



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

Appeal Number: HU/03640/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 29 November 2018**

**Decision & Reasons
Promulgated
On 9 January 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

ENTRY CLEARANCE OFFICER - NEW DELHI

Appellant

and

**MD. SIBBIR AHMED
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr. S. Walker, Home Office Presenting Officer

For the Respondent: Ms. A. Delbourgo, Counsel instructed by M-R Solicitors

DECISION AND REASONS

1. By way of a decision promulgated on 9 August 2018, I set aside the decision of First-tier Tribunal Judge Plumtre. The appeal came before me to be remade.
2. For the purposes of this decision I refer to the Entry Clearance Officer as the Respondent and to Mr. Ahmed as the Appellant, reflecting their positions as they were before the First-tier Tribunal.

3. The appeal was adjourned in October as no British Sign Language (“BSL”) interpreter had been booked. At the hearing on 29 November 2018, Mr. Mark West, a British Sign Language interpreter, assisted the Sponsor. She confirmed that she understood him. I was satisfied that there were no problems with understanding during the course of the hearing.
4. As I set out in the error of law decision, the Judge in the First-tier Tribunal had failed to give reasons for why she could depart from the previous findings of the First-tier Tribunal that the Sponsor’s deafness was not an exceptional circumstance which made the decision a breach of Article 8.

Evidence

5. In addition to the Sponsor’s oral evidence, I have taken into account the documents in the Respondent’s bundle, the Appellant’s bundle (23 pages), the Appellant’s supplementary bundle (12 pages), the Appellant’s bundle provided for the Upper Tribunal hearing (8 pages), a letter from the Sponsor’s doctor dated 9 October 2018, and two further supporting letters.

The burden of proof

6. The burden of proof lies on the Appellant to show, on the balance of probabilities, at the date of the hearing, that the decision is a breach of his rights, and/or those of the Sponsor, to a family life under Article 8 ECHR.

Findings and Reasons

Immigration rules

7. Judge Russell found that the Appellant had used deception in relation to the ETS testing issue. It was found by Judge Plumptre that the Entry Clearance Officer (“ECO”) was fully justified in refusing the Appellant’s appeal under the immigration rules [50]. She found that the ECO was entitled to refuse entry clearance with reference to the discretionary ground set out in paragraph 320(11). She also found that the Appellant and Sponsor had not improved their case by continuing to assert that the Appellant left the UK voluntarily.
8. As I stated at the hearing, there had been no cross-appeal against the finding of Judge Plumptre that the ECO was entitled to refuse entry clearance on the discretionary grounds set out in paragraph 320(11). The appeal to the Upper Tribunal was made by the Respondent in relation to the failure by Judge Plumptre to give reasons for departing from the decision of Judge Russell. There was no cross-appeal in relation to the findings of Judge Plumptre that the ECO was entitled to refuse entry clearance on the discretionary grounds.

9. I therefore adopt the unchallenged finding that the Appellant cannot meet the requirements of the immigration rules as the Respondent was entitled to refuse the application with reference to paragraph 320(11).

Article 8

10. I have considered the Appellant's appeal under Article 8 outside the immigration rules in accordance with the steps set out in Razgar [2004] UKHL 27. The Respondent accepted that the Appellant and Sponsor were in a genuine and subsisting relationship. I find that the Appellant and Sponsor have a family life sufficient to engage the operation of Article 8. The Appellant has been in Bangladesh since November 2016. I find that family life has been maintained between the Appellant and Sponsor during this time. There was no suggestion by Mr. Walker that family life no longer subsisted between the Appellant and the Sponsor. The Sponsor visited the Appellant in Bangladesh in March 2017. I find that the decision is an interference in their family life.
11. Continuing the steps set out in Razgar, I find that the proposed interference would be in accordance with the law, as being a regular immigration decision taken by UKBA in accordance with the immigration rules. In terms of proportionality, the Tribunal has to strike a fair balance between the rights of the individual and the interests of the community. The public interest in this case is the preservation of orderly and fair immigration control in the interests of all citizens. Maintaining the integrity of the immigration rules is self-evidently a very important public interest. In practice, this will usually trump the qualified rights of the individual, unless the level of interference is very significant. I find that in this case, the level of interference would be significant and that it would not be proportionate.
12. In considering proportionality I have taken into account section 117B of the 2002 Act. Section 117B(1) provides that there is a strong public interest in refusing leave to enter to those who do not meet the requirements of the immigration rules. The Respondent was satisfied that the Appellant met the substantive requirements for entry clearance as a spouse, but that paragraph 320(11) applied.
13. In relation to section 117B(2), the application was not refused by reference to the English language requirements. I find that the Appellant speaks English.
14. In relation to section 117B(3) the application was not refused with reference to the financial requirements. At the date of the hearing before me the Sponsor is still employed. I find that the Appellant would be financially independent. Sections 117B(4) to (6) are not relevant.
15. The Appellant's immigration history is set out in the decision of Judge Russell. He came to the United Kingdom on 20 December 2009 as a

student. He was granted further leave to remain, but this was curtailed as his sponsor college's licence was revoked. On 24 August 2012 he was granted further leave to remain until 2014 with a new sponsor college. On 2 November 2013 the Appellant married the Sponsor. On 6 June 2014 he applied for leave to remain as her partner. The application was refused on 19 January 2015. The Appellant was appeal rights exhausted in August 2015, and was removed to Bangladesh on 22 November 2016.

