



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

Appeal Number: IA/28997/2013

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 16<sup>th</sup> June 2014**

**Determination**

**Promulgated**

**On 9<sup>th</sup> October 2014**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE R C CAMPBELL**

**Between**

**MISS SYEDA RAHELA BEGUM  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms S Pararajasingam (Solicitor)

For the Respondent: Ms J Isherwood (Senior Home Office Presenting Officer)

**DETERMINATION AND REASONS**

1. The appellant's appeal against a decision to refuse to vary her leave to remain was dismissed by First-tier Tribunal Judge Hussain ("the judge") in a determination promulgated on 27<sup>th</sup> March 2014. She entered the United Kingdom on 10<sup>th</sup> October 2012, with leave as a visitor which was valid from 2<sup>nd</sup> September that year until 2<sup>nd</sup> March 2013. On about 28<sup>th</sup> February 2013 she applied for further leave to remain, on a discretionary basis. The Secretary of State refused that application on 26<sup>th</sup> June 2013 and, at the same time, refused to vary her leave.

2. The Secretary of State considered the application, which was put on the basis that the appellant was pregnant and could not safely return to Bangladesh, under Appendix FM of the rules. The appellant could not succeed as she and her partner had not been in a relationship akin to marriage for at least two years and she was present in the United Kingdom as a visitor. She could not benefit from EX.1 as she failed to meet certain eligibility requirements contained in the rules. In any event, there were no insurmountable obstacles to the appellant enjoying family life outside the United Kingdom. The Secretary of State also found that the appellant could not succeed under paragraph 276ADE of the rules. Insofar as her case amounted to a claim to be entitled to international protection, the Secretary of State advised the appellant to approach the Asylum Screening Unit.
3. The judge made findings of fact, having heard evidence from the appellant, her partner and her partner's mother. The judge noted that the application for leave was made on form FLR(O). The appellant discovered that she was pregnant, carrying her partner's child, in November 2012. The judge accepted that the relationship between the appellant and her partner was a genuine one, as had the Secretary of State. By the time of the hearing, the appellant had given birth to a daughter. So far as the rules are concerned, the judge found that the appellant could not meet the requirement contained in paragraph E-LTRP.2.1 and that she was not a partner within the meaning of section GEN.1.2. He went on to make an Article 8 assessment, noting that the appellant still maintained that as she had given birth outside marriage, she would be ostracised by her community on return to Bangladesh and would have nowhere to return to because her family had disowned her. The judge made a clear finding that the appellant's claim to have become pregnant outside marriage was simply not true. She and her partner had gone through an Islamic marriage ceremony which was, found the judge, consistent with the norms of her culture and so she would be viewed as a married woman at the time she gave birth. The judge disbelieved the appellant's claim that she had not had contact with her family since her mother left the United Kingdom, having accompanied the appellant on entry here in October 2012. The reasons given by the appellant for not wishing to return to Bangladesh were that her young child had to remain here to complete a vaccination course and that her husband was born and brought up in the United Kingdom and would not wish to live in Bangladesh permanently. The judge found that any interruption in the appellant's family life caused by her removal to Bangladesh would be only for a minimal period. She could apply for a visa to return here with her child, from Bangladesh. There would be no need for her husband or her child to remain there in the long-term. In view of the child's age, her welfare would not be affected by return to Bangladesh with her mother. He dismissed the appeal.
4. In grounds in support of an application for permission to appeal, it was contended that the judge "was misdirected in evaluating" the "violation to Article 8 rights" of the appellant, her daughter, her spouse and other relatives. It was disproportionate to "insist upon immigration control (removal) despite the degree of interference this would cause."

Immigration control in this context was described in the grounds as a bureaucratic exercise that would require the appellant and her child to return to Bangladesh simply to make an application to return here. The length of separation of the family members was unknown. The public interest in immigration control amounted to “an appropriate and politically correct tag”, whereas in fact there would be no positive benefit to immigration control. Mention was made in the grounds of delay, in the light of EB (Kosovo) [2008] UKHL 41 (although there has been no substantial delay, the Secretary of State deciding the application only four months after it was made).

5. The author of the grounds noted that the judge accepted that the marriage was genuine. The appellant lived with her spouse and her spouse’s mother and sisters. Reliance was placed upon Chikwamba [2008] UKHL 40 and on Huang [2007] UKHL 27. The author of the grounds also drew attention to Article 20 of the TFEU, describing the appellant as a primary carer with nobody else able to provide care for her daughter. Precluding the appellant from remaining in the United Kingdom would hinder her daughter’s right to exercise treaty rights in the United Kingdom. Reliance was placed upon Zambrano [C-34/0].
6. Permission to appeal was granted on 7 May 2014. In a rule 24 response made by the Secretary of State in the same month, it was submitted that the judge directed himself appropriately and made no material error of law. The case of Chikwamba had been to an extent overtaken by changes in the Immigration Rules and guidance from the Court of Appeal in MF (Nigeria) [2013] EWCA Civ 1192.

