



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/08471/2019

THE IMMIGRATION ACTS

Heard at Field House
On 16 March 2020

Decision & Reasons Promulgated
On 15 April 2020

Before

UPPER TRIBUNAL JUDGE KEKIĆ

Between

M B
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms F Shaw of Counsel instructed by IHRC Legal
For the Respondent: Ms S Jones, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. Following a hearing on 20 December 2019 and by way of a determination promulgated on 13 January 2020, I set aside the decision of First-tier Tribunal Judge Ross, promulgated on 5 August 2019, to the extent that a fresh decision was required on the issue of whether the appellant would have the support of her family on return to Bangladesh and, if not, on how this would impact on the assessment of whether there would be very

significant obstacles to her integration. The judge's findings that the appellant would not be at risk from her first ex-husband and that none of her health conditions were life threatening or prevented her from living a reasonably normal life were preserved.

2. The appellant is a Bangladeshi national born on 19 August 1957. She entered the UK on 24 June 2003 on a visit visa 12 August 2013, to allegedly escape domestic abuse, and overstayed. On 28 October 2014, she made an application for leave to remain on private and family life grounds. That was refused on 22 March 2015. A further application was made on 19 October 2016; that, too, was refused in February 2017. The appellant then made her current application on 4 December 2018 and that was refused on 30 April 2019. Her appeal was heard at Taylor House on 28 June 2019 and dismissed.
3. The appellant's claim was that she was divorced from her first husband in Bangladesh and that a second marriage entered into in the UK on 8 July 2004 had also ended. She maintained that although she had six siblings in Bangladesh, she would be unable to turn to any of them for help and that her first ex husband had not allowed her to have contact with their two children since they were just a few years old. There are no children of the second marriage.

The Hearing

4. The appellant attended the hearing but Ms Shaw stated at the outset that she had been unable to take instructions from the appellant and that it was her view that she was not well enough to give evidence due to her anxiety and medication. It was her view that the appellant was generally unwell so that it was not the case that she would be well on another date. No application for an adjournment was made and the appeal proceeded with the oral evidence of a witness, SB, who gave her date of birth as 6 November 1994.
5. SB confirmed the contents and accuracy of her witness statement and said she had known the appellant for 15 years having met her at a family gathering when she, the witness, had been at primary school. She said that over the years they had developed a close relationship and she knew her very well. She stated that the appellant was in today's state of health most days and had been that way for several years. She said she saw the appellant every other day or every two days over the last 3-5 years. The appellant had not changed during that time. She said that the appellant had spoken about her family and said she had no contact with them. She had two brothers, four sisters, parents and two children. She did not know where her brothers were and her sisters were all

married with their own families. She then said the appellant's parents were deceased. The appellant did not recall how old her children were. Her last contact with her family was in 2003 when she had left Bangladesh. Ms Shaw asked how SB knew if this was true and she replied that the appellant had told her and she believed her. She said she had never seen her have contact with family.

6. SB was asked whether she knew the appellant's last husband. She said she did not. She knew nothing about him other than that the appellant had told her he had ill treated her. She said she was one of the appellant's closes friends despite their large age gap. The appellant looked upon her as a daughter. She had never seen any bruises on the appellant but said the appellant was covered up all the time anyway. That completed examination in chief. The witness was then tendered for cross examination.
7. In response to Ms Jones' questions, SB said she was 25 years old. The appellant's marriage to Mr A ended in 2017. She knew that because the appellant had informed her of it. She confirmed that she had never met the man.
8. SB was asked for evidence of identity. She did not have her passport but produced a driving licence.
9. SB was asked about the appellant's hospital appointments. She did not know what the appellant's last appointment had been for. She had never accompanied the appellant to any of her appointments and she did not know who did. She was not present when the appellant had given instructions to her representatives in respect of her witness statement and she had not been to the solicitors with the appellant. The appellant had gone with a friend. That friend was not at the hearing.
10. SB confirmed that she had met the appellant at a family gathering but she said they were not related. It had been a wedding.
11. SB had last been in Bangladesh in 2011.
12. SB confirmed that she supported the appellant and had done so often over the last 3 years. She had given her £100 some weeks and £200 some months. She was asked whether other friends also supported her financially and she replied that they did. She said that she supported the appellant because she had no money and received no benefits.
13. SB was asked whether the appellant had ever lived with her. She said she had stayed over from time to time and also stayed with others. This started one and a half years ago. After the appellant's

