



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

Appeal Number: PA / 05388 / 2018_V

THE IMMIGRATION ACTS

**Heard at Field House
via Microsoft Teams
On 13 September 2021**

**Decision Promulgated
On 5th November 2021**

Before:

UPPER TRIBUNAL JUDGE GILL

Between

Obaidul Haque Qureshee
(ANONYMITY ORDER NOT MADE)

Appellant

And

The Secretary of State for the Home Department

Respondent

Anonymity

The anonymity order made by Upper Tribunal Judge Kekić in her decision (signed on 6 March 2020 following a hearing on 2 March 2020) is discharged. My reasons are given at para 6 below.

Representation:

For the Appellant: Mr P Jorro, of Counsel, instructed by Waterstone Solicitors.

For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This appeal comes before me for the decision on the appeal of the appellant (a national of Bangladesh born on 1 December 1987) to be re-made subsequent to the decision of Upper Tribunal Judge Kekić following a hearing on 2 March 2020. Judge Kekić decided that, in reaching her decision to dismiss the appellant's appeal against the respondent's decision dated 12 April 2018, Judge of the First-tier Tribunal S.L. Farmer had materially erred in law in her assessment of the appellant's Article 8 claim but not otherwise.
2. Judge Kekić therefore set aside the decision of Judge Farmer on Article 8 grounds only and upheld her decision to dismiss the appellant's appeal on asylum grounds,

humanitarian protection grounds and the related human rights claims under Articles 2 and 3 of the ECHR.

Relevant background

3. Before Judge Farmer, the appellant's Article 8 claim was based on his relationship with his partner who is now a British citizen, born on 19 March 1989, and who he met on 4 April 2018. They went through an Islamic marriage ceremony on 4 May 2018. The appellant's partner has a son who is a British citizen and who was born on 27 November 2008 of her relationship with her previous partner. The appellant also has a daughter by his partner who was born on 26 March 2019. His daughter is also a British citizen.
4. Before Judge Farmer, it was in dispute (in relation to the appellant's Article 8 claim) that he had a parental relationship with his stepson. The following were also in issue before Judge Farmer: (i) whether it would be reasonable to expect the appellant's daughter and his stepson to leave the United Kingdom (s.117B(6) of the Nationality, Immigration and Asylum Act 2002 and para EX.1(a) of Appendix FM of the Immigration Rules) ; and (ii) whether there were insurmountable obstacles to family life being enjoyed in Bangladesh (para EX.1(b) of Appendix FM).
5. The appellant's representatives submitted a 138-page bundle of documents (hereafter the "2021 bundle") under cover of a letter dated 2 September 2021.
6. At the hearing, Mr Jorro confirmed that, given that this case is limited to the appellant's Article 8 claim, there is no need for an anonymity order. I agree that there is no reason for the imposition of an anonymity order. Accordingly, the public interest in open justice applies. I therefore discharge the anonymity order made by Judge Kekić.
7. At the hearing before me, Ms Everett conceded that the evidence in the 2021 bundle was sufficient to demonstrate that the appellant had a parental relationship with his stepson.
8. The appellant gave oral evidence through an interpreter assisting him in the Sylheti language. After brief examination-in-chief during which he adopted his recent statement dated 18 August 2021, he was tendered for cross-examination.
9. Ms Everett then informed me that she did not have any questions in cross-examination. In discussions that ensued at that stage, she informed me that, although the appellant had the burden to establish the facts upon which he relied, she was in difficulty in proceeding with cross-examination. She said that, given the evidence that was in the 2021 bundle, she would find it difficult to argue that it would be reasonable to expect the appellant's stepson to leave the United Kingdom. She therefore asked me to allow the appeal.
10. Mr Jorro and Ms Everett then agreed that the appeal stands to be allowed on human rights grounds with reference to Article 8.

Concluding paragraphs

11. Judge Kekić decided that the making of the decision of Judge of the First-tier Tribunal S L Farmer involved the making of any error of law sufficient to require it to be set aside. However, Judge Kekić decided that she did not err in making her decision to dismiss the appellant's appeal on asylum grounds, humanitarian protection grounds and in relation to Articles 2 and 3. Judge Kekić limited the re-making of the decision on the appellant's appeal to his Article 8 claim only.
12. Ms Everett has asked me to allow the appeal on human rights grounds, Article 8 only.
13. Accordingly, I re-make the decision on the appellant's appeal as set out at para 14 below.

Decision

14. The decision of Judge of the First-tier Tribunal S L Farmer involved the making of an error of law sufficient to require it to be set aside. The Upper Tribunal re-makes the decision on the appellant's appeal against the respondent's decision as follows:

The appeal is dismissed on asylum grounds.

The appeal is dismissed on humanitarian protection grounds.

The appeal is dismissed on human rights grounds, Articles 2 and 3.

The appeal is **allowed** on human rights grounds (Article 8).

Upper Tribunal Judge Gill

Date: 13 September 2021

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.
3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.
4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.
5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.
6. The date when the decision is "sent" is that appearing on the covering letter or covering email