



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

**Appeal Number: PA/10897/2018**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 10 April 2019**

**Decision & Reasons Promulgated  
On 01 May 2019**

**Before**

**UPPER TRIBUNAL JUDGE FINCH**

**Between**

**[N I]**

**Appellant**

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**Respondent**

**Representation:**

For the Appellant: Ms C.Z. Bessi of counsel, instructed by Hope Project Ltd

For the Respondent: Mr. N. Bramble, Home Office Presenting Officer

**DECISION AND REASONS**

**BACKGROUND TO THE APPEAL**

1. The Appellant is a national of Bangladesh. She arrived in the United Kingdom on 10 March 2012, as a visitor, and applied for indefinite leave to remain on 18 July 2012. Her application was refused on 10 June 2013 and her subsequent appeal was dismissed on 14 April 2014. She became appeal rights exhausted on 28 April 2014.

2. She applied for asylum on 2 December 2014 on the basis that she would face persecution in Bangladesh as someone who was stateless, a widow and a lone woman. She also stated that she feared her husband's family in Bangladesh. Her application was refused on 26 June 2015 and her subsequent appeal was dismissed by First-tier Tribunal Judge Conway on 4 April 2016.
3. She made further representations on 6 October 2017. The Respondent accepted that she had made a fresh claim but refused her application on 29 August 2018. She appealed against this decision on the basis that she feared persecution in Bangladesh, as an Urdu-speaking lone woman with mental and physical health problems. Her appeal came before First-tier Tribunal Judge Taylor who dismissed it in a decision promulgated on 29 November 2018. She appealed against this decision and First-tier Tribunal Judge O'Callaghan granted her permission to appeal on 16 December 2018. This was on the basis that First-tier Tribunal Judge Taylor had failed to consider the expert report by Dr. Hoque adequately.

#### **ERROR OF LAW HEARING**

4. Counsel for the Appellant relied on a detailed and useful skeleton argument and sought permission to rely on a further new ground of appeal. It was not necessary to reach a decision as to whether to grant her permission to amend the Appellant's grounds of appeal, as the Home Office Presenting Officer accepted that there was merit in ground one of the grounds of appeal.

#### **ERROR OF LAW DECISION**

5. In *SA (Divorced women – illegitimate child) Bangladesh CG* [2011] UKUT 00254 the Upper Tribunal found that:

(1) *“There is a high level of domestic violence in Bangladesh. Despite the efforts of the government to improve the situation, due to the disinclination of the police to act upon complaints, women subjected to domestic violence may not be able to obtain an effective measure of state protection by reason of the fact that they are women and may be able*

*to show a risk of serious harm for a Refugee Convention reason. Each case, however, must be determined on its own facts.*

- (2) Under Muslim law, as applicable in Bangladesh, the mother, or in her absence her own family members, has the right to custody of an illegitimate child.*
- (3) In custody and contact disputes the decisions of the superior courts in Bangladesh indicate a fairly consistent trend to invoke the principle of the welfare of the child as an overriding factor, permitting departure from the applicable personal law but a mother may be disqualified from custody or contact by established allegations of immorality.*
- (4) The mother of an illegitimate child may face social prejudice and discrimination if her circumstances and the fact of her having had an illegitimate child become known but she is not likely to be at a real risk of serious harm in urban centres by reason of that fact alone.*
- (5) The divorced mother of an illegitimate child without family support on return to Bangladesh would be likely to have to endure a significant degree of hardship but she may well be able to obtain employment in the garment trade and obtain some sort of accommodation, albeit of a low standard. Some degree of rudimentary state aid would be available to her and she would be able to enrol her child in a state school. If in need of urgent assistance, she would be able to seek temporary accommodation in a woman's shelter. The conditions which she would have to endure in re-establishing herself in Bangladesh would not as a general matter amount to persecution or a breach of her rights under article 3 of the ECHR. Each case, however, must be decided its own facts having regard to the particular circumstances and disabilities, if any, of the woman and the child concerned. Of course, if such a woman were fleeing persecution in her own home area the test for internal relocation would be that of undue harshness and not a breach of her article 3 rights.*