marriage ended, she had stayed with friends. She currently lived with a friend in Bethnal Green. SB did not know the address but it was in the E2 postal area of London. SB confirmed that the appellant had received funds from charity. The appellant lived with a Mrs N. She did not know how long she had lived with her. She thought it was months, and then said it was years.

14. SB was asked whether she would continue to support the appellant if she were removed. She said she would not. When asked why, she replied that her situation might change. She was questioned further on this and she replied that she would not support the appellant regardless of her circumstances. Whether asked why, she said it was because she had never sent money home. It was put to her that that was not a credible reason. She repeated her answer. When asked whether she would do so if she were shown how to transfer funds, she said she would still not do so as she would not know how the appellant spent the money. She said she trusted the appellant but repeated that she would not support her if she returned to Bangladesh.
15. SB was asked what medication the appellant took. She did not know but said it was for blood pressure and depression. She was asked what her next medical appointment was for and she said the appellant was due to have cataract surgery.
16. SB was asked whether she would help the appellant to make contact with her family in Bangladesh. At first she said she would not. When she was asked why, she said she did not know where they were. She then repeated that she would not help the appellant. She then said anyone could say they were family. Finally, she said she would help the appellant. She did not know if the appellant's brothers had families and she did not know the ages of the appellant's children. She did not know when the appellant had last attended counselling. She said she had been though although she could not provide any indication as to when.
17. SB said that she lived with her parents and siblings. She was asked if she was married and she replied she was. She was asked whether her husband lived with her and she said he did not. She then said he had his own house. They had had an Islamic wedding ceremony. She then said she was engaged.
18. SB said that her mother was 48 years old. She was aware that SB had attended today's hearing.
19. SB said that she worked full time as a senior co-ordinator for a health agency. She had worked for the last three years since leaving college.

20. SB said she was not related to Mrs N, with whom the appellant lived. She had never met her.
21. SB was asked about the letter from Crisis contained in the bundle. She was shown the letter and she stated that the appellant had gone to seek help. She did not know if any support had been offered. She did not know Mrs N's full name. The appellant went for help in case she could not continue living with Mrs N. The appellant could not come and live with her as she had no space. That completed cross examination. There was no re-examination.
22. I then put questions to SB for clarification. I asked in what way her circumstances had changed since the appellant had stayed with her. She said her brother had been away at work and had returned last week. He had been working outside London and had given up his job. She could not remember where the appellant had been living when their friendship commenced. She said she had never been to visit the appellant; the appellant had always come to her. She had been a school girl when they met. The appellant would come to visit her and her family. She then said that she did used to visit the appellant but stopped going after she left the home she had lived in 3-4 years ago. SB had been in college then and the appellant had been living in Shadwell. She said prior to the appellant leaving that address, she, SB, had been visiting her every week, or every two days, for a couple of years. The appellant lived with her mother in law in Shadwell. SB had met her. She stopped visiting because the appellant left the house. They now saw each other "outside". She clarified this to mean in shops or in the park or the appellant came to her house. The appellant no longer received funds from charity. The witness was asked about the Islamic marriage she said she had had. She said she had been confused. She was just engaged.
23. There were no questions arising from mine and that completed the oral evidence. I then heard submissions.
24. Ms Jones relied on the decision letter. She asked me to note the preserved findings. She submitted that the appellant had been able to provide a full witness statement to her solicitors and had been able to approach Crisis about her housing; all this had taken place this month. There was no mention of the appellant having needed support or any been given. The respondent did not accept that the appellant was vulnerable. Her claimed lack of ties did not amount to an inability to integrate. She relied on MA (prove destitution) Jamaica [2005] UKIAT 00013 (at 11 and 14). She submitted that if the witness supported the appellant then the appellant would not be destitute on return as there was no credible reason why she would stop that support. She was not being truthful in her claim

