



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-006044
HU/57405/2021
IA/16710/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued
On the 31 July 2023

Before

UPPER TRIBUNAL JUDGE BRUCE
DEPUTY UPPER TRIBUNAL JUDGE HOLMES

Between

SAIFUR RAHMAN
(NO ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M. Mustafa, Counsel instructed by Kalam Solicitors
For the Respondent: Mrs A. Nolan, Senior Home Office Presenting Officer

Heard at Field House on 20 March 2023

DECISION AND REASONS

1. The Appellant is a national of Bangladesh born on the 1st July 1993. He appeals with permission against the decision of the First-tier Tribunal (Judge G. Andrews) to dismiss his appeal on human rights grounds.
2. The matter in issue before Judge Andrews was whether the Respondent's decision to refuse to grant the Appellant limited leave to remain as the partner of his British wife was a disproportionate interference with his Article 8 rights. She decided that it was not, and dismissed the appeal. The question before us is whether in so doing she erred in law.

The Dispute

3. There was much in this appeal that was agreed between the parties. The Appellant accepted that he could not meet the immigration status 'eligibility' requirements set down in Appendix FM of the Immigration Rules, since he was without leave at the date that he made his application. For her part the Respondent acknowledged that but for that issue, this was an application that would have succeeded, since all of the other eligibility criteria were met. Specifically it was accepted that the household income exceeds the minimum income requirement, that the Appellant has passed the relevant English language test, and that this is a genuine and subsisting marriage. The matters of dispute were therefore confined to two questions:
 - i) Whether there were 'insurmountable obstacles' to family life continuing abroad so that paragraph EX.1 of Appendix FM applied;
 - ii) If not whether it was proportionate to expect the Appellant to return to Bangladesh in order to make an application for entry clearance to rejoin his wife here.
4. Both of those matters were decided in favour of the Respondent, and the Appellant challenges each of those findings.

Insurmountable Obstacles

5. The Appellant submits that the following factors, assessed cumulatively, amount to insurmountable obstacles to the family life he shares with his wife continuing in Bangladesh. His wife is British, and although of Bangladeshi origin, has only been to that country once, when she was a child. She cannot speak or write any languages used in Bangladesh other than English. Her family and friends all live in this country. She has full-time permanent employment working as a psychiatric nurse for the NHS. This is important work, and she attaches a great deal of personal importance to it: her job plays a significant role in her sense of identity. It was submitted that as a woman the Appellant's wife would face significant levels of discrimination in the workplace in Bangladesh, and would be subject to conservative and patriarchal norms that she does not agree with. It was also suggested that she suffered from medical issues such as anxiety and depression although Mr Mustafa acknowledged before us that there was no accepted medical evidence to that effect. It was said, and as we read it accepted by the Judge, that she had been very upset after she lost her father and that she had been signed off work on compassionate leave for some three months. As for the Appellant, it was submitted on his behalf that the 13 years he had spent in the UK had weakened his integrative links with Bangladesh to the extent that it would be difficult for him to re-establish himself there.
6. Mr Mustafa's first point under this head is a bold one. He submits that the only rational outcome available to a decision maker on these facts would have been to find that the test in paragraph EX.1 was met. That is a submission that we are unable to accept. Even if all of these assertions of fact were accepted by the Judge - which they were not - this would have been an outcome that fell within the range of reasonable responses. Acknowledging that relocation would result in hardship is not the same as accepting that the high test in the rule is met. The focus for enquiry in any 'insurmountable obstacles' enquiry is ultimately whether the family involved will be subjected to such hardship that the decision cannot be

justified. Here the hardship really amounted to the inconvenience of having to move, and ultimately, the undesirability of the Appellant's wife having to give up her interesting and well paid employment in order to take another, perhaps less fulfilling, role in Bangladesh. On the facts we are satisfied that there was no perversity in finding that the test was not met. Lal v Secretary of State for the Home Department [2019] EWCA Civ 1925 is not authority to the contrary: it was decided in the other direction, but on its own facts.

7. Mr Mustafa further submitted that the decision of the First-tier Tribunal was flawed for a failure to have regard to the evidence about how the Appellant's wife responded to the loss of her father. This is a submission without merit. We are quite satisfied that First-tier Tribunal did take that evidence into account: see at its paragraphs 18, 20, 27, 29, 38, 39, 49, 65. It is expressed accepted that she had found the bereavement difficult to accept and had taken time off work, and that the Appellant was there for her, offering her the kind of emotional support that might be expected of a husband. All of that was properly weighed in the balance.
8. Finally under this head it is submitted that the First-tier Tribunal erred in indulging in speculation when it found that "the appellant's family members in Bangladesh might also be able to assist" his partner. It is submitted that the Tribunal had no evidence about the family one way or the other. We are satisfied that the Tribunal was entitled to infer from the Appellant's continued contact with his family in Bangladesh that they may wish to support him and his new wife, but even if this finding was speculative, it was in no way material. That is because as educated and capable adults the Appellant and his wife are quite capable of making their own way in life.

Article 8

9. The essence of the challenge to the ultimate Article 8 findings in this case is that this was an appeal which should have simply been allowed with reference to the decision in Chikwamba v Secretary of State for the Home Department [2008] UKHL 40. That the Tribunal did not take that approach was the focus of Mr Mustafa's ground (i), drafted in December 2022 before the decision in Alam and Rahman [2023] EWCA Civ 30 was handed down. In that matter the Court of Appeal rejected grounds advanced in identical terms to ground (i) in this appeal, and that is a decision that we are bound by. In light of that fact, and that permission in Rahman has been sought to the Supreme Court, Mr Mustafa simply reserved his position. We therefore need say no more about it other than we would reject ground (i) for the reasons set out by Lady Justice Laing in her judgment.
10. A further, second limb of the challenge was however pursued. Whilst the Tribunal plainly did produce a detailed and lengthy decision, Mr Mustafa submits that the structure it adopted reveals a decision improperly reached. He points in particular to paragraph 74 which concludes "having considered all the evidence and submissions in the round, my judgment is that there is a reasonably strong public interest in requiring the appellant to return to Bangladesh, in order to make an entry clearance application". This passage comes before other factors, those weighing in the Appellant's favour, are considered and dismissed. Mr Mustafa submits that this betrays a failure to take all of the relevant factors into account in a rounded assessment.

11. With respect to Mr Mustafa, we do not read the decision as he has done. The highlighted finding at the end of paragraph 74 is simply an indication of the Judge's conclusions on the weight to be attached to the public interest in maintaining immigration control (s117B(1) Nationality, Immigration and Asylum Act 2002). It is not the final conclusion. That this is so can be seen from other paragraphs where the Tribunal explains the weight it attaches to each factor: see for instance paragraph 66 where it states that s117(4)(b) has no application in this case where the Appellant still had lawful leave at the time that the relationship was formed, or paragraph 76 where weight is attached to the family life the Appellant shares with his wife. It can also be seen in paragraph 80 where the global conclusion is set out in these terms: "taking everything into account".

Decisions

12. For those reasons we find the grounds of appeal are not made out, and the appeal is dismissed.
13. There is no order for anonymity.

Upper Tribunal Judge Bruce
Immigration and Asylum Chamber
21st March 2023