6. The Appellant is a lone woman, but she is not a divorced woman and does not have an illegitimate child and is not the mother of any minor children. Therefore, this case is not applicable to her particular circumstances.
7. When reaching his decision, First-tier Tribunal Judge Taylor correctly reminded himself that the previous findings by First-tier Tribunal Judge Conway should be taken as his starting point, in accordance with *Devaseelan v Secretary of State for the Home Department* [2002] UKIAT 000702\*. First-tier Tribunal Judge Conway had accepted that the Appellant had been born in India and had been married at thirteen to a citizen of Bangladesh. She went with him

to Bangladesh at the age of fifteen and acquired Bangladeshi citizenship. Her relationship with her husband was found to be one of domestic servitude.

8. He also accepted that in 1977 the Appellant accompanied her husband to Dubai where she was employed as a domestic worker until his death in 1986. By that time, she had had four children and she remained in Dubai to care for her children and supported them by working as a driving instructor. However, when she became sixty, the authorities in Dubai would not renew her residence permit and that is why she came to visit one of her daughters who lived in the United Kingdom.
9. First-tier Tribunal Judge Conway also found that none of her children were providing her with any form of support and that she did not have a sister in Bangladesh. It was against this background that any further evidence should have been assessed.
10. However, First-tier Tribunal Judge Taylor then went on to effectively ignore the fact that at paragraph 26 of her supplementary statement the Appellant explained that she now suffered from mini strokes about five times a month and that consequently she could no longer work. The fact that she has suffered mini-strokes was confirmed in a letter from the Meridian Practice, dated 2 October 2018.
11. First-tier Tribunal Judge Taylor failed to apply this further medical evidence in paragraph 19 of his decision. He merely accepted First-tier Tribunal Judge Conway's previous finding that the Appellant had been employed as a driving instructor in Dubai and had been able to support her four children on her own after her husband died. This ignored the fact that the medical evidence of blackouts, precluded any similar employment and clearly indicated that her circumstances had materially changed since 2014. In addition, although he did accept that the Appellant now had some mobility problems, he did not consider the impact of these mobility problems in any detail, despite the fact that there was a letter, dated 14 February 2017, from the Coventry Musculoskeletal Service, which confirmed that she was suffering from Osteoarthritis in her knees and lower back. It also stated that the pain in her lower back was aggravated by walking for more than 30 minutes and that the referred pain in her legs was aggravated by walking for more than 15 minutes. It was also noted that there were severe degenerative changes in her knees and that her clinicians would like to operate on her back.

12. The Appellant had also relied on an expert report by Dr. Ashraf-ul Hoque, which was not before First-tier Tribunal Judge Conway, as it was only completed on 19 July 2017. First-tier Tribunal Judge Taylor referred to some of its contents at paragraphs 8 to 10 of his decision but he did not provide any analysis of this content. He went no further than to find at paragraph 17:

“I am entitled to take into account all of the findings of fact made by Judge Conway save for the Bihari issue and the mental and physical health of the appellant. These are, taken together, insufficient to tip the balance from a situation amount to harassment, discrimination and/or societal displeasure to one of persecution and/or a breach of Article 3”.

13. Given the seriousness of the Appellant’s current medical conditions and her age, detailed reasons to support any finding that her circumstances had not materially changed since the previous hearing before First-tier Tribunal Judge Conway should have been made.

14. For the above reasons I find that there were material errors of law in First-tier Tribunal Judge Taylor’s decision.

## **DECISION**

(1) The Appellant’s appeal is allowed.

(2) The appeal is remitted to the First-tier Tribunal to be heard *de novo* before a First-tier Tribunal Judge other than First-tier Tribunal Judge O’Callaghan, Taylor or Conway.

# Nadine Finch

Signed  
Upper Tribunal Judge Finch

Date 25 April 2019