



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

Appeal Number: HU/25032/2018

THE IMMIGRATION ACTS

**Heard at FIELD HOUSE
On 12th June 2019**

**Decision & Reasons Promulgated
On 20th June 2019**

Before

**DEPUTY JUDGE OF THE UPPER TRIBUNAL
G A BLACK**

Between

**MR MD SHAMSUZZAMAN
NO ANONYMITY ORDER MADE**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S. Bisson (Counsel)

For the Respondent: Mr C. Tarlow (Home Office Presenting Officer)

ERROR OF LAW DECISION AND REASONS

1. This is an error of law hearing. The appellant appeals against the decision of the First-tier Tribunal (Judge JP Groom) (FtT) promulgated on 22.3.2019 in which the appellant's human rights claim was dismissed.

Background

2. The appellant is a citizen of Bangladesh. He entered the UK as a student in 2010 and thereafter married his wife, a British Citizen, on 8.5.2016 according to Islamic law. He applied for further leave to remain on the grounds of family life.

Grounds of appeal

3. In grounds of appeal the appellant argued that the FtT erred by failing to provide adequate reasons in support of the decision and by placing too much significance on the finding made that the marriage was not genuine, in light of the fact that the appellant's wife was unaware of his status until after the marriage had taken place [13]. The FTT failed to properly consider Ex 1.
4. The second ground of appeal argued that the FtT failed to properly apply the proportionality test with regard to the appellant's marriage, his wife's ethnicity, the lack of family support and community ties, and likely destitution on return.

Permission to appeal

5. Permission to appeal to the Upper Tribunal (UT) was granted by FTJ Simpson on 14.5. 2019. In granting permission the FTJ considered that overall there was an inadequacy of reasoning and that both grounds were arguable.

Submissions

6. At the hearing before me Mr Bisson representing the appellant expanded on the grounds of appeal and submitted that the FtT decision was in effect tainted by the finding made as to the marriage based on the wife's lack of awareness of the appellant's immigration status. There was no substantiation of the refusal in respect of Appendix FM, EX 1 & 2. The FtT failed to properly consider the relevant issues supported in the background material as to the treatment of ethnic minorities in Bangladesh. The FtT cited two Tribunal decisions that were historic and it was unclear as to their relevance. The proportionality assessment was flawed.
7. In response Mr Tarlow submitted that he could not support the decision and reasons, which contained material errors in law.

Discussion and conclusion

8. I find that there were material errors in law and that both grounds of appeal were made out. The FtT failed to place weight on the considerable evidence supporting the claim that there was a lawful marriage that was genuine and subsisting. The FtT decision and reasons failed to make clear findings of fact on material issues including the claim that the appellant's wife would be subject to discrimination in Bangladesh because of her ethnicity. The evidence as to discrimination in Bangladesh was not properly considered nor reasoned. Further the FtT place too much weight and significance on the finding that the marriage was not genuine and subsisting. In the refusal letter it was accepted that the relationship requirements were met. The FtT failed to give reasons why it concluded that EX 1 was not met [13].
9. In considering Article 8 outside the rules the FtT correctly cited the decision of **Razgar** v SSHD [2004] INLR 349 as to the step by step approach, but somewhat oddly and indeed erroneously referred to historic case law of **Nhundu and Chiwera** and **Bosanago** [17]. It was unclear as to the relevance of such citations and which in my view indicated a misdirection on the law on the part of the FtT.
10. Having regard to all of the above I am satisfied that the decision and reasons was inadequately considered and reasoned and the FtT failed to properly determine the relevant issues.
11. There is a material error of law disclosed in the decision which shall be set aside.

Decision

12. The appeal is remitted to the First-tier Tribunal at Taylor House or Hatton Cross (excluding FTJ Groom).

Signed

Date 17.6.2019

GA Black
Deputy Judge of the Upper Tribunal

NO ANONYMITY ORDER

NO FEE AWARD

Signed

Date 17.6.2019

GA Black

Deputy Judge of the Upper Tribunal