### **Submissions on Error of Law**

7. Ms Pararajasingam said that the judge found that there were no compelling circumstances showing that an Article 8 assessment was required. The judge had not properly considered the compassionate circumstances in the case, concerning the child, the marriage and the relationship. Expecting the appellant to return to Bangladesh with her child would amount to a serious breach of their human rights. There would be a separation of the appellant and her daughter from her spouse and the period of separation would be uncertain. The child would suffer. The judge had erred in law. Article 8 should have been considered outside the rules and the appellant should have been allowed to stay in the United Kingdom. This was so even though she arrived as a visitor. It would be in her child’s best interests for her to remain.
8. Ms Isherwood said that the judge had made no material error. He assessed the best interests of the child. He also found that the appellant had not told the truth regarding contact with her family in Bangladesh and her family circumstances generally. Family life had been established in this case while the appellant’s status was precarious and this was legally relevant in the light of Nagre. It was clear that the requirements of the rules were not met. The appellant put in her application for further leave on a discretionary basis, while present as a visitor.

9. Ms Isherwood said that Chikwamba was decided before the recent changes in the rules and there was now a different emphasis on the public interest. The only salient feature in the appellant's case was the birth of her daughter but the judge had fully considered this. Two reasons were offered by the appellant at the hearing, showing why she could not return to Bangladesh. The judge dealt with both of them. He concluded that the child would be viewed as the outcome of an Islamic marriage. He was fully aware of the family circumstances and took into account the Secretary of State's finding that the requirements of the rules were not met and there was nothing to show that leave was justified outside the rules. So far as delay following an entry clearance application was concerned, there was no evidence showing precisely how long this would be.
10. Ms Pararajasingam said that there were compassionate circumstances in the case. If the judge had properly considered the wellbeing of the child and the need to maintain the family as a unit, he would have carried out an Article 8 exercise outside the rules. Moreover, Chikwamba was not displaced by the further codification of the rules in the Article 8 context. Even if there were no delay in the entry clearance application, no legitimate aim would be pursued. Given the birth of the child and her British nationality, the guidance in ZH (Tanzania) had weight. The mother of the child would return only to make an application. It would be in the best interests of her daughter to enable her to make that application here and to remain.

### **Conclusion on Error of Law**

11. Having considered the competing submissions carefully, I conclude that no material error of law has been shown in the decision of the First-tier Tribunal. The determination is carefully reasoned and it is clear that the judge had all the salient features of the appellant's case in mind. The determination contains a careful summary of the evidence given by the appellant and her two witnesses. He accepted that the relationship between the appellant and her partner was genuine. He was entitled to find, in the light of the evidence, that the appellant and her partner were married in an Islamic ceremony and that the appellant would be viewed as a married woman in Bangladeshi society. The judge disbelieved core claims made by the appellant that she had not had contact with her family since her mother left the United Kingdom in the autumn of 2012. Overall, I find that the judge was entitled to conclude, as he put it, that the appellant invented a story of having given birth outside wedlock, to justify her desire not to return to Bangladesh for a visa.
12. The judge's reasoning in relation to the rules is clear and cogent. He was entitled to find that the relevant requirements were simply not met, not least because the appellant was a visitor when she made her application for further leave. There is a clear and strong public interest in the maintenance of immigration control. As Ms Isherwood submitted, since 9 July 2012 the rules have sought to encapsulate all relevant features of Article 8 and to make explicit the Secretary of State's view of where the

balance should lie when competing interests are weighed. The guidance given in Chikwamba has not, however, been superseded by the rules. Nonetheless, that case does not establish a hard and fast rule and the nationality of the appellant's partner and her young daughter, although relevant factors, are not determinative. In the present appeal, the judge's assessment of the family circumstances overall was, again, thorough and well-reasoned and he had clearly in mind the nationality of the appellant's daughter in particular. His finding that any period of separation would be temporary was manifestly open to him, as was his finding that the welfare of the child would not be adversely affected. The judge carefully dealt with the two reasons offered by the appellant for not wishing to return to Bangladesh and he was entitled, for the reasons he gave, to find that neither had any real substance at all. There were matters of real weight to be placed in the balance in favour of the respondent, as the judge clearly found.

13. So far as Ms Pararajasingam's submission that the judge erred in law in failing to make an Article 8 assessment outside the rules is concerned, I find that even if he did err in this context, there was no material error. This is because the careful assessment of the evidence at paragraphs 30 to 37, and the findings of fact made by the judge, show that even if he had expressly made an assessment outside the rules, the conclusion would have been the same. The appellant and her partner were Islamically married and so she would not be seen as a person who had given birth out of wedlock, following return to Bangladesh in order to apply for entry clearance. He disbelieved her core claims regarding contact with her family and there was no substance to the reasons she offered for not wishing to return. Any period of separation would be temporary and there would be no need at all for her husband to relocate to Bangladesh long-term or permanently, should he wish to accompany her for a temporary period. Her daughter's welfare would not be adversely affected. These findings show that there was very little to put in the balance on the appellant's side, against the Secretary of State's case that the strong public interest in maintaining immigration control justified the adverse decision and showed that it amounted to a proportionate response.
14. In summary, I find that the judge made no material error of law and the decision of the First-tier Tribunal shall stand.

### **DECISION**

15. The decision of the First-tier Tribunal, containing no material error of law, shall stand.

Signed

Date

Deputy Upper Tribunal Judge R C Campbell

### **ANONYMITY**

There has been no application for anonymity at any stage in these proceedings and I make no direction on this occasion.

Signed

Date

Deputy Upper Tribunal Judge R C Campbell