



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: IA/40677/2014

**THE IMMIGRATION ACTS**

**Heard at FIELD HOUSE  
On 16<sup>TH</sup> December 2015**

**Decision and Reasons  
Promulgated  
On 28<sup>TH</sup> January 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE  
G A BLACK**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**MR MAROOF CHOWDHURY  
NO ANONYMITY ORDER MADE**

Respondent

**Representation:**

For the Appellant: Mr S. Kandola (Home office presenting officer)  
For the Respondent: Mr M.K. Mustafa (solicitor)

**DETERMINATION AND REASONS**

1. This matter comes before me for consideration as to whether or not there is a material error of law in the decision and reasons the First Tier Tribunal (Judge Mayall) promulgated on 26<sup>th</sup> June 2015 in which the claimant's appeal was dismissed on the rules under 321A but allowed under Article 8.

## **Background**

2. The Claimant is a citizen of Bangladesh. He appealed against a decision made by the Secretary of State to curtail his leave to remain in the UK because of misrepresentations made in connection with a previous application for the purposes of obtaining a visa. The claimant relied on a false language certificate for his Tier 4 application. It was contended that the test had been done by proxy. This amounted to a change in circumstances and his leave as the spouse of a British citizen was cancelled.

## **Grounds of application for permission to appeal**

3. The Secretary of State argued that the FTT erred by failing to consider whether or not Article 8 could be contemplated outside of the Rules, and further that the FTT failed to give adequate weight to the public interest in light of the false representations, and by failing to properly assess the question of whether or not it would be unreasonable for the British child of the family to live in Bangladesh.

## **Permission to appeal**

4. Permission was granted on the grounds that there was little evidence before the FTT supporting the claim that it would be unreasonable for the child and mother to relocate to Bangladesh. No reasons were given as to why a freestanding Article 8 assessment was made. It was arguable that insufficient weight was placed on the issue of deception.

## **Submissions**

5. Mr Kandola expanded on the grounds in support of the application. He submitted that although the FTT had made reference to SS (Congo) [2015] EWCA Civ 387, it had not in fact applied it. In particular he relied on paragraph 82 of SS Congo in which it had been emphasised that there needed to be compelling circumstances for any consideration of Article 8 outside of the rules. This was not a case of a near miss. The Claimant failed to meet the Rules under appendix FM on the grounds of Suitability. Further the FTT [at 92] had treated section 117(6) 2002 Act as determinative which was wrong in law as the factors therein were not exhaustive. The FTT made no findings to support the conclusion that it would be unreasonable for the child to relocate to Bangladesh. The Claimant had no status in the UK, there was family support in Bangladesh and there was no evidence of any insurmountable obstacles. There was no "Zambrano effect" to be considered in this appeal. The matter clearly fell within the scope of the Immigration rules Appendix FM.
6. Mr Mustafa submitted that the FTT had considered if the Claimants family rights had adequately been considered in the framework of the rules. There were compelling circumstances identified by the FTT at [82 & 83]. Adequate weight was placed on the issue of deception and the factors in

the public interest. The FTT considered the reasonableness of relocation at 85-91 and relied on section 117B(6) which was clear in its meaning.

### **Discussion and conclusion**

7. At the end of the hearing I was satisfied that the Secretary of State had made out all of her grounds and I found that there were material errors in law in the decision of the FTT. The FTT properly considered the main issue under paragraph 321 of the Rules and found that the Claimant had used deception in his previous application for leave under the PBS. The FTT went on to conclude that it was not conducive to the public good for the Claimant to remain in the UK [80]. As a consequence he was unable to satisfy the requirements as to Suitability under Appendix FM in his application as a partner. The FTT went on to consider Article 8 outside of the rules in circumstances where there were no compelling reasons given for the same. I find that the Claimant's circumstances were covered by the rules and EX 1 was not applicable.
8. Significantly the FTT [92] failed to give any reasons for finding that it would be unreasonable to return to Bangladesh, which was material and central to the decision made and failed to follow the guidance in **SS (Congo)**. This final paragraph in a very detailed and lengthy decision, in which there is an absence of findings of fact, failed to provide any reasons at all to support the conclusions reached.
9. Accordingly I set aside the decision and reasons. I allow the appeal of the Secretary of State. I now remake the decision having regard to the findings of fact and evidence that was before the FTT. It is not necessary for a further hearing before this Tribunal.

### **Remaking**

10. I dismiss the Claimant's appeal on immigration and human rights grounds. There has been no argument as to the decision dismissing the appeal on immigration grounds [66 & 81]. Firstly, I am satisfied that there were no compelling grounds which justified consideration outside of the rules under Article 8. The only issue raised was the care of the Claimant's mother in law who suffered from mental ill health. There was evidence before the FTT that there were other close family members who could care for her [31]. There were no insurmountable obstacles to the family living in Bangladesh. The Claimant failed to meet the rules because of past deception and was not "suitable". There is no evidence of circumstances which showed that the family's Article 8 rights had not been fully addressed and covered by the Rules. The Claimant's child born in July 2015, is a British citizen and very young (under one year of age). His wife is also a British citizen. They established a family life in the UK having married in 2013. However, the Claimant has no lawful immigration status in the UK and he has practised deception in a previous application, which is a factor to be considered and which carries weight in a public interest assessment. There would be no interference with the family life as the

family can relocate to Bangladesh where they have other family for emotional and financial support, from where the Claimant's wife originates and has ties, and recently visited, and their child is of an age where his interests are intrinsically bound up with those of his parents and he would be easily able to adapt to life in Bangladesh. I find no evidential basis for concluding either that Article 8 applies outside of the rules or that there would be any disproportionate interference with family life. Even having regard to section 117B(6) there is no evidence that it would be unreasonable for the child (or his mother) to relocate to Bangladesh.

**Decision**

**11. There are material errors of law in the decision which shall be set aside.**

**The decision is remade and a decision substituted that the claimant's appeal is dismissed on immigration and on human rights grounds.**

Signed

Date 27.1.2016

GA Black

Deputy Judge of the Upper Tribunal

No anonymity order

No fee award.

Signed

Date 27.1.2016

GA Black

Deputy Judge of the Upper Tribunal