Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU 13748 2018
& HU 09424 2018

THE IMMIGRATION ACTS

Heard at Field House	**Decision and Reasons Promulgated**
On 16th April 2019	**On 23rd April 2019**

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL
G A BLACK

Between

MR MAHAFUJ AHMED AND MRS SHANJIDA AHMED
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr P Lewis (Counsel)
For the Respondent: Mr E Tufan (Home Office Presenting Officer)

ERROR OF LAW DECISION AND REASONS

1. This is an error of law hearing. The appellants appeal the decision of the First Tier Tribunal (Judge Carroll) (FtT) promulgated on 31.1.2019 in which the appellants human rights claims were dismissed.

Background

2. The appellants are citizens of Bangladesh. The appellants had appealed two separate decisions dated 14.6.2018 and 13.4.2018 respectively. The first appellant had applied for ILR on the basis of 10 years residence and the second appellant, his wife applied to vary her application as a dependent pursuant to the first appellant's application for ILR on human rights grounds. The second appellant's application was refused on the grounds that she had used a proxy taker in her TOIEC test, although this was never relied on in any application.

Grounds of appeal

3. In grounds of appeal the appellants argued that the FtT erred in the assessment of the claims under the Immigration Rules and under Article 8 ECHR. The FTT decided both appeals together under paragraph 276ADE Immigration Rules [17-19]. The FTT made no findings or decision in respect of the ETS language matter which was relied on as reasons for refusing Suitability requirements.

4. The FTT failed to consider paragraph 276B 10 years residence at all or with reference to Paragraph 39E and the respondent's policy guidance re out of time application.

5. The appellants argued that they had been poorly advised by their legal representatives (Visa Inn) to request a hearing on the papers and have commenced complaint proceedings.

Permission to appeal

6. Permission to appeal to the Upper Tribunal (UT) was granted by FTJ ID Boyle on 8.3.2019. In granting permission the FTJ stated, "It appears that the Judge has not properly grasped the claims made i.e. long residence."

Submissions

7. At the hearing before me Mr Lewis acknowledged that the ground of appeal as to long residence was not arguable in the light of **R (on the application of Ahmed)** v SSHD (paragraph 276B – ten years lawful residence) [2019] UKUT 000010. He argued that the appellants had been deprived of a fair hearing (so as to amount to procedural error) because of poor advice from their legal representatives in respect of which a formal complaint had been made. There had been no response from the solicitors to the complaint, although there was no correspondence from the current solicitors to confirm that.

8. In response Mr Tufan relied on **BT** (former solicitors' alleged misconduct) Nepal [2004] UKIAT 00311 and contended that the correct procedure had not been followed as there must be evidence that the allegations had been put to the former representative and the response or correspondence that

there was no response must be shown to the Tribunal. There was no error of law on the part of the FTT.

Discussion and conclusion

9. There is no valid argument in respect of the long residence point, which was correctly conceded by Mr Lewis (**R (on the application of Ahmed)**).

10. I have considered the arguments put to me and whilst I accept that the appellants have made a complaint against their former solicitors as to the advice given to them, I do not have any evidence of correspondence confirming that they have in fact failed to respond as claimed. In any event I am concerned with the decision made by the FTT and the existence of errors of law therein. The FTT determined the appeal on the papers following the request to do so by the appellants via their representatives. There was no error in the FTT taking that course of action, which was entirely proper. However, it seems to me that when faced with that situation the FTT must ensure "*that the determination fairly reflects the input that both parties have made to the proceedings so far" (* **BT***).* In this instance the FTT had before it a skeleton argument and detailed witness statements [2] responding to the respondent's decision including the TOIEC issue. The FTT failed to determine that matter at all and made no reference to the appellant's evidence or arguments set out in. The FTT simply stated that there was insufficient evidence from the respondent and took the matter no further [16]. The FTT ought to have gone on to make a finding and decision on that issue which was relevant to the appellant's human rights claim. If the FTT found that there was insufficient evidence (there were two generic witness statements from Millington and Collings) then it should have made findings accordingly having applied the burden of proof required in such cases. The FTT made no further reference to that issue but it was relied on by the respondent and accordingly should have been determined. It is for that reason as argued in the grounds of appeal that I have decided that the FTT erred. The FTT made its decision concluding that there was a dearth of evidence to show that there were insurmountable obstacles to their integration in Bangladesh, and to that extent the question of materiality is relevant. I have decided that the appellants should have the opportunity to have the issue of Suitability properly determined.

Decision

11. There is a material error of law in the decision which shall be set aside. The matter shall be remitted for oral hearing at Taylor House (excluding FTJ Carroll).

Signed Date 17.4.2019

GA Black
Deputy Judge of the Upper Tribunal