Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/18890/2018

THE IMMIGRATION ACTS

Heard at Cardiff Civil Justice Centre	**Decision & Reasons Promulgated**
On 10 October 2019	**On 21 October 2019**

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

YEASMIN AKTER
(anonymity direction not made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr A Burrett instructed by City Heights Solicitors
For the Respondent: Mr C Howells, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The appellant is a citizen of Bangladesh who was born on 15 January 1983. She entered the United Kingdom on 26 October 2009 with entry clearance as a Tier 4 (General) Student with leave valid from 24 August 2009 until 13 April 2013.

2. On 12 April 2013, the appellant applied for leave to remain as a Tier 4 (General) Student and was subsequently granted leave until 22 April 2014.

3. On 22 April 2014, the appellant applied for further leave as a Tier 2 (General) Migrant. That application was refused on 7 December 2015. The appellant appealed but her appeal to the First-tier Tribunal was dismissed on 9 May 2017. Subsequent applications for permission to appeal to the Upper Tribunal were refused by the First-tier Tribunal and Upper Tribunal on 6 December 2017 and 30 May 2018 respectively. The appellant became appeal rights exhausted on 18 June 2018.

4. On 12 June 2018, the appellant made a further application for leave to remain under Appendix FM of the Immigration Rules (HC 395 as amended) and Art 8 of the ECHR.

5. That application was based upon her marriage to Majharul Islam Rony ("the sponsor") whom she had married in the UK on 30 March 2010. At that time, the sponsor was a Bangladesh citizen who had been granted indefinite leave to remain on 20 March 2017. Subsequently, the sponsor became a British citizen by naturalisation on 27 November 2018.

6. On 31 August 2018, the Secretary of State refused the appellant's application for leave under Appendix FM and under Art 8 of the ECHR. The basis of the decision under the Rules was that, although the appellant met the eligibility requirements in s. E-LTRP of Appendix FM, she did not meet the 'suitability requirements' in s. S-LTR.4.2 as the Secretary of State was satisfied that the appellant had submitted a fraudulently obtained TOEIC certificate with her application for further leave as a Tier 4 (General) Student in April 2013. The Secretary of State was, therefore, satisfied that she had used deception in making that application. As a result, the appellant could not succeed under the 'partner' rules in Appendix FM or under para 276ADE(1). Further, the Secretary of State concluded that the refusal of leave would not result in 'unjustifiably harsh consequences' to the appellant or her family so as to justify the grant of leave outside the Rules under Art 8.

The Appeal to the FtT

7. The appellant appealed to the First-tier Tribunal. In a determination sent on 2 April 2019, Judge M Dorrington allowed the appellant's appeal under Art 8 of the ECHR.

8. In reaching that decision, the judge accepted, as had the judge in the earlier appeal, that the appellant had submitted a fraudulently obtained TOEIC certificate and had therefore practised deception in applying for leave as a Tier 4 Student in April 2013. In addition, the judge, again as had the judge in the earlier appeal, accepted that the appellant had used deception on another occasion, namely in her Tier 2 application in April 2014, when she had submitted a false Certificate of Sponsorship.

9. Nevertheless, Judge Dorrington was satisfied that the appellant met the 'partner' rules in Appendix FM, despite not meeting the suitability requirement due to her deception, because para EX.1 applied as there were 'insurmountable obstacles' to the appellant and her husband continuing their family life in Bangladesh. As the appellant met the requirements of the Rules, the judge concluded that her removal would breach Art 8 of the ECHR.

10. In addition, the judge found that, in any event, there were 'compelling reasons' such that the public interest was outweighed and the appellant's removal would be disproportionate.

The Appeal to the UT

11. On 1 May 2019, the First-tier Tribunal (Judge Gumsley) granted the Secretary of State permission to appeal to the UT.

12. On 11 July 2019, the appellant's appeal was heard in the Upper Tribunal. In a decision sent on 12 August 2019, DUTJ JFW Phillips concluded that the First-tier Tribunal had materially erred in law in allowing the appellant's appeal under Art 8 and set the decision aside.

