



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number:
IA/30001/2014**

THE IMMIGRATION ACTS

**Heard at Birmingham
On 24 February 2016**

**Decision & Reasons
Promulgated
On 28th April 2016**

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL CHANA

Between

**MR ABIDUR RAHMAN CHOUDHURY
(anonymity direction not made)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: no appearance

For the respondent: Senior Presenting Officer

DECISION AND REASONS

1. The appellant, who is a national of Bangladesh, born on 27 April 2014 appealed against the decision of the respondent dated 14 July 2014 to refuse him leave to remain in United Kingdom outside the Immigration Rules and pursuant to Article 8 of the European Convention on Human Rights. First-tier Tribunal Judge

North dismissed his appeal in a determination promulgated on 21 October 2014.

2. Permission to appeal was first refused by First-tier Tribunal Judge Chohan on 21 January 2015 and later granted by Deputy Upper Tribunal Judge McGinty on 24 April 2015 stating that it was arguable that the Judge made a material error of law with respect to its application of the case of **Chickwamba [2008] UK HL 42** in not considering whether the appellant provided sufficient documents to be able to satisfy the Immigration Rules “under appendix FM-SE in respect of his wife’s income before the Judge of the first-tier Tribunal in considering their article 8 claim, before **Chikwamba** considerations applied to the assessment of proportionality”.
3. Before the hearing, a letter from the appellant’s representative stated that the appellant cannot attend the hearing because he is not well. No medical certificate was enclosed. There was no appearance from the representatives although they did not mention that they would also not be attending. I therefore proceeded with the appeal and heard submissions from the Home Office presenting officer. I have taken into account the documents in the grounds of appeal on behalf of the appellant’s case.
4. The Judge at paragraph 10-20 made findings of fact. He made it clear that the appellant cannot meet the requirements of the immigration rules and then went on to consider his claim under Article 8 in respect of family and private life. The judge took into account all the factors at play and concluded that it would be entirely proportionate to remove the appellant.
5. The Judge took into account that the appellant’s partner’s was a British citizen settled in the United Kingdom. The judge noted that she gave oral evidence that she had last visited Bangladesh 13 years previously and that she presently worked as a paralegal at a firm of solicitors and was hoping to qualify as a legal executive. He also noted in the evidence section of his determination that the appellant’s partner did not see herself settling in Bangladesh because of her profession and family in this country.
6. The judge stated at paragraph 12 that he has considered whether there are any exceptional circumstances, which warrant a grant of leave to remain in the United Kingdom. He took into account at paragraph 17 that it would be reasonable for the appellant to return to Bangladesh and make an application to enter the United Kingdom. The judge recorded the position of the Home Office which was that it was wrong for the judge to assume

that the evidential requirements of an entry clearance application would be met by the appellant. The judge agreed with this. He said that he was not satisfied that an application of entry clearance is therefore a mere formality and there are no sensible reasons for the appellant to make an application for Bangladesh. He stated that it would not be unreasonable for the appellant to return to Bangladesh and to make an application of entry clearance in the normal way as either financier or spouse.

7. I find that there is no material error of law as the Judge considered all the factors relevant. The Judge properly took into account the case of **Chikwamba** and applied the principles therein. The length of any separation of the parties did not have to be specifically considered as there are no children. Even if he did not specifically take into account the length and degree of family disruption, in the appellant's case as there are no children and therefore it is not a material error.
8. The judge found that the interference with the right to respect for family life of both parties to the marriage required by the refusal of this application is proportionate to the legitimate aim of the United Kingdom in its economic well-being and maintenance of immigration control.
9. The comments of Elias LJ, in **Hayat versus Secretary of State for the Home Department**, bolsters my conclusion. It states that the situation is fact sensitive and there may be circumstances where there would be a disruption to family life with particular importance where children are involved. This was not the position in the instant appeal.
10. The grounds are a mere disagreement with the findings made by the Judge who considered all the evidence and applied the correct burden and standard of proof. The Judge directed himself properly.
11. I find that there is no error of law in the determination of the First-tier Tribunal Judge and I uphold the decision.

Decision

Appeal dismissed

I make no anonymity direction

I make no fee order

Signed by,

Dated this 26th day of

April 2016
A Deputy Judge of the Upper Tribunal

.....

Mrs S Chana