



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

Appeal Number: HU/19198/2016

THE IMMIGRATION ACTS

**Heard at Centre Tower, Birmingham
On 4 December 2018**

**Decision & Reasons
Promulgated
On 28 January 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE O'RYAN

Between

**Mrs NURUN NAHAR
(ANONYMITY ORDER NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Islam of Fountain Solicitors

For the Respondent: Mrs Aboni, Senior Home Office Presenting Officer

DECISION AND REASONS

- 11 This is the appellant's appeal against the decision of First-tier Tribunal Judge Hetherington dated 17 August 2017, dismissing the appellant's appeal against the respondent's decision of 27 July 2016 refusing her leave to remain and refusing her human rights application.

- 2 The appellant is a national of Bangladesh, who arrived in the United Kingdom on 12 May 2010 in possession of entry clearance as a visitor. She had applied for that entry clearance on 27 January 2010, and it was issued on 23 March 2010, and was valid until 23 September 2010. The appellant was at one point married to a Mr Md Arif Hossain, who also applied on 27 January 2010 for entry clearance, and which was also granted on 22 March 2010. The circumstances of how that marriage ended were unclear to the judge.
- 3 The details of the appellant's further immigration history are set out in the respondent's decision letter. On 20 December 2013 she applied for leave to remain under family/private life grounds, which was refused with no right of appeal on 15 May 2014. It is not said in the decision letter what family life she had relied upon in that application. On 28 January 2015, the appellant applied for leave to remain under Article 8 ECHR. This was refused on 20 March 2015. It would appear that the appellant was granted a right of appeal against that decision, as there is reference in a later letter dated 15 March 2016 from the appellant's then representatives, Kingswood solicitors, that the appellant had an appeal which came before judge of the First-tier Tribunal Watson on 3 September 2015, and it was alleged that certain findings were made within that decision, although the appeal was dismissed. Although no copy of that decision appears to have been before the present judge, it seems apparent that the appellant was, in 2015, relying on her marriage to a Mr Khaled Ahmed, a British national.
- 4 In her March 2016 application for leave to remain in relation to her marriage to Mr Ahmed, the appellant argued that they had a genuine and subsisting relationship, Mr Ahmed suffered from various disabilities, and there were very significant obstacles to family life continuing outside of the United Kingdom.
- 5 In the decision letter of 27 July 2016, the respondent accepted (page 3 of 8) that the appellant had a genuine and subsisting relationship with her British partner, but that the requirements of section EX.1(b) were not satisfied, on the basis that there were no insurmountable obstacles to family life continuing outside the UK.
- 6 The appellant's subsequent appeal came before the judge on 15 August 2017. Copies of two entry clearance applications, relating to the appellant and her former husband Mr Hossain, were filed. Although Mrs Aboni stated that there was nothing in the Presenting Officer's notes to confirm that it had been Mr Hogg, the Presenting Officer who appeared before the judge, who had filed that evidence, it seems likely that it was.
- 7 It is apparent that there was cross examination of the appellant regarding her previous relationship with Mr Hossain, her reasons for coming to the United Kingdom, and the timing of and circumstances in which a relationship with Mr Ahmed came about. Her evidence was that

her marriage to Mr Ahmed was arranged, with a religious ceremony taking place on 13 August 2010 (which the judge noted was just over three months after her arrival in the UK as a visitor) and they underwent a civil marriage on 22 August 2013.

- 8 The judge made findings which included the following:
- (i) the appellant's visa application in 2010 was 'deceptive' [24];
 - (ii) the evidence of the appellant and Mr Ahmed was inconsistent about where they had met [25];
 - (iii) the appellant should not be regarded as having given a truthful account; she was not credible, she was a mountebank; she was an unimpressive and inherently unreliable witness whose evidence was transparently and calculatingly dishonest [29];
 - (iv) the appellant was an economic migrant who entered the UK and in an opportunistic manner, to bolster her decision to remain in the UK, cynically looked for a man with whom to form a relationship, and found Mr Ahmed; the relationship was contracted for reasons other than that of relationship, family or love; the appellant was Mr Ahmed's unpaid helper in exchange for a roof over her head; the marriage was not genuine [29];
 - (v) 'even if I am wrong' (although it is not clear precisely what issue the judge was here proposing to consider in the alternative), when considering whether there were insurmountable obstacles to a family life continuing outside of the UK [32], neither the appellant nor Mr Ahmed spoke English; Mr Ahmed knew the language and customs of Bangladesh; the judge rejected the appellant's assertion that she had no family in Bangladesh, although the judge here appears to rely on his previous adverse credibility finding in relation to her evidence, and therefore it again not being clear on what basis this allegedly alternative consideration was being made);
 - (vi) (after taking into account considerations set out in s.117B(2)-(5) NIAA 2002 at [34]-[37]) there were no compelling circumstances to warrant a departure from the immigration rules [39]; the appellant's removal from the United Kingdom was proportionate, as was a temporary separation to enable her to make an application for entry clearance [40].