13. Judge Phillips found that the FtTJ had erred in concluding that the appellant met the requirements of the 'partner' rules in Appendix FM because para EX.1 applied. Judge Phillips identified that para EX.1 could not condone a failure by an individual to meet one of the 'suitability' requirements only a failure to meet one of the 'eligibility' requirements. Consequently, Judge Dorrington had been wrong in law to allow the appellant's appeal under Art 8 on the basis that, given that she met the requirements of the Immigration Rules, it would be disproportionate to remove her.

14. Further, Judge Phillips concluded that the judge's reasoning in allowing the appeal, in any event, outside the Rules was inadequately reasoned.

15. Judge Phillips adjourned the appeal in order that the decision in respect of Art 8 could be remade in the Upper Tribunal.

The Resumed Hearing

16. Following a transfer order, the appeal was relisted before me on 10 October 2019 in order to remake the decision in respect of Art 8.

17. At the hearing, the appellant was represented by Mr Burrett and the respondent by Mr Howells.

18. Without objection from Mr Howells, Mr Burrett invited me to allow the appellant and her husband to give brief oral evidence on the implications for them of the appellant (and the sponsor) returning to Bangladesh. Mr Burrett accepted that there were no additional witness statements but, during the course of their respective oral evidence, he drew my attention to the witness statement of the appellant and sponsor in the First-tier bundle at pages 23–29 and 30–33 respectively both dated 1 March 2019.

19. In addition, again during the course of the evidence, Mr Burrett provided me with a letter from the appellant's GP (Dr Howgrave-Graham) dated 27 September 2019.

20. Mr Howells indicated that he had no objection to any of this evidence being admitted and, as a consequence, I agreed to admit all the new evidence under rule 15(2A) of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698 as amended).

21. As a consequence, the appellant gave brief oral evidence, in the absence of the sponsor. Thereafter, the sponsor returned to court and also gave oral evidence. I then heard submissions from Mr Howells and Mr Burrett respectively.

The Law

22. It was common ground between the parties that the appellant could only succeed under Art 8 outside the Rules.

23. Mr Burrett accepted the judicial findings in the earlier appeal and by Judge Dorrington in the present appeal that the appellant had practised deception on two occasions when making her applications for further leave in April 2013 and April 2014 by submitting a fraudulently obtained TOEIC certificate and Certificate of Sponsorship respectively. He accepted, therefore, that the appellant failed to meet the 'suitability' requirement in S-LTR.4.2 of Appendix FM. As a consequence, she could not rely upon the 'partner' Rule or para 276ADE(1) and a claim based upon her private life under that Rule.

24. Article 8.1 of the ECHR provides that:

> "Everyone has the right to respect for his private and family life, his home and his correspondence."

25. Article 8.2 provides that:

> "There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in … the economic wellbeing of a country [and] for the prevention of disorder or crime….".

26. In approaching the application of Art 8 the applicable structure is set out in the well-known five-stages in R (Razgar) v SSHD [2004] 2 AC 368 at [17] as follows:

    (i) Will the proposed removal be an interference by a public authority with the exercise of the applicant's right to respect for his private or family life?

    (ii) If so, will such interference have consequences of such gravity as potentially to engage the operation of Art 8?

    (iii) If so, is such interference in accordance with the law?

    (iv) If so, is such interference necessary in a democratic society for one or more of the listed legitimate aims?

    (v) If so, is such interference proportionate to the legitimate public end sought to be achieved?

27. In determining whether any interference with an individual's private and family life that engages Art 8.1 is justified, the issue of proportionality requires that a "fair

balance" is struck between "the rights of the individual and the interests of the community" (see Razgar at [20]). The former includes the rights of those with whom the appellant has established family life (see Beoku-Betts [2008] UKHL 39).

