



**Upper Tribunal  
(Immigration and Asylum Chamber)  
IA/42136/2013**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Field House**

**Determination  
Promulgated**

**On 26 November 2014**

**On 3 December 2014**

**Before**

**Deputy Upper Tribunal Judge MANUELL**

**Between**

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

Appellant

**and**

**MS MORIOM KHATUN  
(ANONYMITY DIRECTION NOT MADE)**

Respondent

**Representation:**

For the Appellant: Mr N Bramble, Home Office Presenting Officer

For the Respondent: Ms E Greenwood, Counsel  
(instructed by Nicholas Solicitors )

**DETERMINATION AND REASONS**

*Introduction*

1. The Appellant (the Secretary of State) appealed with permission granted by First-tier Tribunal Judge Colyer on

16 October 2014 against the determination of First-tier Tribunal Judge Beach who had allowed the Respondent's appeal on Article 8 ECHR grounds only against the Appellant's decisions dated 7 August 2013 to refuse to grant the Respondent leave to remain as a dependant relative and to remove her. The determination was promulgated on 3 September 2014.

2. The Respondent is a national of Bangladesh, born on 10 January 1946. She had entered the United Kingdom as a visitor on 18 January 2011, with leave to enter valid until 18 July 2011. On 16 June 2011 the Respondent made her application for further leave to remain, which was refused. There was no appeal. The Respondent made further representations on 12 July 2012.
3. Judge Beach found that the Respondent was unable to meet the requirements of Appendix FM (i.e., section EC-DR) or paragraph 276ADE. The judge held that there was insufficient evidence to show that the medical treatment the Respondent received in the United Kingdom was not available in Bangladesh. The judge found that return to Bangladesh would not result in a breach of Article 3 ECHR. The judge expressed concern about the reliability of the evidence offered on the Respondent's behalf. The judge found that the situation in Bangladesh had been exaggerated. The judge described the appeal as "finely balanced" and concluded that there was a real risk that removal would affect the Respondent's existing depression to the extent of interfering with her physical and moral integrity, amounting to a breach of Article 8 ECHR.
4. Permission to appeal to the Upper Tribunal as sought by the Appellant was granted by Judge Colyer because he considered that it was arguable that the judge had failed to apply sections 117A-D of the Nationality, Immigration and Asylum Act 2002 when considering the public interest in the proportionality assessment. Permission was also been sought as to the judge's reasoning generally. That was not expressly refused.
5. Standard directions were made by the Upper Tribunal, indicating that the appeal would be reheard immediately in the event that a material error of law were found. Despite that direction, no interpreter had been booked so

that a rehearing that day would have created obvious difficulties.

*Submissions – error of law*

6. Mr Bramble for the Secretary of State relied on the grounds of onwards appeal and submitted that this was a clear case of legal error in relation to the Article 8 ECHR claim, as the grant of permission to appeal indicated. Section 117B had not been considered at all. No exceptional circumstances had been identified by the judge. Insufficient weight had been given to the public interest and to the Immigration Rules when conducting the proportionality assessment. Key authorities had not been followed, e.g., Haleemudeen [2014] EWCA Civ 558. In particular, the judge had not taken into account the requirements of EC-ECDR, in the long terms care and financial aspects. Her findings were confused. The determination should be set aside and remade at a fresh hearing.
7. Miss Greenwood for the Respondent accepted that the judge had not mentioned section 117B. Nevertheless, in reality the judge had taken into account the relevant statutory factors into the balancing exercise. English language was not significant because the Respondent was 68 years of age. There was nothing explicit about finances but there had been evidence before the judge about the sponsors' finances and from that it could be shown there would be no burden on public funds. Private life had not been relevant because the Respondent had based her case on her family life. The precariousness of her existing leave had not been important. The fact that there had been found to be exaggerated evidence was not of itself fatal to the case, as the judge had taken it into account in reaching her decision. There were proper findings about the Respondent's physical and moral integrity. The determination should stand.
8. There was nothing which Mr Bramble wished to add.

*The error of law finding*

9. At the conclusion of submissions, the tribunal indicated that it found that the judge had fallen into material error of law, such that the determination would be set aside. It would not be possible to preserve any findings of fact and the appeal would have to be reheard before another judge. The tribunal reserved its determination which now follows.
10. The tribunal considers that there were a number of problems with the determination. It is, of course, not the judge's fault that sections 117A-D of the Nationality, Immigration and Asylum Act 2002 were introduced by the government with little advance warning on 28 July 2014. The appeal was heard on 18 July 2014, before the legislative changes, but under the Asylum and Immigration Tribunal (Procedure) Rules 2005 (as amended) as then in force, the tribunal's decision was not made until set out in writing in a determination as required by those rules: see SK (Sri Lanka) [2008] EWCA Civ 495. Judge Beach's determination was not promulgated until 3 September 2014, so the judge was required by law to give express consideration to section 117B in particular when considering the Article 8 ECHR claim. The judge ought to have shown that by such reference that she had adequately weighed the relevant public interest considerations, one of which was finance of which no mention in any sufficiently clear form was made in the determination.
11. More importantly, however, the judge failed to make clear findings of fact in her determination. The judge was critical of key elements of the evidence but exactly what was accepted and what was rejected was far from plain. It was important for the tribunal to find exactly what the situation in Bangladesh was, but [48] of the determination failed to set out firm conclusions. The circumstances in which the Respondent applied for further leave to remain as a dependant relative, months after entering as a visitor with a declared intention of returning to Bangladesh, were mentioned by the judge at [49] but her finding – doubtless justified – that the Respondent had always intended to remain needed to be factored into the credibility assessment, as well as the proportionality assessment.
12. The tribunal accordingly sets aside the determination.

13. As noted above, no interpreter had been booked for the hearing. In the tribunal's view it was necessary for further evidence to be called. It was not possible to work from the inadequate findings which had been made. There was no alternative but to return the appeal for a fresh hearing in the First-tier Tribunal. No findings are preserved.
14. There was no application for an anonymity direction and the tribunal sees no need for one.

### **DECISION**

The making of the previous decision involved the making of an error on a point of law. The tribunal allows the onwards appeal to the Upper Tribunal, sets aside the original decision and directs that the original appeal should be heard again before a differently constituted First-tier Tribunal.

**Signed**

**Dated**

**Deputy Upper Tribunal Judge Manuell**