Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/32556/2014

THE IMMIGRATION ACTS

Heard at Columbus House, Newport	**Decision and Reasons Promulgated**
On 18 December 2015	**On 1 February 2016**

Before

MR C M G OCKELTON, VICE PRESIDENT
DEPUTY UPPER TRIBUNAL JUDGE J F W PHILLIPS

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MAHMUDA KHANUM DOLY

Respondent

Representation
For the Appellant: Mr I Richards, Home Office Presenting Officer
For the Respondent: Ms C Grubb, Counsel instructed by Qualified Legal Solicitors

DECISION AND REASONS

1. This is an appeal by the Secretary of State against the decision of First-tier Tribunal Judge Clemes in which he allowed the appeal of Ms Doly, a citizen of Bangladesh, against the Secretary of State's decision to refuse to grant leave to remain in the United Kingdom. We shall refer to Ms Doly as the Claimant, although she was the Appellant in the proceedings below.

2. The application for leave to remain was refused by reference to paragraphs D-LTRP 1.3, R-LTRP1.1(d), 276CE and 276ADE(1) (iii) to (vi) of the Immigration Rules (HC395) on 16 April 2014. The Claimant exercised her right of appeal to the First-tier Tribunal. This is the appeal which came before Judge Clemes on 23 January 2015 and was allowed. The Secretary of State applied for permission to appeal to the Upper Tribunal. The application was granted by Designated First-tier Tribunal Judge Zucker on 22 July 2015 in the following terms

> "1. First-tier Tribunal Judge Clemes allowed the Appellant's appeal, brought in reliance upon paragraph 276ADE, against the decision of the Respondent to refuse her leave to remain in the United Kingdom.
>
> 2. The grounds submit that the Judge focused on "no ties" rather than the clarification to the rule introduced from 28 July 2014 which requires focus on the possibility of reintegration.
>
> 3. Given that the Respondent states in the grounds that the amendment to the rule was to provide clarity the Upper Tribunal may wish to consider the extent to which the guidance in Bossadi (paragraph 276ADE; suitability; ties) [2015] UKUT 00042 (IAC) assists in appeals before the Tribunal on or after 28 July 2014. However the grounds are arguable.

3. At the hearing before us the Secretary of State was represented by Mr Richards and Ms Grubb appeared for the Claimant. Mr Richards accepted that the first three paragraphs of the grounds of appeal to the Upper Tribunal were not sustainable, the application and the decision under appeal having been made prior to the changes to the Immigration Rules which came into effect on 28 July 2014. The reference to Article 8 ECHR in the grounds was not appropriate as the appeal was allowed under the Immigration Rules. He confirmed that the only paragraph of the grounds upon which he sought to rely was paragraph 4:

> "4. It is respectfully submitted that the Tribunal's findings at paragraph 11 that there is no evidence to suggest that appellant has retained ties to Bangladesh is wholly inadequate. The appellant has limited English language skills despite claiming to have resided here since 1995 and states at paragraph 6 that her main language is Bengali. This does not in anyway suggest she has either lost all ties to Bangladesh, or that she has integrated into the UK way of life. Given the appellant's main language is Bengali she would have no difficulties in integrating back into life in Bangladesh. Whilst the appellant may claim she had no family there, given her blatant disregard for immigration laws she is not a credible witness and her evidence cannot be relied upon in this regard. Even if she has no family there, she is an adult who has spent all her youth, formative years and education in Bangladesh and is fully capable of living an independent life there. If she requires support, her family here can provide her with some as they have been doing since her arrival. There is no evidence whatsoever that the appellant has integrated into the UK way of life and given that she has now married a Bangladeshi citizen it suggests she has been associating with the Bangladeshi community in the UK, which shows she still retains close ties to its culture and customs. Therefore there would be no very significant obstacles to her integration."

4. In this respect Mr Richards submitted that the Judge allowed the appeal on the basis that the Claimant had no ties to Bangladesh as shown in his conclusion at paragraph 11 of the decision. This focuses almost exclusively on the Claimant's lack of family or friends in Bangladesh. So far as cultural ties are concerned the Judge comments only that these will have been dissipated by the passage of time. This is not an appropriate or necessary conclusion. The Judge found previously that the Claimant has limited English and that her main language is Bengali. She is married to a Bangladeshi husband. The Claimant has lived in the United Kingdom without leave for almost 20 years and the evidence was that her links were with the Bangladeshi community in this country.