28. In striking that fair balance, the Tribunal is addressing the 'public interest question' as defined in s.117A(3) of the Nationality, Immigration and Asylum Act 2002 (the 'NIA Act 2002') and the Tribunal "must …have regard" to the considerations listed in s.117B (in respect of which see, in particular Rhuppiah v SSHD [2018] UKSC 58).

29. So far as relevant to this appeal those considerations are set out in s.117B(1)–(5) as follows:

> "**117B Article 8: public interest considerations applicable in all cases**
>
> (1) The maintenance of effective immigration controls is in the public interest.
>
> (2) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are able to speak English, because persons who can speak English—
>
> (a) are less of a burden on taxpayers, and
>
> (b) are better able to integrate into society.
>
> (3) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are financially independent, because such persons—
>
> (a) are not a burden on taxpayers, and
>
> (b) are better able to integrate into society.
>
> (4) Little weight should be given to—
>
> (a) a private life, or
>
> (b) a relationship formed with a qualifying partner,
>
> that is established by a person at a time when the person is in the United Kingdom unlawfully.
>
> (5) Little weight should be given to a private life established by a person at a time when the person's immigration status is precarious.
>
> ..."

30. Where a person meets the requirements of the Immigration Rules, providing Art 8.1 is engaged, then a decision to refuse leave will be disproportionate (see TZ (Pakistan) v SSHD [2018] EWCA Civ 1109 at [34]).

31. By contrast, where an individual does not meet the requirements of the Immigration Rules, the Tribunal must accord 'considerable weight' to the fact that the appellant has not met the Rules which set out, at least prima facie, the balance to be struck between the individual circumstances and the public interest (see R (Agyarko and Another) v SSHD [2017] UKSC 11 at [47] and [56]–[57]).

32. Where relevant under para EX.1 of Appendix FM or when considering a claim outside the Rules, whether there are 'insurmountable obstacles' to family life continuing outside the UK will be an important factor (see Agyarko at [42]-[45]). That phrase must be understood in a "practical and realistic sense, rather than as referring solely to obstacles which make it literally impossible for the family to live together" abroad (see Agyarko at [43]). It requires that the individual will face "very serious hardship" or "very significant difficulties" in continuing family life outside the UK' (see Agyarko at [44] and [45]).

33. In striking the 'fair balance' under Art 8.2, and having regard to the considerations set out in s.117B and where an individual does not meet the requirements of the Rules, then in order for the public interest to be outweighed there must be 'unjustifiably harsh consequences' (see Agyarko at [45] and [48]).

34. In seeking to establish a breach of Article 8, the burden of proof is upon the appellant to establish on a balance of probabilities that Art 8.1 is engaged. Thereafter, it is for the Secretary of State to justify any interference under Art 8.2.

Discussion and Findings

35. It was common ground between the parties that Judge Dorrington's primary findings of fact set out in para [25] of his determination were preserved. So far as relevant to my consideration of the appeal they are set out as follows at para [25(i)] – [25(xxviii)]:

> "(i) The Appellant is a citizen of Bangladesh.
>
> (ii) She entered the UK on 26 October 2009 with a student visa. She has remained in the UK since that date.
>
> (iii) She met her husband, Mr Majharsul Rony, when they were both lawfully present in the UK and they married when they both had a lawful right to remain in the UK. The marriage was on 30 March 2010.
>
> (iv) They have lived together since being married. They were and remain in a genuine and subsisting relationship.
>
> (v) They have no children.
>
> (vi) The Appellant's husband was granted indefinite leave to remain in the UK on 20 March 2017.
>
> (vii) By the date of the appeal hearing he had already been granted full British Citizenship in November 2018. Previously he was a citizen of Bangladesh.
>
> (viii) At the date of the appeal hearing the Appellant had been in the United Kingdom for almost 10 years. Her husband had been in the United Kingdom for over ten years.
>
> (ix) On 22 April 2014 the Appellant ceased to have a lawful right to remain in the United Kingdom because her subsequent application to remain as a Tier 2 general migrant was refused by a decision of the Respondent dated 07 December 2015.

