Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/09127/2016

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 25 February 2019	**On 12 March 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

MR M N H
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr N Mustafa, Solicitor of Kalam Solicitors
For the Respondent: Mr Tufan, Senior Presenting Officer

DECISION AND REASONS

1. The Appellant, a national of Bangladesh, applied for leave to remain on 22 January 2016, which was refused on 27 March 2016. His appeal came before First-tier Tribunal Judge A M Black whose decision [D], on 27 June 2017, dismissed the appeal on all grounds. Permission to appeal was given by First-tier Tribunal Judge P J M Hollingworth, on 24 January 2018, and the Respondent made a Rule 24 response on 2 May 2018.

2. Mr Mustafa carefully confined his principal challenges to grounds 1 and 2 upon which permission had been granted.

3. In respect of the Ground 1, the principal complaint as expressed in the grounds which did not appear to have been drafted by Mr Mustafa, was that the Judge erred in failing to properly address a report of Dr, Mirza, dated 16 June 2017, which had set out much of the Appellant's wife's (Mrs M B) medical history.

4. In fact, before the Judge there was an earlier report of Dr. Mirza, dated 23 December 2015, but the 16 June 2017 report essentially repeated or re-referred to events in the medical history of the Appellant's wife, Mrs M B, date of birth 1 October 1957. Issue was not taken in the grounds with any failure to refer to the first report It did not seem to me, in the light of the arguments being addressed, that a failure to make reference to it materially affected the assessment likely to be made of the issue raised in relation to the difficulties Mrs M B might face on a return to Bangladesh.

5. Rather, the complaint was that the Judge diminished the weight that might be given to the report by Dr Mirza. The Judge set out [D19] why, for a variety of reasons why she could give '… some evidential weight…' to the report of Dr Mirza concerning the wellbeing and health of Mrs M B, but said '…I do not find it wholly independent and impartial". The fact was that the Judge had not simply dismissed it, but had given it less weight than was evidently being relied upon by the Appellant.

6. In these circumstances it seemed to me that Ground 1 somewhat understated the assessment that the judge had fairly given to the report and the reasons why. I did not conclude, even if I might not have reached the same decision on the evidence, that the Judge's reasoning for the weight given to Dr Mirza's report, demonstrated a material error of law. Therefore, I did not find Ground 1 has any material substance.

7. As to Ground 2, Mr Mustafa emphasised the scope of the evidence that was before the Judge on the ill-health of Mrs M B, but ultimately it seemed

to me that those, in two respects, were of limited value. First, the evidence did not show her removal from the UK would give rise to a real risk to her health, or that once return to Bangladesh and living there, such would be her personal and health circumstances that it would impact on her mentally and/or physically so as to demonstrate the kind of conditions expected and emphasised in the cases of D v UK (1997) EHRR 423, N v UK {2005] UKHL 31 and Paposhvili4173 8/013 and AM (Zimbabwe) [2018] EWCA Civ 64. Rather, the argument had been run before the Judge on the basis of Mrs M B health and that conditions demonstrated that there were insurmountable obstacles for the purposes of return to Bangladesh so as to engage paragraph EX.1. or EX.2. of Appendix FM (family members) of the Immigration Rules.

8. It was said that the Judge was setting a threshold for insurmountable obstacles that was far higher than ever intended by the case law, particularly Agyarko [2017] UKSC 11, because the Judge made reference to the fact that the evidence of her health and conditions (D25, 26 and 29) were not life threatening. The fact was the Judge on three occasions did refer to that as a consideration, but she went on to say [D29]:-

> "There is no medical evidence to suggest her physical or mental condition would deteriorate on return to Bangladesh. I recognise Mrs B has lived in the UK for more than forty years and is British but she embarked on her marriage with the appellant in the knowledge that he did not have immigration status; she must have appreciated that he may be removed at any time. I appreciate Mrs B does not wish to return to Bangladesh. However, she is familiar with the culture, language and society in that country. It is not alien to her, particularly as she has lived within the Bengali diaspora in the UK."

9. The Judge did not lose sight of Mrs M B's nationality, or that of the Appellant, and noted, in terms of impact on Mrs M B if her husband was to return to Bangladesh, she would still have support within the UK and could reasonably continue her life here. The judge referred to Jeunesse

(12738/10 of the European Court decision) and it was clear, with reference to the other case law that the Judge cited, that the Judge did not fail to consider the impact on others affected by the Appellant's removal or the interruption of family life and its impact. Accordingly, I concluded that Ground 2, namely that the Judge had applied the wrong standard to the consideration of insurmountable obstacles, did not disclose any material error of law was wrong and that the Judge in a range of paragraphs respectively dealt with the issue of obstacles on a return to Bangladesh.

10. I concluded in the light of the submissions made by the parties that the Judge's decision, whilst it might not have been mine, did not demonstrate a failure to properly consider the merits of the case: Rather, this was an appeal where, on the face of it, the grounds were semi-attractive arguments that ultimately on a careful consideration simply did not demonstrate a material error of law.

11. The Original Tribunal's decision stands.

NOTICE OF DECISION

12. The appeal is dismissed.

13. The anonymity direction made by the Judge is continued.

DIRECTION REGARDING ANONYMITY – RULE 14 OF THE TRIBUNAL PROCEDURE (UPPER TRIBUNAL) RULES 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed Date 5 March 2019

Deputy Upper Tribunal Judge Davey

TO THE RESPONDENT

FEE AWARD

The appeal has failed and there can be no fee award.

Signed Date 5 March 2019

Deputy Upper Tribunal Judge Davey