



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

Appeal Numbers: AA/06876/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 29 January 2015**

**Determination  
Promulgated  
On 6 February 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE I A LEWIS**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**SONGIDA BEGUM  
(ANONYMITY ORDER NOT MADE)**

Respondent

**Representation:**

For the Appellant: Ms K Pal, Home Office Presenting Officer

For the Respondent: Ms F Shaw of Counsel, instructed by Lawland Solicitors

**DECISION AND REASONS**

1. This is an appeal against the decision of First-tier Tribunal Judge Miller promulgated on 19 November 2014 allowing Ms Begum's appeal against the decision of the Secretary of State for the Home Department dated 21 August 2014 to remove her from the United Kingdom in consequence of refusing her application for asylum.
2. Although before me the Secretary of State is the appellant and Ms Begum is the respondent, for the sake of consistency with the proceedings before

the First-tier Tribunal I shall hereafter refer to Ms Begum as the Appellant and the Secretary of State as the Respondent.

3. The Appellant is a national of Myanmar whose date of birth is given as 1 January 1984. Her immigration and personal histories are a matter of record and set out in the Respondent's 'reasons for refusal' letter ('RFRL') of 21 August 2014 and also summarised at paragraphs 11-13 of the First-tier Tribunal's decision. It is unnecessary for me to re-rehearse such matters here.
4. In considering the Appellant's appeal it is evident that the First-tier Tribunal Judge had regard to the seeming peculiarities of the Appellant's claimed history that might have undermined her credibility, but was ultimately satisfied in respect of the explanations offered, and accepted the Appellant's account: see in particular paragraphs 32-35.
5. However, with particular reference to the case of **AH (disputed nationality - risk on return - Rohingya Muslim) Burma [2004] UKIAT 00085**, the Judge concluded that the Appellant had not demonstrated a risk of persecution were she to be returned to Myanmar at the present time: see paragraph 36 of the First-tier Tribunal's decision.
6. The Judge did however allow the appeal on human rights grounds with reference to Article 8 private life. It is this aspect of the decision that the Respondent has challenged by way of the grounds in support of the application for permission to appeal.
7. The basis of the Respondent's challenge is summarised at paragraph 1(a) of the grounds in these terms:

*"It is respectfully submitted that the Immigration Judge has materially erred in law by allowing the appellant's appeal on Article 8 grounds, yet dismissing it on asylum grounds. It is respectfully submitted that the reasons provided at paragraph 39 of the determination for allowing the appellant's appeal are those which are protection based issues which fall under the Refugee Convention or Articles 2 and 3. It is respectfully submitted that these are issues which would not fall into an Article 8 proportionality balancing exercise."*

8. Paragraph 39 of the determination is in these terms:

*"Whilst Section 117B, when applied in this case, does not assist the Appellant in any way, the fact still remains that it would be extraordinarily difficult for her to return, as a member of a minority which experiences severe discrimination, to a land which she has not seen since she was 5 years old. It is also difficult to see how she could be removed to Bangladesh, a country where she has no rights of residence at all. It is in these somewhat unusual circumstances, therefore that I have come to the conclusion that this appeal should*

*succeed, there being, as I find, compelling circumstances not sufficiently recognised under the Rules.”*

9. The Respondent’s grounds otherwise plead that the findings at paragraph 39 are contradictory when compared with the findings at paragraph 36 in respect of the Refugee Convention, and also plead that the Judge erred in the application of section 117B of the Nationality, Immigration and Asylum Act 2002 in that the factors required to be considered all pointed in an adverse direction yet the Judge reached an overall favourable conclusion in the appeal.
10. In my judgment the difficulty that the Respondent’s challenge faces is that it ignores what the First-tier Tribunal Judge said at paragraph 37 of the determination:

*“With regard to Article 8, however, I reached somewhat different conclusions. Under paragraph 276ADE(vi), I have to consider whether she has any “ties (including social, cultural or family) with the country to which (s)he would have to go if required to leave the UK”. I have no difficulty at all in finding that she has no ties whatsoever with Burma/Myanmar which she left when she was only 5, her family having moved to a refugee camp in Bangladesh. She does not, moreover, have a Bangladeshi passport and I am not altogether surprised at what she states was the response, when she enquired as to whether it was possible for her to obtain one.”*