(x) The Appellant appealed that decision on 22 December 2015. That appeal was heard before First Tier Judge White on 19 April 2017 and was dismissed in a written decision dated 09 May 2017.

(xi) Since that date the only new evidence that was not before Judge White, but which was before me, relating to the substance of the appeal heard by Judge White was the British Citizenship of the Appellant's husband and the email that appears at pages 51-53 of the Appellant's bundle.

(xii) There was no reply to that email.

(xiii) The email at pages 51-53 of the Appellant's bundle does not advance her case in a way that was not already before Judge White.

(xiv) The Appellant argued that her photograph taken on the day of the English Test in 2013 was consistent with the time of year and that the evidence from her and her husband was such that I should find she had not used deception in her immigration journey. However, the photograph only demonstrates she attended the English test. That does not prove she took the test. In that respect it would not be probable for a proxy to attend and be photographed in the stead of every person who they were standing in for that day. That would attract immediate suspicion. In reality the actual person would, I find, have to attend and then the proxy could undertake the test for them. The photograph carries little, if any, meaningful weight.

(xv) She also argued that the evidence before me showed, on balance, that she had not used any form of deception. However this misses the most important point, like the reliance on the photograph. All of this evidence (save the two matters detailed above) was before Judge White at the previous First Tier Tribunal.

(xvi) In considering the principles set out in the appeal case of **Devaseelan** (see paragraph 22 above) I was satisfied, on the balance of probabilities, that the findings of Judge White have not, and should not, be displaced. In that respect the Appellant did use deception on two occasions in her immigration journey.

(xvii) Neither the Appellant nor her husband have been convicted of any criminal offences since entering the UK either before or after the last First Tier Tribunal.

(xviii) The Respondent accepts that the Appellant meets all of the suitability requirements in her instant application for leave to remain except under Appendix FM paragraph S-LTR.4.2 namely that she has previously made false representations.

(xix) However the provisions under paragraph S-LTR.4.1. of Appendix FM to the Immigration Rules are not a mandatory reason for refusal. They state "The applicant **may** be refused on grounds of suitability if any of paragraphs S-LTR.4.2 to S-LTR.4.5. apply." [emphasis added]. The decision maker is therefore afforded discretion.

(xx) Since the Appellant arrived in the UK I was satisfied that she had integrated herself into UK society. As far as I can see she had only returned to Bangladesh on one occasion in 2012.

(xxi) The Appellant had obtained numerous qualifications (albeit obtained before the decision of Judge White and the certificates of those qualifications were before Judge White) including a bachelor's degree from the University of Sunderland and a BTEC Level 5 HND Diploma from the St Peter's College of London. She had taken and passed, in Bangladesh, an International English language test in December 2008 and it was clear from the hearing and from the papers before me that her understanding and speaking of English was very good.

(xxii) I am satisfied that the only reason why the Appellant has not worked since 22 April 2014 is because from that date she has not had a lawful right to remain in the UK.

(xxiii) The Appellant's husband has been accepted as fully integrated into the United Kingdom as evidenced by the grant British Citizenship. He works in a responsible job as a manager and undertakes other activities for the good of society as a whole such as the giving of blood which he has done for many years.

(xxiii) He had to have an operation to his knee in 2010. He still needs physiotherapy but is able to walk and does so unaided. I find that neither the present condition of his health nor his ongoing health needs are such that they could not be provided for in Bangladesh to a reasonable standard.

(xxv) The Appellant and her husband have family in Bangladesh. They have only revisited the country once in 2012. I accept that their marriage in the UK was not made with the approval of their family which will have adversely affected their relationship with family members.

(xxvi) The Appellant and her husband have made friends in the UK. Those friends have been made and maintained over many years.

(xxvii) The Appellant and her husband still have friends in Bangladesh but the last time they visited the country was 2012. The Appellant's husband stated in oral evidence that they had "friends" (plurality used) in Bangladesh when answering questions asked by the Presenting Officer for the Respondent.

(xxviii) At all material times the Appellant and her husband have not avoided the Home Department authorities, they have not gone underground and they have always remained in contact with them."

