



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/15968/2017**

THE IMMIGRATION ACTS

**Heard at: Field House
On: 27 February 2019**

**Decision and reasons
Promulgated
On: 14th March 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHANA

Between

MS TAHMINA AKTER

**Appellant
(anonymity direction not made)**

and

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

Representation:

For the appellant: Mr M Bhuiyan, Legal Representative
For the respondent: Mr L Tarlow, Senior Presenting Officer

DECISION AND REASONS

1. The appellant born on 1 January 1983, a citizen of Bangladesh appealed against the decision of the respondent dated 29 October 2017 for entry clearance to enter the United Kingdom as the spouse of a person present and settled in the United Kingdom in accordance with the immigration rules. First-tier Tribunal Judge Sullivan dismissed the appellant's appeal.
2. The appellant's permission to appeal to the Upper Tribunal was granted by First-tier Tribunal Judge O'Brien who stated that it is arguable that the Judge has fallen into error by failing to consider the appellant and her

spouses situation holistically as to whether Article 8 of the European Convention on Human Rights was engaged because the appellant satisfied the requirements of Appendix FM and therefore that would signify that refusal was disproportionate.

3. The First-tier Tribunal Judge Sullivan dismissed the appellant's appeal and stated that the appellant and the sponsor share family life for the purposes of Article 8. The Judge stated at paragraph 13, "I am satisfied that there is a genuine and subsisting relationship between them and that they intend to live together as spouses". The judge concluded that having considered all the evidence he finds that the refusal does not interfere with the right to respect for family life pursuant to Article 8 because the appellant and the sponsor have lived together in Bangladesh and there is nothing to show that it would be unreasonable or harsh for them to do so again.
4. The appellant's legal representative submitted at the hearing that the appellant satisfied appendix FM of the immigration rules and that the only issue taken by the respondent was whether the marriage was subsisting and genuine. He submitted that the Judge having found that it was subsisting and genuine, fell into legal error by considering Article 8 in refusing the appellant's appeal.
5. Mr Tarlow accepted that the appellant had satisfied Appendix FM of the immigration rules and that had been the only issue raised in the reasons for refusal letter as to whether the appellant and her sponsor's marriage was subsisting and genuine. He accepted that there was no need for the Judge to have gone on to consider Article 8 given that the appellant had satisfied the requirements of the immigration rules to be granted entry clearance to join her sponsor in the United Kingdom.
6. I agree with the very sensible and fair submissions made by Mr Tarlow that the appellant has met the requirements of the immigration rules and that her marriage to the sponsor was found to be genuine and subsisting and that they intend to live together in the United Kingdom as spouses. The Judge by then considering Article 8 of the European Convention on Human Rights and refusing the appeal was a material error.
7. I find that this is a material error of law in the decision of the First-tier Tribunal and I set it aside. I remake the decision and allow the appellant's appeal under the Immigration Rules.

DECISION

The appellant's appeal is allowed under the immigration rules.

Signed by

A Deputy Judge of the Upper Tribunal
2019

Dated this 12th day of March

Ms S Chana