



IAC-FH-NL-V1

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

Appeal Number: VA/16589/2013

THE IMMIGRATION ACTS

Heard at Bradford

On 9th October 2014

**Determination
Promulgated**

On 30th October 2014

Before

UPPER TRIBUNAL JUDGE D E TAYLOR

Between

ASIA BEGUM

and

Appellant

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Janjua of Bashir Consultancy

For the Respondent: Mr M Diwnycz, Home Office Presenting Officer

DETERMINATION AND REASONS

1. This is the Appellant's appeal against the decision of First-tier Tribunal Judge Saffer made following a hearing at Bradford on 13th June 2014.

Background

2. The Appellant is a citizen of Bangladesh born on 17th July 1989. She applied to come to the UK for entry clearance to see her husband, Mezan Miah but was refused on 18th July 2013 on the grounds that there was

insufficient evidence of her financial circumstances and she had no incentive to leave.

3. The Appellant's husband is in prison. The judge heard evidence from his mother and wrote as follows:

"I accept that the Appellant has family in Bangladesh. I accept that she is impecunious and entirely reliant on others. I accept that she wants to live here having previously applied for settlement and given her stated intention, I do not accept that she has much to return to in Bangladesh given that she has no job or income and she sees her future as living with her husband rather than her mother. I do not, in those circumstances, accept that the purpose or period of the trip is as claimed.

The limitation on their family life has been caused entirely by her husband. He chose to offend and limit the relationships he has with her and others. The Respondent's decision merely retains the status quo created by him. There is nothing unusual, compassionate or exceptional about this case."

The Grounds of Application

4. The Appellant sought permission to appeal on the grounds that the judge's conclusions were against the weight of evidence and irrational.
5. Permission to appeal was granted by Judge Ransley for the reasons stated in the grounds.

Consideration of whether there is a material error of law

6. Mr Diwnycz did not seek to defend this determination. First, the fact that an applicant has no apparent economic reason to return to his own country does not mean that he/she has no intention of doing so at the end of his/her visit (AA & Others (Bangladesh) [2006] UKAIT 00026).
7. Second, the judge heard oral evidence but made no findings on the credibility of that evidence.
8. Third, the Appellant in this case said that she had a clear incentive to return to Bangladesh, i.e she wants to make a settlement application in the future, but the judge did not engage with her case.

Re-making the decision

9. I heard brief oral evidence from the Sponsor. She said that her son was in prison and would be for the next five or six years. Her daughter-in-law did not want to settle in the UK at this stage, but when her son was released from prison he would sponsor her in the hope that she could come and live with him as his spouse. The Appellant was fully aware that this was not an application for settlement and that she would return after about three or

four months. The family sent her money in Bangladesh, around 30 to 60 Taka every couple of months.

10. So far as maintenance for the visit was concerned, there was a spare room in the family home and her husband was working.
11. Mr Diwnycz defended the decision and relied on the Entry Clearance Officer's refusal.
12. Mr Junjua asked that the appeal be allowed. He said that the family fully intended to make a settlement application in the future. The Appellant's husband could not visit her and other forms of communication were difficult. When the time came to make the application they would have to show that the marriage was subsisting and visits would be one way of establishing that the Immigration Rules could be met. This was not a family which had ever shown that they had an intention to flout the Immigration Rules.

Findings and Conclusions

13. First I am satisfied that accommodation is not an issue. According to the documentary evidence in the Entry Clearance Officer's bundle there is at least one spare bedroom available in the large family home. Second, the family already remits money to the Appellant in Bangladesh and there is evidence of the Appellant's father-in-law's employment and payslips in the bundle. The extra amount that it would cost for the Appellant to be fed during the course of her visit would be minimal.
14. I am also satisfied that there is a very clear incentive for the Appellant to return. There is absolutely no reason to disbelieve the evidence that the family intends to make a settlement application in due course when her husband is released from prison. Clearly any breach of the conditions of the visit visa would harm her prospects in such an application. Moreover since her husband is not going to be released from prison for another six years, and she cannot therefore live with him during that time, there is no basis to conclude that she intends to overstay her visa in the UK. The fact that the Appellant has little money is not evidence of an intention to overstay her visa in the UK when she has a clear motive not to do so.

Decision

15. The original judge erred in law. His decision is set aside. The Appellant's appeal is allowed.

Signed

Date: **28th October 2014**

Upper Tribunal Judge Taylor