by the NHS into what had happened to the partner and the child, with a view to establishing whether their care and treatment by the NHS had been in accordance with best practice. The Judge had clearly taken account of the medical evidence, and the Judge had clearly accepted that the partner was depressed.
5. In reply, Mr Mustafa conceded that treatment would be available to the partner in Bangladesh. However, he submitted that this was only one

factor in assessing whether there were insurmountable obstacles to relocation.

## **Discussion**

6. Ground 1, as pleaded, is that the Judge did not engage with the extensive documentary evidence that was submitted, including evidence of the sponsor's *"medical report and history"*.
7. At paragraph [6] of his decision, Judge Ross acknowledged that the evidence presented at the hearing included the fact that the couple had had a child from their relationship who died after approximately one month, and that this had left both of them traumatised, and they had been suffering from depression since the loss of their baby: *"Because of his wife's poor medical condition he helps her with her day-to-day activities such as cooking, cleaning, and also comforts her. She does not have anyone to care for her except him. He said that, because of her condition, his wife is unable to leave the UK."*
8. At paragraph [8], the Judge recorded the appellant's oral evidence that his wife was taking some painkillers and that she was mentally stressed. At paragraph [9], the Judge recorded the partner's oral evidence that she had been suffering from low mood, poor concentration and poor appetite since she had lost their baby.
9. At paragraph [11], the Judge recorded the partner's answer in cross-examination as to why she could not relocate to Bangladesh with her husband: *"She did not want to go to Bangladesh. She said she needs her husband. She also stated that she does not like Bangladesh. When she went there she got food poisoning."*
10. The Judge addressed the issue of whether there were insurmountable obstacles to married life being carried on in Bangladesh at paragraphs [15]-[18]. The Judge reached the following conclusion: *"I do not consider in this case that the appellant has proved that he and his wife would face very serious hardship if returned to Bangladesh. I do appreciate that his wife has lived in effect her whole life in the UK, but she is of Bangladeshi ethnicity, she has relatives in Bangladesh as does the appellant, and the rules do not require the Secretary of State to take into account the preferences of applicants in connection with the issue of where they wish to live. ... I appreciate that the appellants do not want to live in Bangladesh, and that moving to Bangladesh will cause difficulties for them, however they married knowing that the appellant had no right to live in the UK. I take into account the tragic loss of their baby, but nonetheless I do not consider that the appellant has been able to satisfy the requirements of paragraph EX.1 and EX.2 for the reasons that I have given."*
11. The Judge went on to consider whether the refusal decision was proportionate. At paragraph [24], the Judge directed himself that he had to

consider, “*the arguments on both sides of the balance sheet*”, following **Hesham Ali [2016] UKSC 60**; and, on the Article 8(1) side of the balance sheet, he took into account that the appellant, “*has suffered a tragedy of a baby dying, and his wife is still depressed about the loss of the child*”.

12. When addressing EX.1, the Judge did not make a specific finding on the up to date medical evidence concerning the partner’s mental state. But he expressly accepted that “*the tragic loss*” of the baby was a relevant consideration in evaluating whether the requirements of EX,1 were met; and, albeit in the context of a later discussion of proportionality, he expressly found that the partner was depressed, thereby indicating his acceptance of the latest evidence from the partner’s GP.
13. It was not incumbent on the Judge to make a specific finding on the serious incident report. The matters canvassed in this report were not a matter of dispute as between the appellant and the respondent, and they did not have a bearing on EX.1. The appellant was the person to whom the partner was primarily looking to for emotional support and consolation following the tragic loss of their baby. His comforting presence was going to continue in Bangladesh if she accompanied him to Bangladesh. There was no reason to suppose that she would be unable to access in Bangladesh the same or similar medication that she was being prescribed by her GP in the UK.
14. Ground 2 is that the Judge acted unfairly in interpreting EX.1(b) of Appendix FM in “*a purely literal way*” as opposed to in a sensible and practical manner. It is pleaded that the partner’s presence in the UK and her medical condition; the appellant’s fear of persecution in Bangladesh; his and his partner’s family and private lives in the UK; his partner’s lack of any meaningful ties to Bangladesh; his partner’s language barrier in Bangladesh; and his partner’s tragic circumstances in the UK, meant that it was “*practically impossible*” for his partner to relocate with him to Bangladesh, with the consequence that the Judge’s consideration of EX.1(b) was “*tainted with illegality and unfairness*” as the Judge had used a misconceived interpretation of the law to arrive at his decision.
15. I consider that Ground 2 is wholly unmeritorious. The Judge correctly directed himself as to the law at paragraphs [15] to [17] of his decision by express reference to the definition contained in EX.2 - which defines “*insurmountable obstacles*” as not being obstacles which are literally insurmountable but as being very significant difficulties which cannot be overcome or which will entail very serious hardship for the applicant or their partner - and by reference to **Agyarko -v- SSHD [2017] UKSC 11**. Ground 2 is manifestly no more than an expression of disagreement with findings that were reasonably open to the Judge on the evidence for the reasons which he gave.

## **Notice of Decision**

The decision of the First-tier Tribunal did not contain an error of law, and accordingly the decision stands. This appeal to the Upper Tribunal is dismissed.

I make no anonymity direction.

Signed

Date 2 January 2019

Deputy Upper Tribunal Judge Monson