



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/09080/2016

THE IMMIGRATION ACTS

Heard at Manchester
On 16 May 2018

Decision & Reasons Promulgated
On 6 June 2018

Before

DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MRS MST ALIMUN NESSA
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Mr C Bates, Home Office Presenting Officer
For the Respondent: Mr N Ahmed, Solicitor

DECISION AND REASONS

1. The appellant (hereafter the Entry Clearance Officer or ECO) has permission to challenge the decision of Judge Howard of the First-tier Tribunal (FtT) posted on 18 September 2017 allowing the appeal of the respondent (hereafter the claimant) against the decision of the ECO dated 26 February 2016.
2. The written grounds raise three matters. Mr Bates confirmed that "ground 1" was no longer being pursued. Grounds 2 and 3 are not entirely clear but focus on the judge's treatment of the issue of whether the ECO decision could be said to interfere with any

family life. given that the family in the UK could visit the claimant in Bangladesh and the appellant and her husband did not have a subsisting relationship (ground 1); and the judge's finding that there was family life between the claimant and her adult daughters in the UK and that the decision had a disproportionate effect even though a visit only allows the parties to be together temporarily (ground 2). Also as part of ground 2 it was submitted that the judge failed to have due regard to the fact that the claimant is dependent on her family members in the UK and that (insofar as the claimed need for the claimant to return to look after her own mother was concerned) there would clearly be paid care available to ensure that.

3. I am grateful to Mr Bates and Mr Ahmad for their submissions.
4. The ECO's grounds are a jumble. However, even on a generous reading, I cannot see that they challenge any of the judge's findings of fact as to the evidence he heard from the four witnesses: the claimant's daughters and a niece. At paragraph 25 the judge stated that "I am satisfied this evidence was truthful". The ECO's failure to challenge this finding significantly undermines the submission raised in ground 2 that the judge failed to have due regard to the fact that the claimant is dependent on her family members in the UK (at paragraph 24 the judge found that she "relied to a large extent on money sent from the UK"). This point was also the main point taken by the ECO in refusing entry clearance: the ECO had stated that she had failed to show she had an income and that she was dependent on remittances from the UK for her income, concluding that: "[t]herefore I am not satisfied your economic circumstances in Bangladesh will persuade you to leave the UK at the conclusion of your visit". The ECO's grounds also sought to cast doubt on the claimant's claim that she had an incentive to return to look after her mother. However, it is clear from the judge's decision that central to the evidence of the four witnesses was their belief that the claimant did intend to return to Bangladesh at the end of her visit. The judge clearly accepted their evidence concerning this issue. Hence it is clear that the judge did give due regard to the ECO's concerns but decided that the evidence he heard allayed these.
5. I begin with this matter because the case it means that there is really no effective basis disclosed by the ECO's grounds for challenging the judge's conclusion that the claimant met the requirements of the Immigration Rules relating to visitors (see paragraph 26).
6. Accordingly the only basis on which the ECO's challenge can succeed concerns the judge's treatment of the claimant's human rights circumstances.
7. In respect of that basis of challenge, it has two main prongs: that the judge erred in finding that family life was engaged; and that the judge erred in his proportionality assessment.
8. As regards the judge's findings regarding Article 8, the ECO's failure to mount any effective challenge to the judge's positive findings regarding the four witnesses also significantly reduces its force, since in their evidence they made clear how important their relationship to her was to them. There is nothing in the decision either to suggest

that the Presenting Officer disputed that there was a family life tie between the claimant and her UK family. Even so, I would accept that whilst there was clear evidence that the claimant was financially dependent on the UK family, the evidence concerning whether she had emotional ties over the normal ones between a mother and adult children/relatives is less clear. There was evidence that her niece's mother had been able to visit the claimant a few times and the oldest daughter had been to visit her recently. Arguably, had the entirety of the claimant's ties with UK family comprised simply her adult daughters and her sponsor niece (and her family) there may have been a real question of whether there was family life within the meaning of Article 8 existed in the claimant's case. But in the UK she also had a husband here. The ECO's grounds contend that the couple do not enjoy a subsisting relationship and Mr Bates pointed out that in her EC application the claimant said she would stay at an address which was not her husband's. On the other hand, the evidence was that the husband had visited the claimant once in 2010 and the judge found "he is ill now suffering with high cholesterol, diabetes and asthma. He is 86 years old". Whether or not the ECO was justified in saying the couple did not have a subsisting marriage, it was entirely reasonable of the judge to consider they still enjoyed family life. The evidence was that the husband was now too old and frail to travel to Bangladesh and certainly no evidence to suggest the couple were estranged. Hence, although the judge barely reasoned why he concluded that family life was engaged by the circumstances of the claimant's case, there was nothing unreasonable about that conclusion.

9. As regards the proportionality assessment, the grounds take issue with the judge's findings that there was a viable alternative to the claimant visiting, namely her family visiting her. However, I do not consider this contention gets the grounds very far. The judge stated that "the only members of this family who are likely to make future visits to Bangladesh are those who have already done". In this context the judge said that he accepted the evidence of the witnesses that the appellant's two youngest daughters would not seek to visit the claimant in Bangladesh because they had a "genuine fear of being coerced into marriage". Once again two points are notable. First, the ECO's grounds do not challenge that the daughters' fear was genuine. Second the only challenge raised is that the judge failed to consider that this fear was limited to the claimant's home village and that "there would be nothing to prevent a visit taking place away from the village in Dhaka for example". That is a valid point in respect of a possible alternative way in which the claimant could get to spend time with her daughters, but the ECO did not suggest that this alternative would be reasonable for the claimant's 86 year old husband. Another valid point not made by the judge but relevant in visit cases is that the shortness of the proposed visit was if anything an indication that the refusal of leave to enter did not necessarily involve any want of respect for a claimant's public life: see **ECO Sierra Leone v Kopoi** [2017] EWCA Civ 1511; **SSHD v Onuorah** [2017] EWCA Civ 1757. Both the above-mentioned points are factors that weighed against the claimant. Ultimately, however, what the judge had to decide was the balance of considerations weighing in favour of a family visit in Bangladesh (without the husband) or one in the UK in which the claimant could spend two months with all the UK members of her immediate and extended family. Given that the respondent raised no effective challenge to the judge's finding that the claimant met the requirements of the Immigration Rules, it cannot be said that the

judge erred in considering that the decision was a disproportionate interference in the claimant's right to respect for family life.

10. I cannot interfere in the decision of the FtT judge unless it is vitiated by legal error. Although there are shortcomings in the judge's reasoning, the lack of challenge by the ECO to the judge's positive findings of fact regarding the evidence of the witnesses coupled with the accepted fact that the claimant intended a genuine visit that would to an octogenarian husband, daughters and other family members leads me to conclude that the decision was within the range of reasonable responses.
11. For the above reasons I conclude that the FtT judge did not err in law and his decision to allow the claimant's appeal under Article 8 must stand.

No anonymity direction is made.

Signed:

Date: 5 June 2018

A handwritten signature in black ink that reads "H H Storey". The signature is written in a cursive style with a long, sweeping underline that extends under the word "Storey".

Dr H H Storey
Judge of the Upper Tribunal