16. At the hearing before me the Sponsor stated that she now understood that the Appellant had returned to Bangladesh at Home Office expense. I find that the Sponsor now accepts, despite some confusion, that the Appellant did not leave voluntarily. However, I find that between when he arrived, and when he made the application in June 2014, he had leave to remain. It was after his application was refused and the appeal dismissed that he was returned to Bangladesh.
17. I have carefully considered whether I can depart from the findings made by Judge Russell in 2015 in accordance with the case of Devaseelan. It was found in 2015 that the Sponsor's deafness was not such that it would cause her significant problems in integrating in Bangladesh. Three years has passed since that decision was made, during which time the Appellant has returned to Bangladesh. I have received further evidence regarding the Sponsor's deafness and the issues that she would face were she to move to Bangladesh. I find that this evidence was not before Judge Russell, or before Judge Plumtre. I find that I can depart from the findings of Judge Russell given the evidence before me now.
18. The essence of the case before me is whether or not family life can be enjoyed between the Appellant and Sponsor with the Appellant remaining in Bangladesh, taking into account the Sponsor's deafness, and whether the Appellant' and Sponsor's circumstances outweigh the public interest in maintaining effective immigration control.
19. I note at the outset that Mr. Walker did not suggest that family life could continue in Bangladesh. Rather he submitted that it was necessary for the Sponsor and the Appellant to continue family life through visits, as demonstrated by the Sponsor's visit to Bangladesh in March 2017, and other means of communication. He accepted that some methods of communication would be difficult due to the Sponsor's deafness. However, he submitted on behalf of the Respondent that there was nothing which would constitute exceptional circumstances such that the Sponsor should and could not maintain family life through visits. Essentially the Respondent's position, given the concession by Mr. Walker that there would be problems in using the usual channels for communication, was that family life should be maintained through visits to Bangladesh.

20. I find that the Sponsor is profoundly deaf. I find that she would face significant difficulties in Bangladesh were she to relocate there in order to enjoy family life with the Appellant. Were this an appeal against a decision to refuse leave to remain, I find that paragraph EX.1(b), with reference to paragraph EX.2 would be made out. I find that there would be very significant difficulties for the Sponsor which could not be overcome and which would involve very serious hardship in enjoying family life with her husband in Bangladesh.
21. I find that the Sponsor's first language is British Sign Language. There was no acknowledgement of this by Judge Russell. She does not speak English, and she does not speak Bengali. She uses a sign language interpreter in order to communicate, both to understand what has been said, but also to respond to what has been said.
22. I therefore find that the Sponsor would face significant difficulties communicating with anybody in Bangladesh. I have considered the letter from [NB], a registered BSL interpreter (page 8). She states that BSL is the Sponsor's first language, and English is her second language. The Sponsor does not have any other means to communicate other than those two languages. She states that BSL is similar to spoken languages in that each country has its own sign language, and each area has its own dialect. A move to another country would disadvantage the Sponsor severely as she would not be able to access spoken or written language. She would have to find a way to access the deaf community and learn the local sign language before resuming basic communication. There was no objection to this evidence by Mr. Walker and I find that it can be relied on. It is consistent with the Sponsor's evidence, and with the other documentary evidence provided.
23. Given that the Sponsor does not speak or understand Bengali, and given that she is profoundly deaf and her only language is BSL, I find that she would face very significant difficulties in Bangladesh communicating with anybody.
24. I have taken into account the Sponsor's employment in the United Kingdom. I find that, despite the Sponsor's profound deafness, she has forged an impressive career. I have taken into account the letters from [NB] (page 8), [GN] (page 6), [AH] (page 5) and also from her MP, [JF] (pages 1 and 2).
25. The Sponsor is a project manager working to support deaf drivers. She has set up a system for deaf drivers to become partners with Uber. The evidence shows that she has developed very strong networks with companies such as Uber, TFL and training colleges. She has been on the board for the young people's Mayor Committee in London. I find that she has not allowed her deafness to stop her from becoming a highly qualified employee who makes a significant contribution both to the deaf community, but also to the wider community. However, I find that these

skills, while transferable to a certain extent, would not be transferable to Bangladesh, given the significant communication difficulties that she would face. I find that the Sponsor would struggle to find any sort of employment in Bangladesh, let alone employment such as she now has in the United Kingdom. She makes a significant contribution to the community through her employment. Given what she has achieved both personally and for the deaf community, I find that this is a significant factor. I find that it would not be proportionate to expect her to give up what she has achieved in the United Kingdom in order to move to a country where she will struggle even to communicate.

