



**Upper Tribunal  
(Immigration and Asylum Chamber)  
HU/06044/2015**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Stoke**

**On 26<sup>th</sup> October 2017**

**Decision & Reasons  
Promulgated**

**On 08<sup>th</sup> November 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS**

**Between**

**MRS MARZANA FARDUSY  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr A Samad (Legal Representative)

For the Respondent: Mr G Harrison, Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant is a citizen of Bangladesh born on 16<sup>th</sup> June 1986. The Appellant applied for entry clearance as the post-flight family member of someone with limited leave to enter or remain as a refugee or the beneficiary of humanitarian protection and the Appellant's application was considered under paragraph 319L of the Immigration Rules. That application was refused by Notice of Refusal and dated 24<sup>th</sup> August 2015 (re-issued on 1<sup>st</sup> February 2016).

2. The Appellant appealed and the appeal came before Immigration Judge Juss sitting at Birmingham on 17<sup>th</sup> February 2017. In a decision and reasons promulgated on 18<sup>th</sup> February 2017 the Appellant's appeal was allowed on human rights grounds pursuant to Article 8.
3. The Secretary of State lodged Grounds of Appeal to the Upper Tribunal on 6<sup>th</sup> March 2017. Those grounds contended there was a material misdirection in law on the basis:-
  - (i) That it was unclear how the document such as the BRP and financial documents assisted in establishing that the relationship with the Appellant was genuine and subsisting.
  - (ii) That the judge wrongly applied Appendix FM because this was an entry clearance appeal to which Appendix FM did not apply.
  - (iii) The reference to *MF (Nigeria) v Secretary of State for the Home Department [2013] EWC Civ 1192* whereby the judge said that the Immigration Rules provide a complete code was wrong in law.
4. Permission was granted to appeal to the Upper Tribunal by First-tier Tribunal Judge Mahmood. In granting permission Judge Mahmood commented that he had some sympathy for the Appellant on the basis that the Secretary of State had served an incorrect decision on the Appellant but the confusion referred to by the Secretary of State was caused entirely due to this and the failure thereafter not to rectify the problem until late into the proceedings. However he did consider that the judge's decision in respect of the test he applied was arguably erroneous but whilst the Appellant's documents did appear to assist with showing that there was a genuine and subsisting relationship (and so that ground did not immediately appear to him to be arguable) he did not restrict the ground upon which the Respondent may argue the appeal.
5. It is on that basis that the appeal comes before me to determine whether or not there is a material error of law in the decision of the First-tier Tribunal Judge. I note that this is an appeal by the Secretary of State but for the purpose of continuity throughout the proceedings the Secretary of State is referred to herein as the Respondent and Mrs Fardusy as the Appellant. The Appellant appears by her instructed legal representative Mr Samad. Mr Samad is familiar with this matter having appeared before the First-tier Tribunal. The Respondent appears by her Home Office Presenting Officer Mr Harrison.

### **Submission/Discussion**

6. Mr Harrison advises me that he seeks to do no more than to rely on the Grounds of Appeal. These effectively run to three paragraphs. I have given them full, due and proper consideration. Mr Samad starts his submission by taking me to paragraph 15 of the First-tier Tribunal Judge's decision pointing out the judge was not looking at paragraph FM of the

Immigration Rules only the legal test to be applied and that if I give due consideration to the whole decision it is his submission that the judge has applied the relevant facts and given reasons as to why there would have been a breach of Article 8. As to the submissions with regard to the genuine and subsisting relationship he submits that full reasons have been given with regard to this including details of the Sponsor and that this has been addressed fully by the judge who has given due and proper consideration to the documents produced within the Appellant's bundle. Finally he submits that the Appellant has met the English language requirement, that he has no convictions and he refers me to the documents produced within the Appellant's bundle. He submits that there has been no explanation given by the Secretary of State as to why he has failed to properly address the position of the continuing and subsisting relationship and it does not sit well with the Secretary of State to try and rely in the Grounds of Appeal on Section 117B of the 2002 Act. He submits that any decision reached by the judge is clearly proportionate and that the judge has had full consideration to all aspects. He asked me to dismiss the appeal.

7. Mr Harrison said the only issue with regard to Section 117B is that it is a mandatory requirement and acknowledges that there has been a misdirection made by the Entry Clearance Officer. He does no more than leave the matter for my determination.

## **The Law**

8. Areas of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational conclusions on fact or evaluation or to give legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.
9. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue of argument. Disagreement with an Immigration Judge's factual conclusion, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence which was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration Judge concludes that the story is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

## **Findings on Error of Law**

10. The submissions made by the Secretary of State as far as there are any errors of law in the documents do not assist the Appellant regarding the judge reaching his decision and that there has been a wrong application of Appendix FM. Neither of those grounds are sustainable. The judge has given full and proper consideration to the correct finding that there was a genuine and subsisting relationship, something that is in fact acknowledged at paragraph 5 of the grant of permission by Judge Mahmood. Secondly this is not a case where the judge has misapplied Appendix FM. He has merely stated the legal test and has gone on in detail thereafter to make findings applying the relevant jurisprudence set out at paragraph 15 of his decision.
11. That is a reasoned decision and one that the judge was entitled to reach. He had also considered quite properly the aspect of proportionality reaching that decision has made findings that he was entitled to. Effectively all the submissions of the Secretary of State do is amount to disagreement with the decision of the First-tier Tribunal Judge. That decision does not disclose any material error of law and the Secretary of State's appeal is consequently dismissed and the decision of the First-tier Tribunal Judge is maintained.

### **Notice of Decision**

The decision of the First-tier Tribunal Judge discloses no material error of law and the appeal of the Secretary of State is dismissed and the decision of the First-tier Tribunal Judge is maintained.

No anonymity direction is made.

Signed

Date 07 November 2017

Deputy Upper Tribunal Judge D N Harris

### **TO THE RESPONDENT FEE AWARD**

No application is made for a fee award and none is made

Signed

Date

Deputy Upper Tribunal Judge D N Harris

