



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/44261/2014

**THE IMMIGRATION ACTS**

Heard at Field House  
On 10<sup>th</sup> April 2015

Determination Promulgated  
On 17<sup>th</sup> April 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE MCCLURE

Between

Mrs Misira Khatun  
(NO ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mrs Mughal of Pillai & Jones Solicitors

For the Respondent: Ms Savage, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The Appellant, Mrs Misira Khatun date of birth 19<sup>th</sup> November 1969, is a citizen of Bangladesh. Having considered all the circumstances I do not make an anonymity direction.
2. This is an appeal by the Appellant against the determination of First-tier Tribunal Judge Kanagaratnam promulgated on 23<sup>rd</sup> December 2014, whereby the judge dismissed the Appellant's appeal against the decisions of the Respondent dated 23<sup>rd</sup>

September 2014. The decisions by the Respondent were to refuse the Appellant further leave to remain in the UK and to remove the Appellant from the UK.

3. By decision made on the 12<sup>th</sup> February 2015 Judge C Andrew gave leave to appeal to the Upper Tribunal. The case now appears before me to determine in the first instance whether or not there is an error of law in the original determination.
4. The first two grounds of appeal relate to whether the Appellant could rely upon the Immigration Rules, specifically Appendix FM. Judge Kanagaratnam had ruled that, as the Appellant was a visitor at the time of making the application, she was excluded from relying on the provision of Appendix FM because of the provisions with regard to Immigration Status within the rules/Appendix FM.
5. The relevant provisions of Appendix FM provide:-
  - Immigration status requirements**
  - E-LTRP.2.1. The applicant must not be in the UK-
    - (a) as a visitor;
    - (b) with valid leave granted for a period of 6 months or less, unless that leave is as a fiancé(e) or proposed civil partner;) or
    - (c) on temporary admission
  - E-LTRP.2.2. The applicant must not be in the UK in breach of immigration laws (disregarding any period of overstaying for a period of 28 days or less), unless paragraph EX.1. applies.
6. Judge Kanagaratnam has referred to the provision in paragraph 7 of the decision.
7. The Appellant had entered the UK on the 11<sup>th</sup> August 2012 with leave as a visitor valid until the 25<sup>th</sup> November 2012. On the 31<sup>st</sup> October /1<sup>st</sup> November the Appellant had made application for further leave to remain in the UK as the spouse of a British national in the UK. At the time of the application the Appellant was a visitor and therefore in accordance with the extract from the rules set out could not rely on Appendix FM.
8. Once the Appellant made an application, her leave would have been extended, in accordance with Section 3C of the 1971 Act. That would mean that the leave as a visitor would be extended until any appeal was finally determined. Whilst Judge Kanagaratnam has referred to the fact that the Appellant has overstayed the period of leave originally granted by the visa that does not alter the fact that the Appellant was a visitor at the time of making the application and therefore is excluded under the provisions of the Rules identified from relying on Appendix FM.
9. In the circumstances the first two grounds do not disclose any error of law.
10. Judge Andrews in granting leave has given leave also on the basis that Judge Kanagaratnam has not taken account of all the evidence that was before him, particularly the medical evidence in coming to the conclusion that the Appellant and her husband, Mr Jamshid Ali, can live in Bangladesh.

11. Mr Ali has been diagnosed with a number of ailments but these ailments are long standing. He has latent syphilis diagnosed in 1968, schizophrenia diagnosed in 1978, "squamous" cell carcinoma diagnosed in July 2001 resulting in the amputation of the right leg in 2004. He has diabetes also long standing [ in the letter from the medical practice page 16 there is reference to amputation of the foot/leg as a result of diabetes in 2004]. Mr Ali has "poor left leg hygiene" with scaly skin and marked onychogryphosis [nail distortion and thickening]. Mr Ali also appears to suffer from mental problems associated with schizophrenia, although he does not appear to be a danger to himself or anyone else. For some years prior to 2010 Mr Ali was residing in the UK and being treated here.
12. There is no prognosis of the ailments indicating any deterioration in Mr Ali's condition. There is no evidence as to what treatment Mr Ali was receiving in Bangladesh. There is no statement from the medical professionals that any of the conditions referred to required immediate intervention. The letters from the medical centres relate to acknowledging the conditions and setting up appropriate care package for Mr Ali. There is no suggestion that any medical care received in Bangladesh was inadequate or lacking.
13. Whilst Article 8 outside the rules is raised it is the relationship of the appellant to her husband, Mr Jamshid Ali, that is central to Article 8 in the case. No aspect of private life of the Appellant has been raised. Issues arise in respect of the medical condition of the Appellant's husband, Mr Jamshid Ali, and his needs and dependency on the Appellant but it is not the private life of the Appellant herself.
14. The Appellant and her husband, who is a British citizen, had lived together in Bangladesh for three years immediately prior to the Appellant coming to the UK. They own a house in Bangladesh. Up to 2010 Mr Ali was in a "Care/Nursing" home "Rosewood" in Bradford but the family took him out of the home and Mr Ali went to Bangladesh to be looked after by the Appellant. There appears to have been other family members in Bangladesh. There is reference to the Appellant's and Mr Ali's son sending money to Bangladesh.
15. In the statements the reason that Mr Ali was brought back to the UK was given as :-