that she would stop all support to the appellant after removal. It was not accepted that there would be no family support or that the appellant was not fit to return. The other friends said to support her had not given evidence. The success of the appeal depended on whether the Tribunal believed the claim. The appellant had been receiving support. She would be able to access medical help in Bangladesh. The difficulties she was said to face were not compelling. If they were such good friends it was surprising that the witness had never met the appellant's husband.

25. Ms Shaw responded. She relied on her skeleton argument. She said that it was unsurprising that SB had not met the appellant's former husband. The marriage had been accepted as genuine by the respondent. The appellant's situation here where she received support was different to what it would be on return to Bangladesh. There were costs involved in sending money overseas. SB was due to marry and would probably start a family and stop working. There was a stigma attached to mental health issues in Bangladesh. Few support services were available and who would help her to access facilities. She was nearly 63. Her situation might be different if she did not have mental health issues but she did and that amounted to very difficult obstacles. How could the appellant prove she had no family support. Her sisters were married and it was not the cultural norm for them to take her in. The appellant did not know how old her children were. SB was nine when she met the appellant so it is not surprising that she could not recall where the appellant lived. The witness was aware of the appellant's family members. The appeal should be allowed.
26. At the conclusion of the hearing, I reserved my decision which I now give with reasons.

Discussion and Conclusions

27. I have considered all the evidence and the submissions made. The issue before me is whether the appellant would have the support of her family were she to return to Bangladesh. If she does not, then this may impact upon the issue of whether there would be very significant obstacles to her reintegration and that matter will require assessment. If it is found that she does, then the judge's conclusion that there will not be very significant obstacles on return shall stand. I reach my conclusions only after having considered the evidence and submissions holistically.
28. It is unfortunate that the appellant did not give oral evidence as there are many questions arising from the various written evidence which remain unresolved and which I shall come to later. Although she attended and was present for the duration of the

hearing, it was Ms Shaw's view that the appellant was not able to give oral evidence because she had been unable to take instructions from her. I have no medical evidence to confirm the appellant's ability or inability to give oral evidence and there was no opportunity to try and see how she would manage, given Ms Shaw's decision not to call her. I note Ms Jones' point that the appellant had just some days earlier given a witness statement to her solicitors and that she had been to see a progression coach at Crisis. The appellant's representatives did not at any stage indicate that there were problems in taking instructions for that statement or that the appellant was unfit to give them. SB confirmed that the appellant was as she generally was and had not changed. However, it is for Counsel and the appellant to decide how best to present the case in all the circumstances.

29. I accept that the appellant is depressed and anxious, that her depression and anxiety is likely to be the result of bad relationships with her former husbands and exacerbated by the uncertainty over her immigration status, lack of a permanent home and income. This is confirmed by the evidence from the NHS and other medical professionals and I do not dispute it.
30. I indicated above that there were many unresolved issues arising from the evidence. These are matters which should have been plain to the appellant's representatives, who have represented her over a considerable period, and which should have been addressed in the written evidence particularly as the issue for determination is so narrow. They go directly to the appellant's claim to have been without family support essentially since the end of her first marriage. For all the reasons set out below, in no order of priority, I have concluded, only *after* assessing all the evidence, that the appellant has not made out her case that she would have no family or other support if returned to Bangladesh.
31. The appellant told Judge Ross in her oral evidence that she had lived with her brothers after her divorce and until she came to the UK. She has consistently maintained that she married very young and that her husband divorced her when her two children were toddlers. She told a psychiatrist that she married at 16 and that the marriage lasted four years (at J2). Given that she did not leave Bangladesh until she was almost 46 years old, she would have spent some 26 years living with her brothers which wholly undermines her claim that they told her to "go away" when she divorced. She also claimed at the last hearing that her intention was to return to Bangladesh after her visit which suggests that she had a place to return to.

