



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

Appeal Number: IA/27013/2015

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 29 May 2019**

**Decision  
Promulgated  
On 05 June 2019**

**Reasons**

**Before**

**UPPER TRIBUNAL JUDGE KEBEDE**

**Between**

**MD NAZRUL ISLAM CHOWDHURY**

**and**

Appellant

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr T Shah of Taj Solicitors

For the Respondent: Mr T Lindsay, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant is a citizen of Bangladesh, born on 28 July 1977. He has been given permission to appeal against the decision of First-tier Tribunal Judge Khan dismissing his appeal against the respondent's decision to refuse his human rights claim.

2. The appellant entered the United Kingdom in September 2007 with leave to enter as a visitor valid until March 2008. He overstayed his leave and entered into an Islamic marriage with [LH], a citizen of Bangladesh who had been naturalised on 3 March 2004. On 2 November 2011 they underwent a civil

marriage and on 6 May 2012 the appellant submitted a spouse application which he later withdrew. On 7 July 2012 he submitted a further application for leave to remain as a spouse which was refused without a right of appeal on 26 February 2013. He was issued with a removal decision and submitted a section 120 notice which was considered as a human rights claim and was refused and certified as clearly unfounded under section 94(1) of the Nationality, Immigration and Asylum Act 2002 on 26 August 2014. Following the appellant's judicial review claim challenging that decision, the Respondent withdrew the decision and made a fresh decision on 14 July 2015 refusing the application with an in-country right of appeal.

3. In the decision of 14 July 2015 the respondent accepted that the appellant had a genuine and subsisting relationship with a British citizen but considered that there were no insurmountable obstacles to family life continuing in Bangladesh. The respondent noted, in so concluding, that the appellant's wife had lived in Bangladesh for most of her adult life before coming to the UK, that her children were over the age of 18 and were independent, that her medical condition could be treated in Bangladesh, that she was not working in the UK but was in receipt of benefits and that her mother was in Bangladesh. The respondent considered that the appellant was unable, therefore, to meet the requirements of Appendix FM and that he could not meet the requirements in paragraph 276ADE(1) or demonstrate any exceptional circumstances justifying a grant of leave outside the immigration rules.

4. The appellant appealed against that decision. His appeal was heard on 9 November 2018 by First-tier Tribunal Judge M A Khan. The judge heard from the appellant and his wife. He concluded that there were no insurmountable obstacles to family life continuing in Bangladesh and that the appellant could not succeed within or outside the immigration rules. He dismissed the appeal on Article 8 grounds.

5. The appellant sought permission to appeal the decision to the Upper Tribunal, on the grounds that the judge had failed to apply the EX.1 test and had not considered the appellant's family life and that he had confused the rules and the Article 8.

6. Permission was granted and the case came before Deputy Upper Tribunal Judge Chana who upheld the decision. However Judge Chana's decision was subsequently set aside by the Court of Appeal on the basis of procedural irregularity as she had mixed up different files in making her decision, referring to the wrong judges who had made the initial decision and granted permission.

7. The case was then remitted to the Upper Tribunal and came before me to revisit the decision of First-tier Tribunal Judge Khan and the grounds challenging his decision.

8. Mr Shah submitted that Judge Khan's decision had to be set aside as he had confused the different tests in EX.1(b) of Appendix FM and paragraph 276ADE(1)(vi) and at [28] had applied the "very significant obstacles" test

rather than the test in EX.1(b). Mr Shah relied on the decision of Elayi (fair hearing - appearance) [2016] UKUT 00508 in submitting that justice needed to be seen to be done. Mr Shah submitted further that the judge had failed properly to consider the appellant's wife's circumstances. The appellant had been deprived of a fair hearing and the decision could not stand.

9. Mr Lindsay submitted that the judge had applied the correct test in EX.1(b) and that his reference to paragraph 276ADE(1)(vi) at [28] was neither here nor there and was probably just a mistake. It was not such as to vitiate his consideration of the correct test. Mr Lindsay submitted that even if the judge had erred in his consideration of EX.1(b) the appellant could not succeed on that basis on the facts and evidence before the judge. There was nothing capable of demonstrating insurmountable obstacles to family life continuing in Bangladesh.

10. Mr Shah reiterated his previous submissions in response.

### **Consideration and findings**

11. I do not find any merit in the appellant's grounds of challenge. I agree with Mr Lindsay that the reference to paragraph 276ADE(1)(vi) at [28] of the decision was most likely a mistake and that the last line of that paragraph had probably been added in error. Whilst the judge may have been somewhat careless in that respect, and perhaps could have set out his findings in a clearer and more logical fashion, it is plain that he applied the correct tests and applied the law properly in reaching the decision that he did. It is undeniably the case that the judge gave full and proper consideration to the question of insurmountable obstacles to family life continuing in Bangladesh in accordance with the provisions in EX.1(b). At [26] and [27] he considered the appellant's ability to find employment in Bangladesh and his wife's ties to the UK and to Bangladesh. I agree with Mr Lindsay that on the evidence available to him the judge was fully entitled to conclude as he did in regard to the question of insurmountable obstacles and indeed could not have reached any other conclusion. Accordingly the judge's findings on Appendix FM are unassailable.

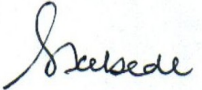
12. Likewise the judge, at [32], properly found that the criteria in paragraph 276ADE(1) could not be met and went on to consider proportionality outside the rules on wider Article 8 grounds. He had full regard to the public interest factors in section 117B of the 2002 Act and reached a proper conclusion on the evidence before him.

13. I do not consider that the judge's reference to paragraph 276ADE(1) at [28] gives rise to any issues of procedural irregularity or unfairness. The appellant had a full and fair hearing. He had an opportunity to provide evidence about his circumstances in the UK and Bangladesh and those of his wife and the judge's decision fully informed him of the reasons why his claim was unsuccessful.

14. The remainder of the appellant's grounds take issue with the judge's findings on the evidence at [25]. The judge properly recorded the evidence before him and was entitled to consider that there were inconsistencies and discrepancies arising in that evidence. The judge had full regard to all the evidence, he gave proper consideration to the appellant's and his wife's family and other circumstances in the UK and the circumstances to which they would return in Bangladesh and he applied the relevant tests to the evidence. He was fully entitled to make the adverse findings that he did. There is no basis upon which his decision can be said to contain errors of law and I therefore uphold his decision and dismiss the appellant's appeal.

## **DECISION**

15. The making of the decision of the First-tier Tribunal did not involve an error on a point of law. I do not set aside the decision. The decision to dismiss the appeal stands.

Signed   
Upper Tribunal Judge Kebede

Dated: 31 May 2019