36. Two points to notice from these preserved factual findings. First, the judge's finding in para [25(xvi)], that the appellant practiced deception on two occasions is accepted. Second, it was accepted by Mr Howells that, in fact, as a result of the appellant's appeal in December 2015, by virtue of s.3C of the Immigration Act, her leave did not

expire until 18 June 2018 (rather than as Judge Dorrington said in para 25(ix) on 22 April 2014) when she became appeal rights exhausted.

37. Turning now to Art 8. It was also accepted before me that both the appellant and the sponsor have established a private life in the UK. That is self-evidently correct given the length of time that they have both been in the UK - over ten years. The appellant in her evidence told me that she had worked initially in KFC as a waitress and then subsequently as a sales assistant in a petrol station for about a year. Her educational record shows that she had studied in the UK attaining, inter alia, a BA from the University of Sunderland (see para 25(xxi) of Judge Dorrington's findings set out above). Likewise, the sponsor has established private life in the UK. I accept his evidence, which was not challenged by Mr Howells, that he has been employed for ten years by Euro Garage Ltd (see para 14 of his witness statement). As I understood his evidence, he is employed by Subway and has recently been promoted and is a manager. In addition, Judge Dorrington's findings at para 25(xxvi) was that the appellant and her husband have many friends in the UK and that those friendships have been maintained over many years.

38. There is no doubt, therefore, that the appellant's removal would interfere with her private life in the UK as it would with the sponsor if he were to leave the UK to live in Bangladesh with the appellant.

39. I also accept that the appellant and sponsor have family life together. Their relationship is patently a genuine one as Judge Dorrington found in para 25(iv) set out above. That was also plain to me having heard both the appellant and sponsor give oral evidence before me.

40. Mr Howells, in his submissions, sought to contend that there would be no interference with the family life between the appellant and sponsor if he were to accompany her to Bangladesh if she were removed.

41. I do not accept that submission. First, it fails to take account of the very real dilemma faced by a couple, such as the appellant and sponsor, if one is removed from the UK. Both the appellant and sponsor were asked during their oral evidence whether the sponsor would accompany the appellant if she were removed. She said that they had "kept talking about this" and that "me and him cannot be separated". When it was asked whether she meant that he would therefore go with her, she replied that they did not have anywhere to go and that they would be on the streets in Bangladesh. She said, "I don't have any answer". The dilemma is readily apparent. Likewise, when the sponsor was asked about this and whether he would accompany the appellant, he said "I don't know". He said that they had been living together for nearly ten years and until recently they had not spent a single night apart. The sponsor also gave evidence why he would not wish to be in Bangladesh by giving up his life in the UK where he had lived and worked for over ten years and to return to Bangladesh where he had, in his view, no prospects of employment or family support. Again, the dilemma of a couple in the circumstances of the appellant and sponsor was readily apparent. That dilemma, in itself, creates the interference with

their family and private life in the UK. In VW (Uganda) v SSHD [2009] EWCA Civ 5 Sedley LJ said this (at [42]):

> "In many such cases, nevertheless, it is too much to ask of a decision-maker that he or she should form a confident or even a probabilistic view of what will follow a proposed removal or deportation in terms of family-breakup or continuity. The evidence may simply not make it possible. Some appellants will command belief when they say what they will do, so that the decision-maker can proceed to assess the proportionality of removal or deportation on a reasonably firm footing. Others may try to practise a form of emotional blackmail on a decision-maker, such that the latter does not know what in truth will happen if removal or deportation goes ahead. In yet other cases it may be clear that what the appellant says is the reverse of what he or she would in the event do. Many others may truthfully say that they do not know what they will do; or the decision-maker may conclude, whatever they say, that this is the case. In such cases it would be risky and unfair to demand that a decision-maker should treat what is at best an educated guess as a future fact. Here, in my judgment, it is the hardship of the dilemma itself which has to be recognised and evaluated."

42. I would particularly emphasise the final sentence that: "It is the hardship of the dilemma itself which has to be recognised and evaluated."

