IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-004895

First-tier Tribunal Nos: HU/57977/2023
LH/04659/2024

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 29th of January 2025

Before

UPPER TRIBUNAL JUDGE LOUGHRAN

Between

Suhail Rahman
(ANONYMITY ORDER NOT MADE IN RESPECT OF THE APPELLANT)

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:
For the Appellant: Ms Ferguson, Counsel, instructed by Novells Legal Practice
For the Respondent: Ms Ahmed, Senior Home Office Presenting Officer

Heard at Field House on 3 January 2025

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant's partner is granted anonymity. She will be referred to XX throughout these proceedings.

No-one shall publish or reveal any information, including the name or address of the appellant's partner, likely to lead members of the public to identify the appellant's partner. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

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1. The appellant appeals with permission of First-tier Tribunal Judge Parkes against the decision of First-tier Tribunal Judge S Taylor, ('the judge'), dated 18 September 2024.

Anonymity

2. At the hearing Ms Ferguson applied for anonymity in respect of the appellant's partner on account of her background and mental health problems. She requested the anonymity order to solely relate to the appellant's partner and not the appellant and for the appellant to be named. Having considered the appellant's partner's background and mental health issues I make an anonymity order in respect of her alone. She will be referred to XX throughout these proceedings.

Background

3. The appellant is a national of Bangladesh whose date of birth is 20 January 1986. The appellant claims to have entered the UK on 6 January 2002 at the age of 15.

4. On 9 March 2012 the appellant was encountered by police and detained. On 28 March 2012 he applied for leave to remain under Article 8 ECHR which was refused. On 9 October 2012 he claimed asylum, which the appellant states was later treated as withdrawn. The appellant made further submissions on 7 December 2019, which were refused.

5. In March 2020 the appellant claims that he met his current partner, XX, a British citizen, originally from Bangladesh, through his cousin. On 26 July 2020 he claims that they had an Islamic marriage and they started living together on 1 October 2020. The appellant states that XX was married previously, was the victim of domestic violence and suffers from mental health issues as a result.

6. On 26 May 2022, the appellant made the current application on the grounds of family and private life. On 22 June 2023, the respondent refused the appellant's human rights claim. As summarised in the judge's decision at paragraph 3, the respondent refused the application for the following reasons:

> (a) The appellant claimed to have a family life in the UK with his partner, Salon Begum. However, the appellant's statements for Universal Credit and council tax, indicate that she is single. No evidence has been submitted showing a genuine relationship and the respondent was not satisfied that the relationship was genuine and subsisting. The appellant was therefore unable to meet the requirements of the partner route.
> (b) The appellant was in the UK illegally, so he could not meet the Immigration Status Requirement.
> (c) The respondent did not consider that the requirements of paragraph EX1 were met. The appellant had not demonstrated that he was in a genuine relationship, and neither had he shown that there were insurmountable obstacles to any relationship continuing abroad.
> (d) With regard to private life, the application fell for refusal on the grounds of suitability, as the appellant had not provided a passport or other document of identity, despite being asked three times. With regard to the time periods under paragraph 276ADE, the appellant had not submitted evidence of being continuously resident in the UK for twenty years. The respondent concluded that the appellant did not meet the requirements of paragraph 276ADE.

(e) The respondent found no exceptional circumstances on which to grant the appellant leave to remain.

The appeal to the First tier Tribunal

7. On 27 June 2023 the appellant lodged an appeal against the respondent's refusal of his human rights claim and the appeal came before the judge on 16 December 2024.

8. The appellant gave evidence. XX attended the hearing and adopted her witness statement but the court was informed that she was too unwell to give oral evidence. The appellant's cousin attended the hearing and gave oral evidence. She confirmed that she had met the appellant in London in January 2002 and had seen him regularly since then and confirmed that in 2020 she introduced the appellant and XX to each other.

9. Although not recorded in the determination, the parties had agreed the issues to be determined were:

    (1) whether the appellant met the requirements of EX.1 for leave to remain under the family life route;

    (2) has the appellant lived in the UK continuously for twenty years;

    (3) will the appellant face very significant obstacles to reintegrating in Bangladesh; and

    (4) are there exceptional feature to the appellant's case which would render removal a breach of Article 8.

10. In the decision dated 18 September 2024, the judge dismissed the appellant's appeal. The judge was not satisfied that the appellant and XX were in a genuine and subsisting relationship and therefore found that the appellant was unable to meet the requirements of paragraph EX.1 of Appendix FM. The judge was not satisfied that the appellant had been in the UK for over twenty years or that he had been in the UK continuously and the judge found no grounds to conclude that there would be very serious obstacles to the appellant's integration.

The appeal to the Upper Tribunal

11. The appellant applied for permission to appeal to the First-tier Tribunal relying on grounds that can be summarised as:

    a. **Ground 1:**

        (i) The judge made a material error of law in making a determination of the appeal without giving adequate consideration to the evidence before him, and failing to carry out sufficient analysis of that evidence in so far as it related to the Article 8 claim.
        The judge failed to consider the impact of removal on the appellant and his partner and in particular his partner's particular vulnerabilities.

(ii) The judge failed to consider relevant evidence, including an electricity statement dated 15 August 2022 for the period 14 September 2020 to 29 July 2022, which is in the names of the appellant and XX and indicates they lived at the same address.

b. **Ground 2:**

(i) The judge failed to consider relevant evidence, including documentary evidence pertaining to XX's divorce proceedings

(ii) The judge failed to consider relevant evidence including medical evidence relied upon to show that that the appellant and his partner were trying for a baby.