32. Her claim that her husband took away her children upon divorce is contradicted by her claim to a psychiatrist in April 2008 (relatively recently after her arrival in the UK when her recollection would have been more reliable) that she lived and struggled as a single mother for seven years before leaving Bangladesh (J2). If that is to be believed, she would have been in her mid-twenties when she arrived here and not in her late forties. I also note that she attributed her low mood at the time to a lack of permanent accommodation and income (J1). In her recent witness statement, the appellant maintained that her children had been taken from her as toddlers (paragraph 4) which conflicts with her earlier claim that she had brought them up for seven years. I also note that when the appellant obtained her passport in 2007, she was described as a housewife and her husband was named (AB:8-9). By her own evidence, however, she would have been divorced long before then.
33. The appellant claimed that she had four married sisters but that she would not be able to live with them. She did not, however, maintain at any point in the proceedings that they would be unable to assist her in other ways and nor did she ever suggest there was any friction between them. Ms Shaw submitted that it was the cultural norm for married female relatives not to take in others and that I should take that into account. The same submission is made by the appellant's representatives (at A13) and by the appellant in her recent witness statement (at paragraph 6). If that is so, then I am also required to consider that it is also the cultural/Islamic norm for male relatives to care for their needy female relatives. Indeed, the appellant's brothers' past conduct supports this.
34. I take note of SB's evidence that she had never seen the appellant make contact with her family. As her evidence was also that she saw the appellant "*outside*", in shops and at SB's home, there would not have been any opportunity for the appellant to have made contact with her family during those times.
35. I accept that SB came to the hearing with good intentions and that she wanted to help the appellant as much as possible in securing a positive outcome but I find that she has exaggerated her evidence to an extent in her attempt to do so. Her lack of knowledge about matters which she could be expected to know had she truly been as close a friend as she claimed, suggests that the relationship is not as she described. She claimed to be one of the appellant's closest friends, yet she has never accompanied the appellant to any medical or counselling appointments or to see her representatives. She did not know the name of the person the appellant currently lives with and her evidence as to when the appellant moved from

the accommodation she had previously lived in with her mother-in-law is contradicted by other evidence. SB said she had stopped visiting the appellant at that property ([60 ~ Gardens], although she could not give the address) when the appellant moved out 3-4 years ago. The appellant's evidence, however, is that she was still at that address in December 2018 when she made her application to the respondent (B2) and even as recently as 21 June 2019 (when her witness statement was prepared: AB:5-7).

36. SB's evidence about supporting the appellant financially over the last 3 years is also contradicted by the appellant's evidence. In December 2018 the only income the appellant declared she received was from a charity (C22) and she flatly denied having received money from friends (C12).
37. Given these contradictions between the evidence from SB and the appellant, it is unclear to me where the truth lies. If, however, SB has been supporting the appellant financially and is a very good friend, then I agree with Ms Jones that her initial claim that she would cease support when the appellant left is not believable. Ms Shaw submitted that SB was due to marry, would start a family and stop working but that is all speculative. The witness was very confused about whether she had been through an Islamic wedding or not and she said nothing in evidence about when if at all she would cease employment or when she would plan to start a family.
38. There is further conflict in the appellant's evidence about her parents. In the representations forwarded by her representatives in December 2018 (A10), it was claimed that the appellant's parents were deceased. In her recent witness statement, she maintained that her parents had passed away before she had left for the UK (at paragraph 5). SB gave oral evidence that the appellant had told her that her parents were deceased. In her application for leave, signed on 3 December 2018, however, the appellant maintained she had a mother and siblings in Bangladesh (B30). She also told Dr Ascione in August 2018 that her mother was in Bangladesh but was unwell and needed constant care (AB:19). It is difficult to accept that the appellant would be confused over whether her mother was alive or dead and this is just one more area of evidence where there is serious conflict and which raises concerns over what the appellant's family circumstances genuinely are. In view of the conflicting evidence, I do not accept that the appellant has been truthful about her family connections and about the circumstances that she would encounter on return as far as their support is concerned.
39. In reaching my conclusion, I have also taken account of MA (Jamaica) as relied on by Ms Jones. I note that the appellant in that