43. I accept that there is a very considerable hardship and dilemma which would be faced by the appellant and sponsor if she were removed. On the evidence before me, I am satisfied that the centre of both the appellant and sponsor's lives is in the UK. The latter's circumstances are exemplified by his earlier grant of ILR and that he is now naturalised as a British citizenship. I accept that his working life has been spent in the UK. Whilst, of course, the appellant's position has been, and remains, precarious, Judge Dorrington's unchallenged factual finding is that not only is the sponsor "fully integrated into the United Kingdom" (para 25(xxiii)) but also that the appellant has "integrated herself into UK society" (para 25(xx)). I agree with those findings based upon my assessment of the evidence, including the oral evidence of both the sponsor and appellant.

44. The dilemma is inescapable and I am unable to make a clear finding as to how it would be resolved if the appellant were removed. There is, however, a very real likelihood that the sponsor would remain in the UK causing a fracture in their living arrangements.

45. Secondly, bearing in mind the sponsor's roots in the UK as a British citizen and someone whose centre of life has relocated from Bangladesh to the UK over the last ten years, I am satisfied that it would not be reasonable to expect him to return to Bangladesh. In reaching that finding, I bear in mind Judge Dorrington's findings that the appellant and sponsor married without the approval of their families (para 25(xxv)). I heard oral evidence from both the appellant and sponsor that, in effect, their families have disowned them. They both told me about their last visit to Bangladesh in 2012 when they were unable to see their families because of this and that they stayed in hotels. They had called them from the airport but the families did not want to see them. I accept that evidence and I also accept the evidence that that

situation continues today. Neither the appellant nor sponsor would, therefore, have the support of their families if they returned to Bangladesh. I accept the sponsor's evidence that it is likely he would have difficulty in obtaining employment in Bangladesh. Even if that were only in the short term, without family support he and the appellant would be in difficulties. Although it was not explored before me, Judge Dorrington found at para 25(xxvii) that they had friends in Bangladesh but it has not been suggested that they would be able to obtain support from them.

46. Consequently, I find that it would not be reasonable to expect the sponsor to give up his life in the UK, now as a British citizen, and return to Bangladesh.

47. I find that Art 8.1 is engaged – the appellant's removal will, on a balance of probabilities, interfere with the family life of the appellant and sponsor and the private life in the UK of the appellant.

48. The focus of Mr Howells' submissions and those of Mr Burrett was on the issue of proportionality under Art 8.2.

49. Mr Howells relied upon the strong public interest under s.117B(1) given that the appellant had on two occasions practised deception.

50. He submitted that the appellant's private life should be accorded "little weight" under s.117B(5) as her immigration status had been precarious and there were no exceptional circumstances to justify a more flexible approach as recognised in Rhuppiah v SSHD [2018] UKSC 58 at [36] and [49].

51. Relying upon Lord Reed's judgment in Agyarko at [49]–[50], Mr Howells submitted that the appellant's family life had been established when it was known that the appellant's ability to remain in the UK as a spouse was precarious.

52. Mr Howells submitted that there was no basis for concluding that entry clearance would be granted to the appellant as any application was likely to be refused on suitability grounds.

53. Mr Howells submitted that even if their families had disowned them, and he invited me to treat the appellant's evidence with caution given her previous deceptions, there was no need for family support. There was no background evidence to support the contention, based upon the appellant and sponsor's evidence, that they would have difficulties in obtaining employment in the government sector or privately. Mr Howells submitted that the appellant is highly qualified and the sponsor has worked for ten years and there was no reason to believe he could not succeed in obtaining employment in Bangladesh.

54. Mr Howells reminded me that both spoke English and that both were in good physical health. As regards the appellant's mental health, and a supporting letter from her GP. Mr Howells submitted that her health issues was said to be largely based on a fear of being separated from her husband.

55. Mr Howells accepted that it would be difficult for them to go back but they were likely to be able to re-establish themselves and, applying Agyarko, they were not unjustifiably harsh consequences such that the public interest was outweighed.

