Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/26663/2013

THE IMMIGRATION ACTS

Heard at Bradford	**Determination Promulgated**
On 12 March 2014	**ON 25 March 2014**

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

ROWSHON ARA BEGUM

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Bashir, Bashir Consultancy
For the Respondent: Mr Diwnycz, a Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, Rowshon Ara Begum, was born on 10 January 1948 and is a citizen of Bangladesh. The appellant had applied to the respondent for indefinite leave to remain as the dependent relative (mother) of a person present and settled in the

United Kingdom. The application was refused on 13 June 2013 and the appellant appealed to the First-tier Tribunal (Judge Hands) which, in a determination dated 12 November 2013, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. The appellant had been refused under paragraph 317 of HC 395:

317. The requirements to be met by a person seeking indefinite leave to enter or remain in the United Kingdom as the parent, grandparent or other dependent relative of a person present and settled in the United Kingdom are that the person:
(i) is related to a person present and settled in the United Kingdom in one of the following ways:
(a) parent or grandparent who is divorced, widowed, single or separated aged 65 years or over; or
(b) parents or grandparents travelling together of whom at least one is aged 65 or over; or
(c) a parent or grandparent aged 65 or over who has entered into a second relationship of marriage or civil partnership but cannot look to the spouse, civil partner or children of that second relationship for financial support; and where the person settled in the United Kingdom is able and willing to maintain the parent or grandparent and any spouse or civil partner or child of the second relationship who would be admissible as a dependant; or
(d) parent or grandparent under the age of 65 if living alone outside the United Kingdom in the most exceptional compassionate circumstances; or
(e) parents or grandparents travelling together who are both under the age of 65 if living in the most exceptional compassionate circumstances; or
(f) the son, daughter, sister, brother, uncle or aunt over the age of 18 if living alone outside the United Kingdom in the most exceptional compassionate circumstances; and
(ii) is joining or accompanying a person who is present and settled in the United Kingdom or who is on the same occasion being admitted for settlement; and
(iii) is financially wholly or mainly dependent on the relative present and settled in the United Kingdom; and
(iv) can, and will, be accommodated adequately, together with any dependants, without recourse to public funds, in accommodation which the sponsor owns or occupies exclusively; and
(iva) can, and will, be maintained adequately, together with any dependants, without recourse to public funds; and
(v) has no other close relatives in his own country to whom he could turn for financial support; and

(vi) if seeking leave to enter, holds a valid United Kingdom entry clearance for entry in this capacity; and

(vii) does not fall for refusal under the general grounds for refusal

At the time of her application to the respondent, the appellant had been aged under the age of 65 years. By the time the appeal hearing came before the First-tier Tribunal, she had attained the age of 65 years. She was, as a consequence, no longer required to show that she would be living alone in the most exceptional compassionate circumstances. However, prior to the hearing before the First-tier Tribunal, the Home Office had written to the appellant's solicitor and to the Tribunal on 31 October 2013 in the following terms:

> The refusal letter of June 2013 raises the single issue of Rule 317(i)(d), the respondent concedes that the appellant is now age 65.
>
> However, the respondent will seek to argue, subject to the permission of the judge, that Rule 317(a) and 317(v) are not satisfied. I apologise for the late notice of this issue but believe the respondent's current position to be supported by the authority of *RM (Kwok On Tong: HC395 para 320) India* [2006] UKAIT 00039 (18 April 2006).
>
> The position of the respondent has altered after reviewing the evidence submitted in support of [the appellant's] visit visa application and appeal (VA/16176/2009) and I enclose the application form, the evidence provided in support of the appeal and the determination of Judge Bircher.

3. By a letter dated 31 October 2013, the appellant's solicitor responded to the letter from the Home Office:

> If the learned judge decides to include this [the additional grounds under paragraph 317(a) and (v)] then we would not be in a position to proceed with the hearing and we will seek an adjournment.
>
> Therefore the appellant seeks guidance from the Tribunal. If the above Rules are to be included then I have no option but to seek a five weeks' adjournment to enable us to gather new evidence. However, if the above is not to be included then the appellant will not seek an adjournment. However, it would be unfair to adjourn on the hearing date given the costs involved.