(iii) The judge erred by applying the wrong standard when considering the evidence.

12. First-tier Tribunal Judge Parkes granted the appellant permission to appeal on 18 October 2024 finding:

> "The Judge assessed the length of the Appellant's residence and rejected the claim to have entered the UK in 2002. In rejecting the claim to be in a relationship it would follow that there would be no need to assess his claimed partner's article 8 rights as they would not be engaged. However, it is arguable that the assessment of the relationship may be flawed and the failure to address paragraph EX.1 and compelling circumstances may have been an error."

13. The respondent provided a Rule 24 response and I heard submissions from Ms Ferguson for the appellant and Ms Ahmed for the respondent, all of which I have considered.

14. During her submissions Ms Ferguson submitted that the judge materially erred in his approach to the witness evidence of the appellant's cousin. Ms Ahmed correctly identified that there was no reference to the evidence of the appellant's cousin in the appellant's grounds. This is extremely unfortunate. However, I am satisfied that the submission is encompassed by the general grounds which assert that the judge failed to properly consider, assess and interrogate the evidence that the appellant and XX are in a genuine and subsisting relationship.

15. I also note that in the grant of permission the First tier Tribunal Judge concludes that it is arguable that the assessment of the relationship may be flawed. I am satisfied that Ms Ahmed was able to make submissions on this point before me, notwithstanding the fact that it had not been raised in detail prior to the hearing. I have therefore considered it.

16. I am satisfied that the judge materially erred in law by failing to have regard relevant evidence in considering whether the appellant and XX are in a genuine and subsisting relationship. That evidence included the electricity statement dated 15 August 2022 for the period of 14 September 2020 to 29 July 2022, which is in the name of the appellant and XX and indicates they lived at the same address.

17. At paragraph 16 of the determination, the judge states, "The appellant has submitted joint utilities bills from 2022 or utility bills in his name, … they only

relate to the period after 2022, which was after the application was made." This is not correct. As outlined above, there was a utility bill from 14 September 2020. I am satisfied that the judge failed to have regard to that evidence, which was clearly material to whether the appellant and XX are in a genuine and subsisting relationship.

18. I am satisfied that the judge failed to have regard to the medical evidence in its entirety. The appellant relied on:

   a. Medical records from XX's GP recording on 12 November 2021 that she had a miscarriage.
   b. A letter from XX's community genealogical clinic dated 17 February 2024, recording that she had had a miscarriage in October 2021 and that she is currently trying to conceive and will be referred to a fertility clinic and detailing the outcome of a scan.
   c. Documents detailing XX's consultation on 25 November 2021 for the management of her miscarriage and also details of an early pregnancy ultrasound dated 10 November 2021, which indicated that she may be having a miscarriage.
   d. A letter to the appellant explaining how to book a semen analysis.

19. The only reference to this medical evidence is at paragraph 16 of the determination where the judge states, "The notes of the GP that the parties were trying for a baby is recording information given by the parties". I am satisfied the medical evidence is not solely based on what the appellant and XX have told their GPs it was also based on physical examinations, such as scans and ultrasounds. I am satisfied that the medical evidence corroborates the appellant's account that he and XX are trying to conceive and is therefore material to whether they are in a genuine and subsisting relationship.

20. I am also satisfied that the judge failed to have regard to the witness evidence of the appellant's cousin. As highlighted above, the appellant's cousin attended the hearing and gave oral evidence. Her evidence is that she had introduced the appellant and XX. There is no consideration of this aspect of her evidence in the judge's consideration of whether the appellant and XX's relationship is genuine and subsisting.

21. The judge only considers the appellant's cousin's evidence in his consideration of the of the length of time the appellant has spent in the UK. At paragraph 18, the judge considers her evidence that she is certain she first saw the appellant in the UK in 2002. The judge rejected this aspect of her evidence because he was not satisfied the appellant's cousin "has given any credible reason as to why she could remember the date when she first saw the appellant in the UK with such accuracy." The judge commented that she may feel sorry for the appellant and wished to help him. However, the judge does not record that he rejected her evidence in its entirety.

22. I am satisfied that the judge has not adequately explained what he concluded in respect of the appellant's cousin's evidence and it not possible for the appellant to know whether or what aspects of her evidence were rejected and why.

23. I am satisfied that the judge made material errors of law by failing to have regard to relevant evidence for the reasons outlined above.

24. The First-tier Tribunal must be set aside in its entirety. No findings of fact can be preserved.

25. I have considered whether to retain the matter for remaking in the Upper Tribunal, in line with the general principle set out in statement 7 of the Senior President's Practice Statement and **AEB v Secretary of State for the Home Department** [2022] EWCA Civ 1512 and **Begum (Remaking or remittal) Bangladesh** [2023] UKUT 00046 (IAC), and taking into account the representatives submissions.

26. The hearing will need to be heard afresh. In all the circumstances, I accept that the proper course is to remit rather than to remake the decision on the appeal in this Tribunal.

Notice of Decision

27. The First-tier Tribunal decision involved the making of an error of law.

28. I set aside the decision of the First-tier Tribunal and remit the case to the First-tier Tribunal to be heard by a different judge, with no findings of fact preserved.

G. Loughran

Judge of the Upper Tribunal
Immigration and Asylum Chamber

24 January 2025