IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-003109
First-tier Tribunal No:
HU/10663/2019

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 13 August 2023

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

Mehadi Hasan
(no anonymity order made)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:
For the Appellant: The appellant appeared in person.
For the Respondent: Mrs A Nolan, Senior Home Office Presenting Officer.

Heard at Field House on 31 July 2023

DECISION AND REASONS

1. The appellant was not represented before me. He confirmed that he was not expecting to be represented but had come to assist as much as he could. I explained to him in outline the history of the case and pointed out that permission had been granted on detailed grounds settled by his barrister, Ms Sarah Pinder, and that had prompted the Home Office to serve a detailed reply, which he said he had seen.

2. The appellant said that he did not want to make many representations, but he indicated that he would appreciate a quick decision if that were possible because he could not work but he had made another application. He said that in December 2022 he had applied for a "spouse visa". Mrs Nolan did not know about that before the hearing but was able to trace it on the Home Office records. Understandably, and appropriately, she made no comment whatsoever about the merits of the application or the likely outcome but confirmed that there was a note to indicate it would not be decided until the determination of this appeal had been finalised.

3. The appellant appeals a decision of the First-tier Tribunal dismissing his appeal against the decision of the respondent as long ago as on 6 June 2019 refusing

him leave to remain on human rights grounds based on his relationship with his wife. I begin by considering carefully the First-tier Tribunal's decision.

4. This notes that the appellant entered the United Kingdom with entry clearance in March 2014. His leave was extended until 24 December 2018 but then curtailed to expire on 31 August 2018. On 31 August 2018 he made an application on the basis of his private and family life and the application was refused and certified as clearly unfounded on 13 March 2019. He challenged that by submitting a Pre-Action Protocol letter in contemplation of an application for judicial review and the respondent agreed to reconsider the application. Upon reconsideration the application was again refused. The main point taken in the refusal is that the appellant was not eligible to apply to settle as a partner. His partner was not a British citizen and was neither "settled" in the United Kingdom nor a person who had shown that she was in need of protection.

5. The Secretary of State looked at the relevant Rules and decided there would not be very significant obstacles in the way of the appellant's integration into Bangladesh. He had lived there for most of his life and could be expected to retain knowledge of the life, language and culture of the country.

6. There were not thought to be any exceptional circumstances that would make refusing the application an unlawful interference with the United Kingdom's obligations under Article 8 of the European Convention on Human Rights and there were not found to be any unjustifiably harsh consequences for the appellant and his partner. There were no children of the relationship.

7. The core point was that the appellant was in the United Kingdom with limited leave and chose to form a partnership with a person in the United Kingdom who, although lawful present there, had less than settled status and there was thought to be no reason why they could not go to Bangladesh, the appellant's country of nationality, and establish themselves there as a couple.

8. The case was presented to the First-tier Tribunal on the basis of there being a lacuna in the Immigration Rules. It was argued that, at the time of the application, the Rules did not provide a category which could lead to permission to stay as the husband or wife of a person issued with a Residence Card. The appellant's wife's father was a national of Italy exercising treaty rights in the United Kingdom. The appellant's wife was the dependant of her father and it was claimed that refusing the application would frustrate his wife's and father-in-law's rights to exercise their treaty rights. This was considered to be a highly relevant element in the Article 8 balancing exercise.

9. The Judge noted that the appeal had previously been determined unsatisfactorily and he was required to redetermine the appeal.

10. The Judge further reviewed the immigration history. The reasons for his leave being curtailed are not spelled out but they appear to arise from a dispute with his university and the decision clearly upset the appellant. Curtailment does not appear to be the result of any disreputable conduct on the appellant's part.

11. The appellant's wife left Bangladesh for Italy when she was 10 years old. She arrived in the United Kingdom in 2017 having become acquainted with the appellant on "Facebook" in 2017. She married in April 2018 at an Islamic ceremony and the marriage was registered at the Tower Hamlets Registry Office in October 2018.

12. The appellant's wife was earning. She was doing part-time work at a business in Canary Wharf but was still receiving pocket money from her father in the order of very approximately £150 a month. Her father had been working full-time in a restaurant but at the time of evidence was unwell.