5. For the Claimant Ms Grubb relied on her skeleton argument. There is no error of law made by the Judge. He correctly directs himself to Ogundimu (Article 8 – new rules (Nigeria) [2013] UKUT 00060 (IAC). Ties must be more than remote and abstract links. In the case of the Claimant all her ties are to this country. Her siblings are here and they are all British; her husband is here and her friends are here. It would be wrong to look simply at her nationality and hold that this is a tie to Bangladesh. She has not had contact with anyone in Bangladesh for more than 10 years. She has no family remaining in Bangladesh. The Judge has looked at the evidence and made a rounded assessment. Ms Grubb added that the Claimant would now quality for leave to remain under the long residence provision of paragraph 276ADE.

6. Mr Richards responded to say that language cannot be equated with nationality. There is no loss of language of origin through integration. It is not simply a question of looking at nationality as Ms Grubb asserts.

7. We reserved our decision

Background

8. The Claimant is a citizen of Bangladesh who came to the United Kingdom in October 1994 for the purpose of marriage. This marriage broke down in 1995 and the Claimant's leave to remain expired on 8 October 1996. The Claimant remained in the United Kingdom without leave and without bringing herself to the attention of the authorities until February 2009 when she made an application for leave to remain under the 14 year long residence rule then in being. This application was refused with no right of appeal and the Claimant's representations against the refusal were not upheld. The Claimant remained in the United Kingdom without leave and on 5 September 2012 married Mohibur Rahman a Bangladeshi national who had also come to the United Kingdom as a spouse and remained without leave following the breakdown of his marriage. The couple had a son who died in August 2012 when he was three months old. The Claimant's husband was granted discretionary leave to remain expiring in 2017 following a successful appeal against the Respondent's decision to refuse leave to remain on the basis of long residence.

9. The Claimant's application for leave to remain in the United Kingdom was made on the basis of her family and private life. The application was rejected by the Secretary of State on two substantive bases. Firstl, the application did not meet the eligibility requirements of Appendix FM of the Immigration Rules. Secondly the application did not meet the requirements of paragraph 276ADE(1)(vi) because the Claimant had not lost ties to her home country. At the appeal hearing before the First-tier Tribunal the Claimant's representative conceded that the Claimant could not meet the eligibility requirements of Appendix FM but maintained that she did meet the requirements of paragraph 276ADE91)(vi) because she had lost ties to her home country. The First-tier Tribunal accepted this submission and allowed the appeal.

Discussion

10. The grounds of appeal to the Upper Tribunal assert a material misdirection in law and give, in essence, three reasons for this assertion. The first, that the Tribunal applied the wrong test by considering the Claimant's ties to Bangladesh rather than the obstacles to her re-integration, was conceded by Mr Richards as having no merit. This was a proper concession. Both the application and the Secretary of State's decision were made prior to the change in the Immigration Rules that came into effect on 28 July 2014. The second, that the Tribunal misdirected itself in relation to Article 8 ECHR, was also conceded as being without merit. Again this is a proper concession as the appeal was allowed by virtue of the Immigration Rules.

11. It is the third reason (paragraph 4 of the grounds) that has apparent substance. The Secretary of State asserts that the Tribunal's findings at paragraph 11 of the decision and reasons, that there is no evidence to suggest that the Claimant has retained ties to Bangladesh, is wholly inadequate. The grounds point out that the Claimant has limited English language skills, her main language in Bengali, she spent her youth and formative years in Bangladesh and she was educated there. Further she is married to a Bangladeshi citizen and this suggests that she associates with the Bangladeshi community in the United Kingdom and retains close ties to the culture and customs of Bangladesh.

12. The findings of the First-tier Tribunal in this respect at paragraph 11 are as follows:-

> "Based on the facts and applying Ogundimu (Article 8 – new rules) Nigeria [2013] UKUT 00060 (IAC), I am satisfied the Appellant in reality has no ties whether social cultural or family with the country to which he (sic) would have to go if required to leave. I acknowledge that she has limited English but note that she has taken steps to address that issue (documents from her English language course in the Appellant's bundle). She has no family ties left in Bangladesh and her family now – to all intents and purposes –is her husband and her siblings who are in the UK … there is in fact no contradictory evidence to suggest (persuasively or otherwise) that the Appellant has retained ties to Bangladesh. Considering the factors that the

