Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/04784/2015

THE IMMIGRATION ACTS

Heard at Field House

On 1st December 2017

Decision & Reasons Promulgated
On 17th January 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE RENTON

Between

SHOFIK MIAH
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

ENTRY CLEARANCE OFFICER – NEDE

Respondent

Representation:
For the Appellant: Mr M Hasan of Kalam Solicitors
For the Respondent: Mr S Kotas, Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The Appellant is a male citizen of Bangladesh born on 21st January 1966. He applied to the British High Commission in Bangladesh for entry clearance under Appendix FM of the Statement of Changes in Immigration Rules HC 395 as the partner of the Sponsor, [AB]. That application was refused for the reasons given in a Notice of Decision dated 28th July 2015 which decision was subsequently confirmed by an Entry Clearance

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Manager. The Appellant appealed, and his appeal was heard by Judge of the First-tier Tribunal Owens (the Judge) sitting at Hatton Cross on 3rd April 2017. He decided to allow the appeal for the reasons given in his Decision promulgated on 11th April 2017. The Respondent sought leave to appeal that decision, and on 19th October 2017 such permission was granted restricted to Ground 2 of the application for leave.

2. The Judge found that the Appellant had a family life with his wife [AB], a British citizen whom he married on 24th March 2008, and his two children [AnB] born on [ ] 2005 and [KM] born on [ ] 2008. Both children are British citizens. The Judge also found that the decision of the Respondent amounted to an interference with that family life, but dismissed the appeal under the Immigration Rules because the Appellant was unable to satisfy the financial requirements of Appendix FM. The Judge then considered the Appellant's Article 8 ECHR rights outside the Immigration Rules. He decided that the best interests of the children outweighed the public interest and therefore that the Respondent's decision was not proportionate. The Judge allowed the appeal on that basis.

3. At the hearing, Mr Kotas submitted that the Judge erred in law in coming to this conclusion. The Judge failed to carry out the proportionality exercise properly. He failed to give sufficient consideration to the possibility of family life continuing in Bangladesh. Further, the Judge did not say why it would not be proportionate for the Appellant to make a fresh application now that the Appellant was able to meet the financial requirements of Appendix FM. The decision in **SSHD v SS (Congo) and Others [2015] EWCA Civ 387** was that this was a preferable course of action. The Judge further erred by taking into account the fact that Section 117B(6) of the Nationality, Immigration and Asylum Act 2002 was met by the Appellant. The Judge failed to apply the emphasis set out at paragraph 15 of **SM and Others (Somalia) v Entry Clearance Officer (Addis Ababa) [2015] EWCA Civ 223**.

4. In response, Mr Hasan argued that there was no such error of law in the decision of the Judge. The Judge produced a well-reasoned judgment which gave clear reasons for his decision, for example at paragraph 31 of the Decision. The Judge was entitled to find that the best interests of the two children outweighed all other considerations. The Judge considered the prospect of the family living together in Bangladesh at paragraph 50 of the Decision.

5. At the hearing I reserved my decision which I now give.

6. I find no error of law in the decision of the Judge which I therefore do not set aside. The issue before me is whether the Judge erred in law in allowing the appeal under Article 8 ECHR outside of the Immigration Rules. In a thorough and comprehensive Decision, the Judge followed the format given in **Razgar (R on the application of) v SSHD [2004] UKHL 27** and demonstrated that he carried out the balancing exercise necessary for any consideration of proportionality. On the evidence before him, it was

open to the Judge to find that the best interest of the children, although not a trump card, outweighed the public interest notwithstanding the Appellant's immigration history. The Judge found that it was not reasonable for the Appellant's family life to take place in Bangladesh. That again was a decision open to the Judge and which he satisfactorily explained. It is true that the Judge did not specifically consider the prospect of the Appellant applying for entry clearance again, but the evidence before the Judge was that at the date of the hearing before him the Appellant was still incapable of meeting the financial requirements of Appendix FM. It is true that the Judge wrongly referred to Section 117B(6) of the 2002 Act, but I find this not to be a material error of law as the Judge properly took the best interest of the children into account elsewhere in the Decision.

7. For these reasons I find no error of law in the decision of the Judge.

Decision

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside that decision.

The appeal to the Upper Tribunal is dismissed.

Anonymity

The First-tier Tribunal did not make an order for anonymity. I was not asked to do so, and indeed find no reason to do so.

Signed Date 15th January 2018

Deputy Upper Tribunal Judge Renton