Paragraph 14 Appellant's statement

My son realised that his financial remittances was being used by family members hence why we decided to come and live in the UK permanently

Paragraph 5 of the son's statement

Other family members took advantage of the financial support

16. In the letter from Brunswick medical centre dated 17<sup>th</sup> August there is also reference to the fact that "*all his benefits were being used by family members*" and because of that Mr Ali was brought down to London by the son. Again there is no medical reason for moving Mr Ali.

17. It is clear that the decision was that the Appellant and her husband were coming back to the UK permanently but an application for entry on the legally correct basis was not made in respect of the Appellant. Despite Mr Ali having been in the UK for some years prior to 2010 it appears that the Appellant was in Bangladesh and only came to the UK for the first time in 2013 on the visit visa. As noted by the judge she was being brought to the UK to look after her husband, who was being brought back to the UK because of the issue of finances. There is no suggestion of a medical reason for bringing the husband back to the UK.
18. There are references in the statements to Mr Ali's medical conditions but no references to Mr Ali's health deteriorating or of there being a requirement of medical intervention. Whilst Mr Ali's medical conditions have been listed there is no evidence that treatment was not available in Bangladesh or that Mr Ali was not receiving treatment in Bangladesh. There is a list of his ailments but no evidence that medical treatment would not be available in Bangladesh albeit at a price.
19. There is nothing in the medical reports that indicate that Mr Ali was not receiving medical treatment in Bangladesh and could not have continued to do so. The reason given for the Appellant and Mr Ali coming to the UK is that other family members appear to have been misusing the money sent to support them in Bangladesh, not medical reasons.
20. Accordingly the evidence disclosed that the son had taken the Appellant's husband out of a care home to send him to Bangladesh to be looked after by the Appellant. When issues arose with regard to the money being used by other family members, it was decided to bring the Appellant and her husband back to the United Kingdom, in the full knowledge that the Appellant was coming to live permanently to look after her husband. No medical justification for that has been set out in the brief letters from the medical practitioners dealing with the husband. No evidence has been adduced that the medical treatment would not be available in Bangladesh at a price.
21. The judge clearly took account of the medical issues as is evident from paragraph 4 of the decision but there was no evidence that the appellant's husband needed treatment in the UK that was not available in Bangladesh or that only the Appellant could provide such care. Care had been provided in the past in a secure Care home environment but the family had decided to remove Mr Ali from that environment.
22. The family clearly circumvented the Immigration Rules by bringing the Appellant into the United Kingdom as a visitor when they knew she was coming to stay.
23. As is evident from what the judge says he did consider the medical evidence and set out in paragraph 4. Circumstances otherwise would seem to indicate that the Appellant had lived all her life in Bangladesh whilst her husband had lived most of his life over the years in the United Kingdom separated from his wife. The Appellant and her husband had lived in Bangladesh for three years and the only issue was with regard to family members misusing the money sent to support them. There is no

suggestion that the circumstances in Bangladesh were not adequate or that Mr Ali's medical condition was not being adequately looked after.

24. In light of the evidence the judge was entitled to conclude that the Appellant and her husband could live in Bangladesh. There was nothing on the medical evidence that indicated that that compromised the medical conditions of Mr Ali. In the circumstances the judge was entitled to conclude that the decision appealed against did not breach the Article 8 rights of the Appellant or her husband.
25. In light of all the factors there is no material error in the determination of the judge.
26. Even if there were an error of law in the determination by the judge taking account of all the evidence presented I would in any event have found that the decision to remove the appellant is proportionately justified.
27. Whilst Mr Ali does have medical conditions there is no evidence that they could not be treated in Bangladesh. The Appellant and Mr Ali had lived for three years in Bangladesh and the only reason for bringing them back to the United Kingdom was financial, that is family members were misusing the money sent. There is no reason why appropriate steps could not be taken to ensure that the money sent to support the Appellant and Mr Ali is applied properly. The Appellant and Mr Ali have a house in Bangladesh, which they could occupy.
28. If Mr Ali wants to remain in the UK to receive medical treatment, there is nothing to indicate that he requires the personal care of the Appellant. If they want the Appellant to live with Mr Ali in the United Kingdom there is no reason why she could not make an application and seek to comply with the rules.
29. Thus even if there were an error of law taking all the circumstances into account I am satisfied that the decision would in any event had been proportionately justified.
30. There is a no material error of law in the determination. I uphold the decision to dismiss this appeal on all grounds.

Signed

Date **10<sup>th</sup> April 2015**

Deputy Upper Tribunal Judge McClure