



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/25904/2013

THE IMMIGRATION ACTS

Heard at Sheldon Court
On 25 March 2013

Determination Promulgated
On 21 May 2014

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

MOHAMMED ROHMOT ALI

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Miah, Counsel, instructed by Sony Sadaf Haroon
Solicitors

For the Respondent: Mr J Singh, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. This is an appeal by a citizen of Bangladesh against the decision of the First-tier Tribunal dismissing his appeal against a decision refusing him further leave to remain in the United Kingdom. His case is that his circumstances have changed and he has married in the United Kingdom. The respondent decided that he did not meet the requirements of the Rules because he and his wife between them did not earn sufficient money.
2. There are crucial findings at paragraph 33 of the determination which have not been challenged before me. They are to the effect that the parties did not earn the £18,600 required by the Rules but they did earn a significant amount of money and certainly in excess of the figure of £13,500 identified by Mr Justice Blake in the decision of **MM and Others v SSHD** [2013] EWHC 1900 (Admin) as an approximation of the sum needed to live in the United Kingdom.
3. I have to say that it is quiet clear that the First-tier Tribunal did err in law. It is plain beyond argument because the Tribunal said expressly at paragraph of 20 of

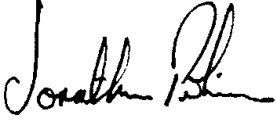
the determination that the appellant was relying on the decision in MM but although this was acknowledged in the determination there is no finding at all about the impact of MM. There really should have been. The decision in MM is not strictly a binding decision as it is a decision of the Administrative Court, albeit made by a High Court Judge with particular experience of immigration matters. If the First-tier Tribunal wanted to rely on MM it should have explained clearly what, exactly, it thought that MM decided and how it should be applied.

4. I also find it plain, although this was not raised in the grounds, that the First-tier Tribunal Judge erred at paragraph 40 of the determination when he found that it would be reasonable to conclude that with the passage of time the appellant's wife and baby would be able to travel to Bangladesh. As a statement of fact this may very well be right but it rather misses the point that when determining human rights claims the First-tier Tribunal Judge should have decided the case in the light of the facts extant when he made his decision. It may very well be thought that it is not reasonable to expect a woman who is seven months pregnant to travel to Bangladesh. Indeed it is not easy to see how that could practically be achieved without going to quite extraordinary means such as hiring a private air ambulance. It may have been appropriate in accordance with the findings for the judge to direct a short period of leave, at least until the time the baby was born, to allow the appellant to be present at the birth, but that is not a matter for me because that is not what happened.
5. Mr Singh was not able to advance any detailed argument to support the decision of the First-tier Tribunal. It is the Secretary of State's case that MM is not a decision to be followed and that the Rules are to be followed and the appeal should have been dismissed. Mr Singh made that much extremely clear but MM had to be considered and, other than being mentioned by name, it was not.
6. Having found that there is an error of law I have to decide how to advance the case. My starting point would be to determine the appeal now on the facts as found but I do not think that would be the right thing to do. This is because I am told, and I accept although I have not seen any evidence for this, that the appellant's wife, who was heavily pregnant in January 2014, has been delivered of a child, in this case a son. I am pleased to say I have been told that the boy is healthy and everybody is very happy.
7. However, the arrival of the baby will impact significantly on the finances of the couple, both in terms of what they have to spend and in terms of their ability to earn a living. I was told in general terms that the appellant's wife intends to carry on earning and understands that her sister-in-law will look after the baby. This may be right but it was not disclosed in any properly admissible form and was not something that the Secretary of State had an opportunity of considering or checking.
8. I am aware that people who choose to come before the Upper Tribunal without preparing their cases when new evidence suggest that they should have been prepared are not normally entitled to a lot sympathy but this case is clearly going to concern the interests of a small child who may be a British national. He must not be disadvantaged in any way because of any dilatoriness in the preparation of the case. It is also right to say that the appellant and his wife have had a great

deal more to think about more about recently than immigration matters. I do not wish to be unduly critical but the fact is that the preparation has not been done.

9. I have decided therefore that the proper way to address this error of law is for the matter to be remitted to the First-tier Tribunal for there to be fresh findings on the impact of removal on the family, on how the family could manage in Bangladesh, if at all, and on what their financial circumstances in the United Kingdom are now, and both findings of fact will then illuminate a proper decision on human rights grounds.
10. It may be that by then the judgment of the Court of Appeal in MM will be available to us but I do not ask for the case be left until that has happened because that might take longer than anyone expects.
11. It follows, therefore, that I allow the appeal and direct that the case be heard again in the First-tier Tribunal for the findings indicated to be made and a proper decision made in accordance with the law.

Signed
Jonathan Perkins
Judge of the Upper Tribunal



Dated 19 May 2014