13. It was the appellant's evidence that he was last in Bangladesh in 2015 when he stayed there for about six weeks with his parents and younger brother. His wife was last in Bangladesh in 2014. She had stayed there for two and a half months with her grandmother. They both had families in the Chandpur district.

14. The Judge noted that the Secretary of State's case was very straightforward. There really was nothing to show that the appellant could not re-establish himself in Bangladesh. The obvious points were good. He had spent his formative years there; he had been educated there and he had family there. There was no reason to think that he could not return to the family home for help and support and his wife had some finances to support him. His educational background made him very employable.

15. The appellant and his now wife were aware at all material times that he was not on a route to settlement and he had no legitimate expectation to be able to remain in the United Kingdom. His wife was from Bangladesh too so could be expected to return there. The appellant's case, necessarily based on human rights, really did not begin to run.

16. He was represented in the First-tier Tribunal by Ms Pinder and her submissions "place considerable emphasis" on the fact that his wife had previously held a Residence Card as the non-EEA daughter of a qualified person in the United Kingdom and the appellant's wife and father-in-law had been issued with Pre-Settled Status. It was her case that they had free movement rights under EEA law which were now protected by the Withdrawal Treaty and that bore on the Article 8 rights of them and therefore the appellant.

17. Ms Pinder, helpfully and sensibly, made clear that it was not suggested that the appellant met any relevant Rule except the "very significant obstacles to reintegration" test. His wife, it was said, faced insurmountable obstacles to accompanying him.

18. Ms Pinder drew attention at the decision of this Tribunal in **FH (post-flight spouses) Iran [2010] UKUT 275 (IAC)**. The appellant in that case was the wife of a refugee from Iran who had been recognised as a refugee in the United Kingdom. He was from Iran too. She wanted to join her husband but there was no relevant Rule. The Rules, of course, provided for the wife to join her husband subject to certain conditions but only if the husband was "settled" in the United Kingdom. In that context, "settled" was a defined term and did not extend to people such as that appellant's husband who, although lawfully in the United Kingdom, was still subject to immigration control. It was a feature of that case that the appellant and her husband were both citizens of Iran but her husband was a refugee from Iran. There was no possibility of their enjoying their married life together in Iran and, as the Tribunal noted, no suggestion that they could exercise it anywhere else in the world.

19. Even if the appellant in **FH** could show that hers was a genuine marriage where all the Immigration Rules relating to maintenance and accommodation and intention would be satisfied, there was no provision under the rules that would allow her to join her husband in the United Kingdom even though he has nowhere else to live. This was seen as a lacuna and the Tribunal indicated that such marriages that otherwise satisfied the Immigration Rules should be allowed on Article 8 grounds.

20. In **FH** the Tribunal gave considerable weight to the obligation to promote a private and family life, particularly a genuine marriage, and was critical of there being no mechanism under which the appellant could join her husband, other than a human rights claim. The decision only assists the present appellant if the analogy is good. The appellant's case was that the analogy was good. His wife

was lawfully in the United Kingdom and was exercising treaty rights. Those treaty rights had been preserved by the Withdrawal Agreement and she had pre-settlement status. It was fundamentally wrong to require her to leave the United Kingdom, and therefore give up her treaty rights without more in order to be with her husband. The appellant's wife's father would find her departure a clog on his treaty rights because he wanted his daughter living with him in the United Kingdom and not having to be worried about her living elsewhere.

21. The First-tier Tribunal Judge applied her mind to the problems, if any, that the couple would have in establish themselves in Bangladesh. The Judge found it significant that when the appellant married his immigration status was precarious. The Judge did not accept that the appellant's wife would be unable to re-establish herself in Bangladesh. Neither did the Judge accept that there were any Article 8 rights to consider other than those of the appellant and his wife. There was no "family life" with the appellant's parents-in-law.

22. At paragraph 53 of the Decision and Reasons the Judge accepted that there was a lacuna in the Rules at the time of the application. The Judge said that at the date of the application the appellant's wife would have needed indefinite leave to remain to sponsor the appellant under Appendix FM but the Rules had been changed to include those with pre-settled status as eligible sponsors and the appellant's wife was, the Judge decided, now an eligible sponsor.