case, a 63 year old woman, slightly older than the appellant, was considered not to be "elderly" and that the Tribunal advised that appellants seeking to prove they would be destitute "*must prove their cases and do it in a way that shows that they have seriously addressed their minds to returning to their country of origin and made proper enquiries about how they could establish themselves. If they fail to do that it will be most unusual for them to be able to show that they would be destitute in the event of return*" (at 14). This approach has not been followed in the appellant's case.

40. I have also had regard to Kamara [2016] EWCA Civ 813 relied on by Ms Shaw in her skeleton argument. The guidance therein would have been more useful had I found that the appellant would not have any family or other support in Bangladesh. Judge Ross has already addressed the matter of the appellant's health and his findings in that respect are not open to challenge at this stage. The only fresh medical evidence that has been provided which post dates Judge Ross' determination is the letter of 13 November 2019 which is identical to that dated 27 June 2019 and which was before the First-tier Tribunal and an admission and discharge note of 2 July 2019 which showed that the appellant complained of abdominal pain but was discharged the same day when no cause was found, no treatment or follow up was needed and the pain settled in any event.
41. There are many other inconsistencies in the evidence which do not, however go to the issue I am required to determine. These include inconsistencies over how the appellant arranged her journey to the UK and whether or not she had ever lived with her second husband. Indeed, Ms Shaw pointed to the latter as a "*factual error*" at paragraph 16 of my previous determination. I would draw Ms Shaw's attention to J1 and AB:28 where the appellant gave her address as [95 ~ Gardens] (her husband's address) and where she told her GP in April 2016 that she had been living with her partner and his mother since 2004. There is no need to detail these matters any further, however, as they do not impact upon whether the appellant would have family support on return to Bangladesh.
42. Due to the appellant's discrepant evidence over her family circumstances I conclude that the truth has not been told. I find that the appellant has not made out her case to the required standard. That finding when taken with Judge Ross' other conclusions on the issue of very significant obstacles means that the appeal does not succeed under the rules.
43. Ms Shaw argues in her skeleton argument that the matter should also be considered under article 8 outside the rules given the compelling compassionate factors. This argument was not pursued

in oral submissions but in any event the factors Ms Shaw relies on - age, lack of support in Bangladesh and mental health issues - have been addressed. The appellant is not an elderly woman (see MA: paragraph 13), it is not accepted that she will have no support in Bangladesh and her mental health issues can be addressed with medication, a point Judge Ross already dealt with. He noted that the psychologist admitted to having no knowledge of health care in Bangladesh and no objective evidence on facilities for mental health patients in Bangladesh has been adduced. The judge also found that none of the appellant's conditions prevented her from leading a normal life in Bangladesh and that finding has been preserved. More importantly, Judge Ross found that the respondent's decision was proportionate on article 8 grounds and that finding was also preserved as my previous determination makes clear.

44. The First-tier Tribunal also considered article 3 and dismissed the appeal on those grounds. That part of the judge's decision is not open to challenge either.
45. The issue for determination before me was limited to the matter of how the lack or not of family support would impact upon the very significant obstacles test. I have engaged with that and have set out my reasons for finding that the appellant would be able to seek family and/or other support on return to Bangladesh.

Decision

46. The appeal is dismissed.

Anonymity

47. I continue the anonymity order made by the First-tier Tribunal.

Signed



Upper Tribunal Judge

Date: 23 March 2020