56. Mr Burrett relied upon Judge Dorrington's primary findings of fact. He submitted that the appellant's private life and her family life with the sponsor (no reliance was placed upon family life with any other person in the UK) would be interfered with disproportionately.

57. He accepted that the Secretary of State was entitled to rely upon the appellant's deception on the two previous occasions but those deceptions were, in his words, "to some extent historic". They also predated the appellant's marriage on 30 March 2010.

58. Mr Burrett submitted that the appellant had had lawful leave throughout until June 2018 although he did accept that had the deception been known or not practised then the appellant would not have had that leave.

59. He submitted I should have regard to the fact that the appellant would not be able to obtain entry clearance because she would not meet the suitability requirement nor, indeed, if the sponsor returned to Bangladesh with her was she likely to meet the financial requirements as he would no longer be working in the UK.

60. Mr Burrett accepted that the sponsor's British citizenship was not a trump card but it was an important factor. Their ties were in the UK and not in Bangladesh and he relied upon the lack of family support in Bangladesh as exemplified by the inability to contact their families when they went to Bangladesh in 2012. He submitted that the sponsor was effectively being forced to leave the UK and lose everything here. It would be unreasonable to expect him to do so and disproportionate for the appellant to be removed.

61. In carrying out the 'fair balance' under Art 8.2, I carry forward the findings of fact I have already made together with those preserved findings of Judge Dorrington set out above at para 34. The issue of 'proportionality' is finely balanced.

62. I begin with the public interest. That is undoubtedly engaged in this appeal. It is not restricted to the fact that the appellant cannot meet the requirements of the Rules. As Mr Howells submitted, there is a strong public interest in the appellant's removal given the two incidents of deception which she practised in April 2013 and April 2014 in making applications for leave to remain. I accept that characterisation. The fact that the appellant has not subsequently committed any further acts of deception or has otherwise led an exemplary life in the UK does not, in my judgment, diminish that public interest. Although, those factors may weigh on the positive side in striking the fair balance against the public interest.

63. I, therefore, proceed to consider the circumstances of the appellant and sponsor to be weighed against that strong public interest.

64. I accept, however, Mr Howells' submission that as regards the parties' private life, s.117B(5) applies as the appellant's immigration status was 'precarious' (and has always been precarious) and so is entitled to 'little weight'. Mr Burrett did not identify any exceptional or other circumstances which might justify a more flexible approach to the application of s.117B(5). That does not mean, of course, that the impact upon their private lives should be given no weight at all. The case, in my judgment, turns principally on the impact upon the appellant and sponsor's family life.

65. As I have already found, I accept that the centre of both the appellant and sponsor's lives is now in the UK. The sponsor is a British citizen and that is an important factor in determining first, whether he should be expected to return to Bangladesh and, secondly in recognising that their marriage has progressed from being one between two individuals who require permission to remain in the UK to a marriage where one of the individuals has a right of abode in the UK. I accept, as did Judge Dorrington, that both the appellant and sponsor are integrated into life in the UK.

66. I accept that the appellant and sponsor have been disowned by their families in Bangladesh because their marriage was not approved by them. The consequence of that is that neither the appellant nor the sponsor will be able to obtain any support, financial or otherwise from their families in Bangladesh. I find that, in effect, they will be 'left to their own devices' in finding accommodation, work or surviving if the appellant is returned to Bangladesh (including if she is accompanied by the sponsor). I accept Mr Burrett's submission that the effect of the appellant's removal might force the sponsor to return there with her. At least, that is the inescapable dilemma that he would face, given the genuineness of their relationship, which I entirely accept.

67. As I have already found, having regard to all the circumstances, it would not be reasonable to expect the sponsor to give up his life in the UK bearing in mind that he is now a British citizen and rooted in the UK. I have concluded that not only would it be unreasonable for the sponsor to have to relocate to Bangladesh, there are, in the sense used in Agyarko, "insurmountable obstacles" to their family life continuing there. The impact upon the appellant and sponsor of returning to a country which is no longer the base of their lives, both having integrated into life in the UK, would present "very significant difficulties" and result in "serious hardship".