23. However, the Judge was not able to say on the evidence before her that the other requirements for successful sponsorship are met. In particular, the income was not known to be sufficient and was suspected to be insufficient. The Judge noted it was now open to the appellant to make a new application. If his wife were in a position to support him he could expect it to succeed.

24. The Judge did not accept that the appellant's wife's departure would be a clog on her father's rights. The Judge did not accept that he would not be able to cope without his daughter. The Judge accepted that the appellant's wife's removal to Bangladesh would have some impact on the family in the United Kingdom but that was not sufficient to be disproportionate.

25. Permission to appeal was granted on two documents, the first being the grounds originally relied upon and the second the supplementary grounds dated 20 October 2021 which both retracted and expanded certain points. The primary grounds are dated 29 June 2022. The grounds are dated 21 August 2021.

26. Upper Tribunal Judge Kamara's grant of permission echoed Ms Pinder's contention that there was a "lacuna" in the law and this prompted a very detailed Rule 24 notice from the Secretary of State dated 18 November 2022.

27. I begin first by addressing the "lacuna" point. I am impressed by the Rule 24 notice. There is no lacuna here. The appellant is aggrieved that he was not able to identify any relevant Rule but it must not be assumed that this is lacuna. It is policy not to permit settlement applications from people who are not settled to join people who are not settled. The extent to which a person exercising EEA rights either primarily, or as in the case of the appellant's wife secondarily, entitles them to become a person treated as settled for the purposes of the Rules is a matter for the Parliament. If it is the case (I am certainly not making a finding to this effect) that the Rules do not give effect to the treaty obligations then it is conceivable that there is a remedy but it is not by way of an appeal on human rights grounds to the Upper Tribunal. This case is entirely different from the authority relied upon by the appellant. There a person wanted to assert a right to join her husband in the United Kingdom when there was nowhere else where they could live. The obligation under the European Convention on Human Rights to promote a person's "private and family life" clearly created a need for a

person claiming to be genuinely married and unable to enjoy her married life outside the United Kingdom to be given permission to live there. This is because the right to marry and create a family is a human right that the United Kingdom is obliged to recognise and promote, although it is a right that is subject to much qualification. The Tribunal in that **FH** was careful to caution itself against extending the rules and although it did indeed identify a lacuna it does not follow that everyone who claims they cannot satisfy the Rules is entitled to say there is a lacuna. Here there are perfectly clear findings that the appellant and his wife can enjoy their married life together but they can do it in Bangladesh. There is nothing new here, this is common Article 8 territory and none the worse for that. It follows therefore and with respect to Ms Pinder's arguments, the fundamental premise of the appellant's case is not sound. There is no human rights obligation to provide a mechanism to settle in the United Kingdom where there is somewhere else to settle.

28. I am aware that Counsel's arguments were also directed to the soundness of the decision but it is careful and identified correct legal tests and the Judge gave proper reasons for her conclusion. The appellant and his wife want to settle in the United Kingdom but they are not entitled to do that. The Judge was entitled to conclude that the appellant's wife's relationship with other family members was not such that it entitled her to remain in the United Kingdom. Such a finding would only be permissible when there was a primary finding of family life and special reasons to show that living apart would be disproportionate. That does not exist here. The plain fact is that the appellant did not make an application under the EEA provisions either before or after withdrawal and I agree with the Secretary of State he should not be treated as if he did. It is also likely that he would not have satisfied those Regulations although I see no point making any findings on that because that is not the point. He made an application based on human rights grounds which was processed on human rights grounds and which was refused on human rights grounds and appealed on human rights grounds and the appeal was done properly and dismissed.

29. It follows therefore that although I acknowledged the considerable work done by Counsel on the appellant's behalf and understand the point being made, I find it does not work. The First-tier Tribunal did not err in law and the appeal is dismissed.

Notice of Decision

30. This appeal is dismissed.

Jonathan Perkins

Judge of the Upper Tribunal
Immigration and Asylum Chamber

7 August 2023