26. Further, as noted above, Mr. Walker did not suggest that she should give up her job and move to Bangladesh. Instead he submitted that she should maintain her family life through visits.
27. I find that, although the Sponsor has visited Bangladesh, she has only been once, and this was in the period since the Appellant moved to Bangladesh. While she has Bengali heritage, given her deafness, she is not an integrated part of the Bengali community in the United Kingdom in the same way as she is an integrated part of the deaf community who communicate using BSL. It is entirely unsurprising that she has not learnt Bengali, given that her first language is BSL, and her second is English, let alone learn Bengali Sign Language.
28. I have also taken into account the evidence from the Sponsor's doctor, which was not before Judge Russell, given that it relates to the Sponsor's current situation. In her letter dated 9 October 2018 the Sponsor's GP, Dr. Tamanna Sarker states that since the Appellant's removal from the United Kingdom the Sponsor has been experiencing distress and social isolation. She has been prescribed Sertraline to help with anxiety and depression and has been seeing a counsellor. She only communicates with the GP using the BSL advocate.
29. I find that the removal of the Appellant has had a negative effect on the Sponsor's mental health. The problem of isolation for deaf people and the associated mental health problems that it can bring is referred to in the letter from [NB], who states that a "lack of communication that Deaf people experience has been named as one of the many reasons that Deaf people are more likely to have mental health in comparison to a person who can hear".
30. I find that the suggestion of the Home Office that family life can be maintained through visits is neither realistic one nor proportionate. I find that face-to-face contact is how the Appellant and the Sponsor maintain their relationship given the Sponsor's profound deafness. She cannot just pick up the phone to speak to the Appellant. There are very significant difficulties for her in maintaining communication. Further, given her employment, she would be limited in the amount of time that she could spend in Bangladesh by her holiday time. Alternatively she would have to

take unpaid leave, which would mean that she may not have the funds in order to visit the Appellant. It is not a realistic suggestion by the Respondent that family life be enjoyed through visits, which would be infrequent.

31. In any event, the Sponsor would still face the same significant communication difficulties when visiting Bangladesh that she would face were she to live there. The Sponsor does not have any family in Bangladesh. The Appellant's mother, aunts and uncles all live in the United Kingdom. The Sponsor has no particular knowledge of Bangladesh.
32. I have found above that I can depart from the findings of Judge Russell. Three years have passed since that decision was made. Further and significantly, I now have evidence before me which indicates the significant difficulties that would be faced by the Sponsor, an individual who only communicates using BSL, in relocating to Bangladesh.
33. I find, taking into account all of the evidence, while bearing in mind that it has been found in the First-tier Tribunal that the Appellant used deception in the English language test, that the Sponsor's disability, and the compelling and compassionate circumstances that exist because of that, mean that family life cannot be enjoyed in another country apart from the United Kingdom. I find that there are compassionate and compelling circumstances in this case. I find that it is not proportionate to expect family life to continue only through visits. This would mean effectively that the Sponsor would have contact with the Appellant for only a very short period of time, up to a month perhaps, a year. As I have found above, the usual channels of communication through e.g. phone calls are not possible due to the Sponsor's profound deafness.
34. Taking into account all of my findings above, I find that the circumstances of the Appellant and Sponsor outweigh the public interest in maintaining effective immigration control. I find that the balance comes down in favour of the Appellant and Sponsor, and the decision is not proportionate. I find that the Appellant has shown on the balance of probabilities, at the date of the hearing, that the decision is a breach of his rights and those of the Sponsor to a family life under Article 8.

Notice of Decision

The appeal is allowed on human rights grounds, Article 8.

No anonymity direction is made.

Signed

Date 19 December 2018

Deputy Upper Tribunal Judge Chamberlain

TO THE RESPONDENT
FEE AWARD

As I have allowed the appeal and because a fee has been paid or is payable, I have considered making a fee award. Submissions were made regarding the failure of the Respondent to consider the Sponsor's deafness in the decision. However, her deafness does not appear to have been mentioned in the application. There is reference in the print out of the application to a covering letter. However I do not have that covering letter before me. In the grounds of appeal to the First-tier Tribunal there is no reference to the Sponsor's deafness. Judge Plumptre stated that there was no indication that the Entry Clearance Officer had considered the disabilities of the Sponsor [53]. This is correct, but what is not clear is the extent to which those difficulties were put forward to the Entry Clearance Officer as being a significant obstacle to family life continuing in Bangladesh. Clearly the Respondent was aware that the Sponsor was deaf given the decision of Judge Russell, but in that decision Judge Russell found that there were no significant difficulties for the Sponsor in adapting to life in Bangladesh.

It does not appear that any particular evidence was put forward with the application relating to the Sponsor's deafness and associated problems. In the circumstances, and given the reason why the application was refused, I make no fee award.

Signed

Date 19 December 2018

Deputy Upper Tribunal Judge Chamberlain