68. Although both gave evidence of the age limit for government employment in Bangladesh (around 30), there was no evidence of this presented in any background documents and I decline to speculate on something that could have, if it is the case, been established by evidence (see GM (Sri Lanka) v SSHD [2019] EWCA Civ 1630 at [30]). However, I do accept their evidence that they will be presented with difficulties, likely to be considerable and significant, in establishing themselves and supporting themselves on return. That is a matter of common-sense given their 10-year absence from Bangladesh and their lack of any familial or other support on return. I also bear in mind that the reality of the couple's dilemma if the appellant is removed is that the sponsor may be forced to relinquish his life in the UK, formed

over a period of ten years, including his employment and his rights and entitlements as a British citizen.

69. I accept Mr Howells' submission that their family life was established whilst it was known to both of them that the appellant's status, and ability to carry on her family life in the UK, was precarious. However, even in such circumstances, as the Supreme Court acknowledged in Agyarko, where there are "unjustifiably harsh consequences" then the public interest may nevertheless be outweighed (see paras [45] and [48] and GM (Sri Lanka) at [38]–[40] and [46]–[49]).

70. I am satisfied on the evidence before me that the appellant and sponsor have, in effect, lost any significant ties with Bangladesh. The sponsor has, self-evidently from his evidence, made the UK his home. Whilst they may retain cultural or linguistic connections with Bangladesh, in reality (and that is the correct focus of any assessment) they have both relocated from Bangladesh, integrated into society in the UK and, in the absence of any family to whom they could turn in Bangladesh, have no real connection with Bangladesh anymore. Both the sponsor and appellant lead an exemplary life in the UK. The appellant has, as Judge Dorrington found in para 25(xxviii) of his determination, always remained in contact with the immigration authorities.

71. For all these reasons, and carrying forward my assessment of the evidence and my findings above, I am also satisfied that the impact of the appellant's removal will have 'unjustifiably harsh' consequences for her and the sponsor – whether by separation or if he resolves the dilemma they face and returns with her to Bangladesh. The prospect of her gaining entry clearance is unlikely (as Mr Howells acknowledged) given her previous deception and that, if the sponsor returns to Bangladesh, she is also unlikely to be able to satisfy the financial requirements of the Rules. Her relocation to Bangladesh is, therefore, likely to be for some time.

72. Whilst I take fully into account the strong public interest relied upon by the Secretary of State, for the reasons I have given, I am satisfied that the appellant and sponsor (if he were to return with her to Bangladesh) would face very significant difficulties and serious hardship in Bangladesh. The impact on them of prolonged separation would also be unjustifiably harsh. Their circumstances, if the appellant were removed, would in my judgment amount to "unjustifiably harsh consequences" of sufficient compulsion to outweigh the strong public interest reflected in the appellant's previous deceptive conduct and in the need for effective immigration control.

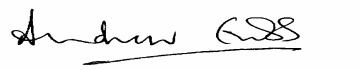
73. Carrying out the "fair balance" under Art 8.2, and taking into account the relevant factors under s.117B, I am satisfied that the public interest is outweighed and that the appellant's removal would be disproportionate and a breach of Art 8 of the ECHR.

Decision

74. The decision of the First-tier Tribunal was set aside by DUTJ Phillips' decision sent on 12 August 2019.

75. I remake the decision allowing the appellant's appeal under Art 8 of the ECHR.

Signed



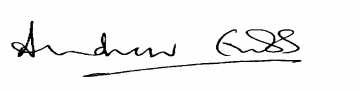
A Grubb
Judge of the Upper Tribunal

17 October 2019

TO THE RESPONDENT
FEE AWARD

Judge Dorrington, in previously allowing the appeal, made a whole fee award of £140. I see no reason to differ from that award which I also make.

Signed



A Grubb
Judge of the Upper Tribunal

17 October 2019