4. The Tribunal considered the adjournment request and refused it by a letter dated 1 November 2013:

> The additional basis for the respondent's refusal simply relies on the material of which the appellant will be well-aware since it is material relating to her own application for entry clearance and its inconsistency with her current application. No good reason is offered fro the inability of the appellant to deal with this or for the inability of her representatives to appear on her behalf.

5. The matter then came before Judge Hands at North Shields. At [3] *et seq* the judge dealt with the renewed adjournment application made by Mr Bashir. She also considered whether it was just to allow the respondent to raise new grounds of refusal. As to the latter, she wrote at [5]:

> I note that the appellant was not 65 at the time she made her application and had the respondent acted with more alacrity, the ground on which it was refused was applicable. However, because of the delay, the appellant has now attained the age of 65 and has the benefit of her appeal being considered in the light of that fact. I am satisfied therefore that what the respondent should be given the benefit of the additional time and the decision being reviewed in the light of the fact the appellant is now 65 and was at the date of the decision the refusal was based on the fact that she had applied before her 65th birthday. I therefore allow the amendment.

6. It is important to note that the grounds of appeal to the Upper Tribunal assert that the judge was wrong to refuse an adjournment; it is not suggested by the appellant

that the judge acted wrongly by allowing the respondent to raise new grounds of refusal.

7. The judge continued at [6] to note that the adjournment application had been refused on the papers. She set out the reasons given for the refusal (see above). She then went on to say:

> No good reasons have been offered for the inability of the appellant to deal with this matter or for the inability of her representatives to appear on her behalf. No additional reasons for the adjournment were placed before me and I refused the application to adjourn for those same reasons.

8. I consider that the judge acted properly in refusing the application for an adjournment. As I have noted above, the addition of new grounds of refusal has not been challenged by the appellant. Further, the point made by the judge who refused the adjournment on the papers is a good one; it cannot be said that the appellant has been taken by surprise by "new evidence" since the evidence now relied upon by the respondent is the appellant's own previous application for a visit visa and the appellant can properly be regarded as having knowledge of the contents of that application. The letter from the Bashir Consultancy seeking an adjournment simply refers to the need to "gather new evidence." No indication was given what that evidence might be or why it would take five weeks in order to obtain it. I acknowledge that the timescale between the Home Office's letter of 31 October 2013 and the appeal hearing before Judge Hands no 4 November was a tight one. It was, however a timescale adequate, in my opinion, for the appellant's solicitor to take instructions from the appellant regarding the apparent inconsistencies between her evidence in the present appeal and that submitted in support of a previous visit visa. At no point has any explanation been given as to why evidence other than directly taken from the appellant herself would be required to explain away the inconsistencies in the appellant's own evidence. I find that the judge was right to refuse the renewed oral application for an adjournment. As she pointed out, no "additional reasons" had been put before her over and above those put before the judge who refused the adjournment on the papers. There was no reason at all for her to take a different view of the application from that taken by the judge who refused the first adjournment request.

9. Significantly, the grounds of appeal make no attempt at all to detail how the evidence which the appellant sought to obtain might indicate that the judge's findings of fact were wrong. The judge found at [26] that the appellant "has [not] provided satisfactory evidence to demonstrate she is separated from her husband or that she is wholly or mainly financially supported by her son. I find she did not meet the requirements of Regulation 317." The judge found that the appellant was still married to her husband and she found that it was "not to be true" that the couple had separated, as the appellant had claimed. In my view, those were findings available to the judge on the evidence before her, including that contained in the appellant's previous visit visa application. They were findings which were fatal to the appellant's appeal in respect of the Immigration Rules. There is no challenge in

the grounds of the Upper Tribunal of the judge's dismissal of the appellant's appeal on Article 8 ECHR grounds. In essence, the judge found that the appellant could return to Bangladesh to continue family life with her husband. I can identify no error of law in the judge's determination of the appeal under the Immigration Rules or in respect of Article 8 ECHR. Accordingly, this appeal is dismissed.

DECISION

10. This appeal is dismissed.

Signed Date 20 March 2014

Upper Tribunal Judge Clive Lane