9 The appeal was dismissed.

10 The appellant applied for permission to appeal in grounds dated 1 September 2017, arguing that the judge erred in law, in summary, as follows:

- (i) by proceeding unfairly, the genuineness of the relationship between the appellant and Mr Ahmed not having been an issue raised by the respondent in the decision letter;

(ii) failing to have adequate regard to the evidence in relation to Mr Ahmed's disabilities and his care requirements.

- 11 Permission to appeal was granted by Judge of the First tier Tribunal Swaney on 31 January 2018 on the grounds that the judge may have proceeded unfairly in failing to put to the appellant at the hearing that the genuineness of her relationship was in dispute.
- 12 Before me it was conceded by Mrs Aboni after a short deliberation that the judge proceeded unfairly. Irrespective of what may or may not be contained in the findings made by Judge Watson in the unseen decision from 2015, the position adopted by the respondent in the decision letter of 27 July 2016 was clearly that the appellant had a genuine and subsisting relationship with Mr Ahmed.
- 13 It is not entirely clear what submissions were made by Mr Hogg before the judge; these are not recorded at [20].
- 14 I find it was an appropriate concession for Mrs Aboni to make, given the way in which the respondent's case was framed within the decision letter, that the judge proceeded unfairly by taking issue with the proposition that the appellant had a genuine and subsisting relationship with her husband. Even if Mr Hogg had submitted copies of the entry clearance applications and asked some questions about the reasons why the appellant first came to the United Kingdom, is not sufficiently clear to me that the appellant was firmly put on notice that the genuineness of her relationship with Mr Ahmed was being disputed, either by the respondent or by the judge directly. The appellant had prepared her case on the basis of the matter being accepted by the respondent in the decision letter.
- 15 Further, the judge's purported consideration of matters in the alternative was not in truth to take matters properly in the alternative, given that his adverse credibility findings in relation to the appellant's evidence affected his approach to whether or not there were insurmountable obstacles to family life continuing outside of the United Kingdom.
- 16 I therefore set aside the judge's decision.
- 17 Mr Islam suggested that the remaking of this appeal may be retained within the Upper Tribunal. However, although Mrs Aboni had accepted that the appellant had not been given sufficient notice that the genuineness of her relationship with Mr Ahmed was being challenged in the First tier hearing before the judge, she wished that it be recorded that it was now the respondent's intention, when the appeal is reheard, to dispute that the appellant is in a genuine and subsisting relationship with Mr Ahmed. She stated that such matters could properly be raised as a result of the information derived from the entry clearance applications, and the apparent existence of children from the appellant's previous marriage, mentioned in those applications.

- 18 Mr Islam did not argue that the respondent ought not be permitted to withdraw any concession contained within the decision letter; rather he simply indicated that upon the appeal being re-heard, the appellant would invite a positive finding from the Tribunal based on the evidence of the appellant's relationship with Mr Ahmed from 2010 onwards.
- 19 I find, in circumstances where the genuineness of the appellant's relationship with Mr Ahmed is now being disputed by the Respondent, that the degree of fact finding that will be required in the re-hearing of the appeal is such that the matter is suitable for remittal to the First tier Tribunal.
- 20 However, I am of the view that the respondent ought to be required to set out its case in relation to the appellant's relationship in more detail. To that end, I make the following decision, and give the following directions.

Decision

The judge's decision involved the making of a material error of law.

I set aside the judge's decision.

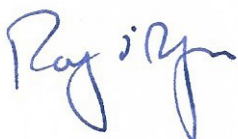
I remit the matter to the First tier Tribunal for re-hearing.

Directions

- (i) The respondent is directed to provide to the appellant within 28 days of this decision being sent to the parties, a position statement setting out the legal basis on which the appellant's application for leave to remain in the UK is now disputed, with reasons.
- (ii) The appeal shall be listed for hearing, not before 56 days after this decision is sent to the parties.
- (iii) The parties are to ensure that the decision of Judge of the First tier Tribunal Watson in appeal reference IA/14007/2015 is before the Tribunal for the re-hearing of the appeal.

Signed:

Date: 21.1.19



Deputy Upper Tribunal Judge O'Ryan