



**Upper Tribunal
(Immigration and Asylum Chamber)
IA/05257/2015**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On 8 February 2016**

**Decision & Reasons
Promulgated
On 29 February 2016**

Before

UPPER TRIBUNAL JUDGE McWILLIAM

Between

**MRS LIPI AHMAD
(ANONYMITY DIRECTION NOT MADE)**

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms R Akhter, Counsel instructed by Taj Solicitors
For the Respondent: Mr E Tufan, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Bangladesh and her date of birth is 10 November 1985. The appellant and her husband made applications for leave to remain on 14 October 2014 and these applications were refused by the Secretary of State on 5 February 2015. The appellants appealed against the decision of the Secretary of State and the matter came before

Judge of the First-tier Tribunal Eban who allowed the appellant's husband's appeal to the extent that it was not in accordance with the law. The First-tier Tribunal concluded that the appellant's husband had been here lawfully and continuously for ten years and met the requirements of paragraph 276B subject to discretion that was to be exercised by the Secretary of State. This appellant's case was that she met the requirements of paragraph 276ADE and that the decision breached Article 8. It was accepted at the hearing by the appellant's representative that neither appellant before the FtT met the requirements of Appendix FM and the judge dismissed this appellant's appeal under the Rules and Article 8.

2. Permission was granted to the appellant on 29 December 2015 by Judge of the First-tier Tribunal A D Baker on the basis that Judge Eban who dismissed the appellant's appeal arguably erred in not considering the appellant's immigration status as a dependent on that of her husband.
3. I heard representations from both the appellant's representative and Mr Tufan. The factual matrix is somewhat unusual. The appellant is married to her co-appellant before the First-tier Tribunal. They do not have children together. She came to the UK in February 2009. Her husband has two sons by Ms Hoque who is a citizen of Bangladesh. The appellant lives with her husband, the children and Ms Hoque in the same household and the appellant is involved in the children's lives. The Judge made findings at paragraph 14 of the decision which are not the subject of challenge and which are lawful and sustainable relating to the family's circumstances. The Judge went on to dismiss the appellant's appeal under paragraph 276ADE taking into account that the appellant had spent most of her life in Bangladesh and prior to coming to the UK she had lived with her sister. In addition her husband's parents live in Bangladesh and the Judge noted that neither the appellant nor her husband could explain what obstacles there would be to the appellant returning to Bangladesh on her own and why she would not be able to live with the first appellant's parents. The Judge concluded that there would not be very significant obstacles to the second appellant's integration into Bangladesh.
4. The Judge went on to consider Article 8 outside of the Immigration Rules, having considered the children's best interests and ultimately concluded that there was no reason why the appellant, her husband, the children and Ms Hoque could not live together in one household in Bangladesh.
5. The Judge did not consider this appellant's appeal under Appendix FM and indeed it was not incumbent on her to do so considering that it was conceded that the appellant could not satisfy the requirements of Appendix FM.
6. It is now a fact that the appellant's husband has been granted indefinite leave to remain following the Judge's determination and it is argued by the appellant that the Judge, having allowed the appellant's husband's appeal to a limited extent should have gone on to consider the appellant's appeal under Appendix FM.

7. At the time of the application and the decision of the Secretary of State the appellant's husband could not meet the requirements of the Immigration Rules under 276B although the position had changed by the date of the hearing before the FtT. However, as discretion had not been exercised by the respondent, it was not open to the Judge to allow the appellant's husband's appeal under the Rules. He has now been granted ILR but it was not for the Judge to proceed with his wife's appeal on the basis that he had ILR at the date of the hearing or that he would be granted ILR. In any event, it does not automatically follow that the appellant would meet the requirements of Appendix FM on the basis that her husband is settled here and the appellant's case was not advanced under Appendix FM. There is no error in the decision of the Judge.
8. The appellant's position has changed as a result of her husband's position and it is incumbent on her now to make an application under Appendix FM should she wish to remain here. The decision of Judge of the First-tier Tribunal Eban does not contain an error of law and is maintained.

Notice of Decision

The appeal is dismissed.

No anonymity direction is made.

Signed

Date 25.02.16

Joanna McWilliam

Upper Tribunal Judge McWilliam