11. The Respondent’s challenge does not seek to impugn the assessment under paragraph 276ADE(vi), and Ms Pal today does not seek to advance any submissions over and above those set out in the grounds of appeal. There being no challenge to the assessment under the Rules, I note that paragraph 276BE specifies that limited leave to remain on the grounds of private life in the UK may be granted for a period not exceeding 30 months provided that the Secretary of State is satisfied that the requirements of paragraph 276ADE are met. The appeal therefore fell to be allowed under the Rules. In those circumstances the First-tier Tribunal Judge’s application of, and consideration pursuant to, section 117B of Part 5A of the 2002 Act as amended by the Immigration Act 2014 was unnecessary.

12. I note that the terms of Section 117A of the 2002 Act specify:

*“(1) This part applies where a court or tribunal is required to determine whether a decision made under the Immigration Acts*

*–*

- (a) breaches a person’s right to respect for private and family life under Article 8, and*
- (b) as a result would be unlawful under section 6 of the Human Rights Act 1998.*

- (2) *In considering the public interest question, the court or tribunal must (in particular) have regard –*
- (a) *in all cases, to the considerations listed in section 117B, and*
- (b) *in cases concerning the deportation of foreign criminals, to the considerations listed in section 117C.*
- (3) *In subsection (2), “the public interest question” means the question of whether an interference with a person’s right to respect for private and family life is justified under Article 8(2).”*

13. I do not understand this to mean that where a case succeeds under the Rules there is still an additional requirement to have regard to the public interest as defined in part 5A of the 2002 Act. If an applicant satisfies the Rules the public interest is of necessity satisfied. The ‘public interest question’ does not then re-emerge in a different guise. Ms Pal did not seek to advance an opposing proposition. In the circumstances, if the First-tier Tribunal Judge erred it was in considering section 117B at all; any error in the way in which he considered section 117B cannot undermine his conclusion under paragraph 276ADE. In the circumstances I find that the challenge raised by the Secretary of State in effect misses the point, and as such does not make any difference to the outcome reached by the First-tier Tribunal.
14. In such circumstances it is unnecessary for me to engage in the substance of the matters raised by the Respondent. Were it necessary I would have been minded to reject the submissions in the grounds (which Ms Pal did not seek to amplify) in any event. It seems to me as a matter of principle that where a particular factor falls under the parameters of a protection claim but falls short of establishing an entitlement to protection, it is not inevitably excluded from consideration in the context of an Article 8 claim. Moreover, the challenge in respect of section 117B is essentially premised on the factors listed thereunder being determinative, whereas they are only factors to which the Tribunal “*must (in particular) have regard*”, and as such as not inevitably determinative. However I reach no final conclusion on these matters as it is unnecessary.
15. In all of the circumstances I conclude that the decision of the First-tier Tribunal contained no material error of law and accordingly stands. The Respondent’s challenge to it is rejected, and the Appellant’s appeal remains allowed on Article 8 human rights grounds with reference to paragraph 276ADE of the Immigration Rules.
16. As an aside I raised the question whether the Secretary of State had given any express consideration to the issue of whether the Appellant had been trafficked. It is not apparent from the papers, and Ms Pal was unable to confirm from her file, if this was the case or not. It is not for me to express any view on the matter, or indeed to recommend that any particular steps now be taken. However, in light of the First-tier Tribunal Judge’s findings

consistent with the matters advanced by the Appellant during the course of her interview, it may yet be the case that the Secretary of State considers it appropriate for the responsible section of her Department to give some further consideration to this, particularly if it might secure some further immigration advantage to the Appellant. Equally it is open to the Appellant through her representatives to make further representations in this regard. I say no further on the matter.

**Notice of Decision**

17. The decision of the First-tier Tribunal contained no material errors and stands.

18. The Secretary of State's appeal is dismissed. Ms Begum's appeal remains allowed on Article 8 human rights grounds with reference to paragraph 276ADE of the Immigration Rules.

*The above represents a corrected transcript of an ex tempore decision given at the hearing on 29 January 2015.*

Signed

Date: **5 February 2015**

**Deputy Upper Tribunal Judge I A Lewis**