Upper Tribunal suggested in Ogundimu I am driven to conclude that the Appellant has lost any ties that she had to Bangladesh through lack of family and friends there, the time that she has been away from the country and the relatively strong ties that she has developed in the UK. The only ties that she has might be cultural ones but even those will have been dissipated by the passage of time. There are no meaningful ties for the Appellant to Bangladesh and – after a rounded assessment as required by Ogundimu – my judgement is that all her ties are to the UK. "

13. In our judgement this finding although referring to Ogundimu amounts to a misunderstanding of the rationale of Ogundimu and as such amounts to a material misdirection in law. In Ogundimu the Upper Tribunal concluded

"122. The natural and ordinary meaning of the word 'ties' imports, we think, a concept involving something more than merely remote and abstract links to the country of proposed deportation or removal. It involves there being a continued connection to life in that country; something that ties a claimant to his or her country of origin. If this were not the case then it would appear that a person's nationality of the country of proposed deportation could of itself lead to a failure to meet the requirements of the rule. This would render the application of the rule, given the context within which it operates, entirely meaningless.

123. We recognise that the text under the rules is an exacting one. Consideration of whether a person has 'no ties' to such country must involve a rounded assessment of all the relevant circumstances and is not to be limited to 'social, cultural and family' circumstances. Nevertheless, we are satisfied that the appellant has no ties with Nigeria. He is a stranger to the country, the people, and the way of life. His father may have ties but they are not ties of the appellant or any ties that could result in support to the appellant in the event of his return there. Unsurprisingly, given the length of the appellant's residence here, all of his ties are with the United Kingdom. Consequently the appellant has so little connection with Nigeria so as to mean that the consequences for him in establishing private life there at the age of 28, after 22 years residence in the United Kingdom, would be 'unjustifiably harsh'.

124. Whilst each case turns on its own facts, circumstances relevant to the assessment of whether a person has ties to the country to which they would have to go if they were required to leave the United Kingdom must include, but are not limited to: the length of time a person has spent in the country to which he would have to go if he were required to leave the United Kingdom, the age that the person left that country, the exposure that person has had to the cultural norms of that country, whether that person speaks the language of the country, the extent of the family and friends that person has in the country to which he is being deported or removed and the quality of the relationships that person has with those friends and family members.

14. The clear evidence presented to the First-tier Tribunal was that having arrived in the United Kingdom in 1994 the Claimant had continuously resided within and associated with the Bangladeshi community in the United Kingdom. She came to the United Kingdom as the spouse of

someone from that community and lived with him until the marriage broke down. Thereafter she went to live with her sister and her family and remained within this Bangladeshi/British family unit for the next 16 years. The Claimant explains in her statement that she was introduced to her future husband in May 2011 having previously seen him at a number of family gatherings. She describes how their marriage took place two months later in accordance with Bangladeshi custom and tradition. The Claimant's husband is Bangladeshi. His statement accords with that of the Claimant as to how the marriage came about. There was no evidence put forward to the First-tier Tribunal to suggest that the Claimant had developed any ties outside the Bangladeshi community.

15. Applying these facts to Ogundimu the Claimant spent the first 19 years of her life in Bangladesh. Since her arrival in the United Kingdom she has lived within the Bangladeshi community. There was no evidence presented to the First-tier Tribunal and, despite our invitation, no evidence highlighted to us that her involvement with the Bangladeshi community was anything other than exclusive. The Claimant cannot be said to be a stranger to Bangladesh, its people or its way of life. There was no evidence before the First-tier Tribunal to suggest that the Claimant has become distanced from the cultural norms of Bangladesh. There was, contrary to the finding of the First-tier Tribunal Judge, nothing to suggest that the Claimant's cultural ties to Bangladesh had dissipated by the passage of time. Indeed there was no evidence presented to the First-tier Tribunal to suggest that the Claimant ties to the United Kingdom had replaced her ties to Bangladesh in any meaningful way. The evidence was firmly and squarely that the Claimant had lived and continued to live as a Bangladeshi in the United Kingdom.

16. It follows from the above that we must set aside the decision of the First-tier Tribunal and remake the decision dismissing the appeal. In doing so we remind ourselves that the Claimant's representative considers that the Claimant now meets the long residence requirements of the Immigration Rules and that upon application she will be entitled to remain.

CONCLUSION

17. The making of the previous decision involved the making of an error on a point of law. We set aside that decision.

18. We remake the decision of the First-tier Tribunal by dismissing the Claimant's appeal against the Secretary of State's decision to refuse leave to remain.

Signed: **Date:**

J F W Phillips
Deputy Judge of the Upper Tribunal