



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/39959/2014**

THE IMMIGRATION ACTS

**Heard at Field House
On 30 July 2015**

**Decision and Reasons
Promulgated
On 3 August 2015**

Before

Deputy Upper Tribunal Judge MANUELL

Between

**Mr SHARIF UDDIN
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No appearance

For the Respondent: Mr S Whitwell, Home Office Presenting Officer

DETERMINATION AND REASONS

Introduction

1. The Appellant appealed with permission granted by First-tier Tribunal Kelly on 17 June 2015 against the decision and reasons of First-tier Tribunal Judge Davda who had dismissed the Appellant's appeal against the refusal on 19 September 2014 of his application made under Appendix FM of the Immigration Rules for leave to remain as the spouse of a British Citizen and as the parent (i.e., step father) of her child and on human rights grounds (Article 8 ECHR family life) in a decision and reasons promulgated on 16 April 2015.
2. The Appellant is a national of Bangladesh, born on 3 March 1991. The Appellant had entered the United Kingdom as a Tier 4 (General) Student Migrant on 19 January 2010, which leave was extended until 28 March 2015. On 29 January 2014 the Appellant married a British Citizen and he applied for leave to remain on that basis. Part of the reasons for refusal letter stated that the Appellant had obtained his previous leave to remain as a Tier 4 (General) Student Migrant by deception by providing a false English language test result. The application was also refused because it was not accepted that the marriage was genuine and subsisting. The Appellant did not have sole responsibility for his step son. The judge found that the Appellant had obtained his Tier 4 (General) Student Migrant leave by deception and so could not satisfy the Suitability requirements of Appendix FM. In any event it was reasonable for family life to continue in Bangladesh and there were no insurmountable obstacles.
3. Permission to appeal was granted by First-tier Tribunal Judge Kelly on limited grounds. He considered that it was arguable that the judge had provided an insufficient assessment of whether it was reasonable for the Appellant's step son to leave the United Kingdom, having regard to section 117B(6) of the Nationality, Immigration and Asylum Act 2002.
4. Standard directions were made by the tribunal, indicating that the appeal would be re-decided immediately if a material error of law were found. A rule 24 notice in the form of a letter dated 25 June 2015 had been filed on the Respondent's behalf opposing the onwards appeal.

Submissions

5. There was no appearance at the Upper Tribunal hearing by or on behalf of the Appellant. By letter dated 27 July 2015 his solicitors stated that they were no longer representing the Appellant and that he requested that the appeal be dealt with on the papers. No further submissions of any kind were made in support of the onwards appeal.
6. Mr Whitwell for the Respondent relied on the rule 24 notice. He submitted that there was no error of law and the determination should stand. By implication the judge had considered that it was

reasonable for the step son to leave the United Kingdom with his mother and the Appellant, which was a sufficient consideration of section 117B(6) of the Nationality, Immigration and Asylum Act 2002.

7. The tribunal indicated at the conclusion of submissions that it found no material error of law, and reserved its determination, which now follows.

No material error of law finding

8. In the tribunal's view the grant of permission to appeal to the Upper Tribunal was generous. The grounds of onwards appeal were little more than an attempt, as so often seen in the Immigration and Asylum Chamber, to dress up a difference of opinion or a disagreement with a First-tier Tribunal Judge's proper findings as an error of law.
9. As noted above, the grant of permission to appeal was limited to Article 8 ECHR and section 117B(6) issues. The decision and reasons is detailed and set out fully the Appellant's evidence and the submissions which had been made on his behalf. It was now accepted by the Respondent that the Appellant had family life with his British Citizen spouse (see [30] of the decision and reasons), so the judge considered proportionality, reasonableness of the child's leaving the United Kingdom and insurmountable obstacles in that context. At [43] of her decision, the judge explained why she found that relocation of the entire family group to Bangladesh was possible and reasonable, a choice which was open to them to make, allowing for some degree of hardship and a period of adjustment. The judge had already set out the contentions about the step son (see, e.g., [34] and {43}), and considered that he was young enough to adapt and would have his mother and step father to assist him. His education would continue and his parents could support themselves. There was no need for that to be repeated at [45] as the judge had already discussed the relevant evidence and the issues which arose. That was a sufficient consideration of section 117B(6) in relation to the step son.
10. The tribunal accordingly finds that there was no error of law in the decision and reasons and there is no proper basis for interfering with the experienced judge's decision.

DECISION

The making of the previous decision did not involve the making of an error on a point of law and stands unchanged

Signed

Dated

Deputy Upper Tribunal Judge Manuell