



**Upper Tribunal  
(Immigration and Asylum Chamber)      Appeal Number: HU/15808/2016**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On December 21, 2018**

**Decision      &      Reasons  
Promulgated  
On January 18, 2019**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE ALIS**

**Between**

**MR RAJU MIAH  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr M Islam, Solicitor

For the Respondent: Mr P Duffy, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant claimed to have entered the United Kingdom in April 1999 and on July 13, 1999 he applied for leave to remain but this application was refused on March 3, 2010. On February 11, 2015 he was encountered and served with form IS151A and on May 20, 2015 he made a human rights claim. The respondent refused this application on May 26, 2015 and on June 3, 2015 he appealed that decision and following a hearing his appeal rights were deemed exhausted.

2. On February 19, 2016 he lodged an application to remain via the family/private life route, but this was refused by the respondent on June 14, 2016. The appellant appealed this decision on June 23, 2016 under Section 82(1) of the Nationality, Immigration and Asylum Act 2002 and his appeal came before Judge of the First-tier Tribunal Boyes on November 23, 2017 who in a decision promulgated on January 17, 2018 dismissed the appellant's appeal on the following grounds:
  - (a) He did not accept the appellant and Ms [NB] were in a genuine and subsisting relationship.
  - (b) There were no very significant obstacles to his reintegration into Bangladesh.
  - (c) There were no compelling circumstances justifying a grant of leave outside of the Immigration Rules.
3. Grounds of appeal were then lodged with the Tribunal on February 1, 2018 but Judge of the First-tier Tribunal Lever refused permission to appeal on July 12, 2018. Permission to appeal was renewed on August 16, 2018 and Upper Tribunal Judge Canavan granted permission to appeal finding it arguable the Judge failed to give adequate reasons for rejecting the witness evidence or make credibility findings in relation to whether the appellant and his partner were in a genuine subsisting relationship. However the Judge cautioned that such an error may not be material as the appellant would have to show there were insurmountable obstacles to family life continuing outside the United Kingdom given the fact he had resided here unlawfully throughout his time in this country.
4. No anonymity direction is made.

### **SUBMISSIONS**

5. Mr Islam submitted that the sponsor's daughter and two friends had attended and given evidence and had provided witness statements. The Judge had not given any reasons why the witness evidence did not tip the balance or make any specific findings about their evidence. The Judge was required to give reasons for rejecting evidence and he submitted that the Judge had failed to do this. The Judge's finding was that the Judge held against the appellant the fact that he may have been assisting Ms [NB] for pay bills etc. and this may well have influenced how he felt about the relationship that was said to exist between the appellant and Ms [NB] but he failed to consider why or how their witnesses may have been involved in this scheme. Mr Islam also raised the issue that the sponsor was undergoing dialysis and although this did not appear to have been fully highlighted to the Judge at the hearing this could also have amounted to insurmountable obstacles. The Judge also failed to give due weight to the fact that the appellant had family in this country. Whilst accepting there were inconsistencies between the evidence of the appellant and sponsor he submitted the error of law centred on the failure to consider the evidence of the witnesses as stated above.

6. Mr Duffy responded to those submissions and stated there was no evidence that any insurmountable obstacles were advanced and to meet the Immigration Rules under Section EX.1 of Appendix FM of the Immigration Rules this had to be shown. He argued the Judge did consider the evidence in the round and the appellant lacked knowledge in important areas about his and the sponsor's relationship and the Judge took those inconsistencies and lack of knowledge into account when considering credibility. The Judge did note the witnesses, who attended and gave oral evidence and provided witness statements, did support the appellant's case but he referred to paragraph 38 of the decision when effectively the Judge rejected their evidence against the background of the inconsistencies. He submitted this was a matter for the Judge and that the decision had been adequately reasoned but even if there had been an error he relied on the observations of Upper Tribunal Judge Canavan who had indicated that there was no evidence before the Tribunal of insurmountable obstacles and therefore the appeal was bound to fail in any event.
7. Mr Islam responded to those submissions referring to paragraphs 38, 39 and 42 of the Judge's decision. He pointed out that the Judge had incorrectly referred to the test in paragraph 276ADE(1)(vi) HC 395 by referring to insurmountable obstacles at paragraph 42 of the decision when in fact it should have been very significant obstacles. Mr Duffy submitted that this was a slip of the pen and the Judge had identified the correct test in paragraph 41 and observed that the test of insurmountable obstacles was a lower test in any event than the very significant obstacles test.

### **FINDINGS**

8. This is an appeal against the decision by the Judge to refuse the appellant's appeal on human rights grounds.
9. The key issue was whether or not there was a genuine and subsisting relationship and the Judge had to take into account not only the written and oral evidence of the appellant, his wife and witnesses but he also had to take into account inconsistencies that had been highlighted. Those inconsistencies can be found from paragraph 30 onwards in the Judge's decision.
10. The Judge had to decide whether the evidence of the appellant, his wife and the three witnesses outweighed the inconsistencies that arose in the hearing bearing in mind the respondent had raised the genuine and subsisting nature of the relationship.
11. It is argued by Mr Islam that the Judge had failed to make findings in respect of the evidence but looking at the evidence and in particular paragraphs 34 to 37 I am satisfied the Judge noted the evidence of the wife and the three witnesses and importantly at paragraph 38 recorded

the fact that the witnesses did support the claim the appellant and his wife were in a genuine and subsisting relationship.

12. The Judge then had to consider whether he accepted that evidence and as can be seen in paragraph 38 he did not, and he found the inconsistencies outweighed the other evidence.
13. It is argued that he should have given further reasons, but the Judge took the evidence of the three witnesses on face value and subsequently concluded that the inconsistencies outweighed their evidence and he then concluded in paragraph 49 that the appellant did not meet the requirements of paragraph E-LTRP1.7 of Appendix FM of the Immigration Rules.
14. The Judge did consider the issue of the relationship and whilst he could have given more reasons for not accepting the evidence it is clear from paragraph 38 he did not accept the evidence put forward by the appellant and his wife because there were significant inconsistencies in that evidence. That finding was open to the Judge and therefore his core finding that they were not in a genuine and subsisting relationship was open to him.
15. I do not go on to deal with the issue of insurmountable obstacles because that, as has been accepted at the hearing before me, would only arise if there had been an error in respect of the genuine and subsisting relationship finding. However, I do note the lack of evidence in the appellant's bundle of such obstacles.
16. The next issue that was tentatively raised at the hearing related to paragraph 42 and that is the private life claim that was advanced. There was little or no evidence of this private life and whilst I accept the point Mr Islam advanced in relation to the appropriate test to apply I am satisfied the correct test was properly recorded at paragraph 41 of the decision and I accept the point advanced by Mr Duffy that it was probably a slip of the pen rather than the application of an incorrect test.
17. Turning finally to the consideration outside of the Rules it seems to me that this whole appeal centred around the genuine and subsisting nature of the relationship and on the basis of the Judge's finding the findings made under Article 8 were clearly open to the Judge.

### **NOTICE OF DECISION**

18. I therefore dismiss the appeal.

Signed

Date

10/01/2019

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Deputy Upper Tribunal Judge Alis

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

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date 10/01/2019

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Deputy Upper Tribunal Judge Alis