



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

Appeal Number: PA/00087/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 30 October 2017**

**Decision & Reasons
Promulgated
On 13 November 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE HANBURY

Between

**TJ
(ANONYMITY DIRECTION MADE)**

and

Appellant

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Symes of Counsel

For the Respondent: Mr D Mills, Presenting Officer

DECISION AND REASONS

Introduction and background

1. The appellant is a citizen of Bangladesh born on [] 1987. The appellant came to the UK in March 2014. The appellant applied for a Tier 1 (Entrepreneur) partner visa to come to the UK. This was issued on 12 February 2014 and valid until 27 June 2016. The appellant claims to have been married in 2009 to [KMI], or [IMK], and they had a daughter together called [TT] born on [] 2011. The appellant travelled to the UK with her

daughter. However, the appellant claims to have become estranged from her husband, who left in April 2016.

2. On 27 June 2016 the day before the appellant's visa was due to expire, she claimed asylum on the basis that she claimed to fear her husband, a non-state agent, if she were returned to Bangladesh.
3. The respondent considered the application under the United Nations Convention relating to the Status of Refugees 1951 (Refugee Convention) but concluded that the appellant whilst not a member of a particular social group within the meaning of the Refugee Convention - i.e. she did not have an immutable characteristic. Whilst it was accepted that women in Bangladesh constituted a particular social group, this by itself, did not mean appellant would face persecution on her return to Bangladesh. In order to bring herself within the Refugee Convention the appellant had to demonstrate that she was a person with a well-founded fear of being persecuted but the respondent did not accept this was the case. The appellant was also considered for humanitarian protection, but it was found that she had not given consistent information about her background. Her permanent address in Bangladesh was the address of her parents, where she had been able to live safely for a number of years. It was by no means established that the appellant would be kidnapped by her in-laws, as she had claimed. Accordingly, the respondent did not accept that the appellant would be at risk of serious harm if she were returned to Bangladesh.
4. Finally, the respondent considered sufficiency of protection in Bangladesh and considered the appellant had failed to demonstrate that the authorities there would be unable or unwilling to offer protection. There is evidence of domestic violence and human rights abuses arising in the domestic setting. The respondent also noted the presence of corruption in Bangladesh. Police officers often failed to collect the necessary evidence and there was not always a degree of respect for women's rights that would be expected by a modern country. Domestic violence, such as the appellant claimed to have experienced at the hands of her husband, was not combated in the same way as it would be in a modern Western country. Nevertheless, having regard to the presence of shelters available to women within Bangladesh, the fact that the appellant had adequate protection from her own family and the fact that the state overall took reasonable steps to prevent persecution or serious harm to individuals such as her, it was concluded that the appellant did not qualify for humanitarian protection or protection under the European Convention on Human Rights (ECHR). Specifically, Article 2 was not engaged because it was considered on the evidence the appellant had not demonstrated that her death was likely to occur and there was no real risk of ill-treatment falling within Article 3 of that Convention. Article 8 was considered by the respondent who found inadequate information to suggest that the appellant had a genuine and subsisting relationship in the UK and her child ([TT]) could travel back to Bangladesh with the appellant. The appellant

had not made out the requirements of the Immigration Rules and specifically Appendix FM. She did not qualify under paragraph 276ADE(1) (iii) which was designed to protect a private life formed whilst in the UK. Finally, there were no exceptional circumstances for granting discretionary leave.

The First-tier Tribunal Hearing

5. The appellant appealed the respondent's refusal by notice of appeal to the FTT dated 6 March 2017. The grounds of appeal observe the child's schooling in the UK and state that it would not be in accordance with Section 55 of the Borders, Citizenship and Immigration Act 2009 to remove the appellant and her child to Bangladesh where she would lose "her mother's care". Their best interests lay in remaining in the UK. The respondent was also criticised for failing to identify significant parts of the appellant's claim that did in fact engage international instruments designed to protect her. The respondent had been over-dismissive of the appellant's credibility, having regard to Section 8 of the Asylum and Immigration (Treatment of Claimants) Act 2004 (2004 Act) in that the appellant had submitted a late claim. This was behaviour that the respondent was entitled to take into account under Section 8 (4). The appellant claimed that this was because the attitude of her "in-laws" had come to her attention relatively recently. It was alleged that the respondent had not considered all the evidence in reaching her decision.
6. The appeal against that decision came before Judge of First-tier Tribunal Howard (the Immigration Judge) who dismissed the appeal, explaining that in his view the most "egregious" activities she accuses her in-laws of did not take place. She had been able to live safely at Chittagong with her parents. The threats towards mother and child have been exaggerated and the appellant's asylum claim failed. The Immigration Judge rejected the "factual matrix" on which the case was based, finding that the appellant was not a refugee but needed to be returned to Bangladesh at the earliest opportunity. In any event, the respondent considered that the appellant had an adequate degree of state protection in Bangladesh, noting a number of reports internationally available which suggested that shelters and other accommodation is available for women who wish to seek refuge from vicious husbands. The respondent gave consideration to Article 8 dealing with it in a number of paragraphs but did not consider it to be an unreasonable response to require the appellant and her child to return to Bangladesh.
7. The appeal against the respondent's decision came for hearing before Judge of First-tier Tribunal Ian Howard (the Immigration Judge). He considered that the appellant had indeed married her husband in 2009 and due to abuse had moved out. He noted that the appellant's parents still lived in Chittagong, that she had had a happy marriage at one time and that the parties' split had been acrimonious with her husband walking

out in April 2016. He said that the evidence showed, to the lower standard of proof that applied, that the egregious activities of her husband would not put her at risk if she continued to live at her parents' house. The threats allegedly made towards mother and child were not accepted and they were contradicted by other evidence. The appellant made her asylum claim on the day that leave expired, which was opportunistic and undermined the credibility of her account. The appellant submitted a number of documents from Bangladesh but none of them could be verified and they contained contradictions. The Immigration Judge rejected the factual matrix advanced by the appellant and decided to dismiss the claim on all grounds. He made a direction for anonymity, however. Having dismissed the claim, he made no fee award.

8. The appellant was given permission to appeal by Upper Tribunal Judge Reeds on 5 September 2017 because she thought the appellant, as a single woman returning to Bangladesh was arguably a vulnerable individual. Furthermore, judge reads That considered that the Immigration Judge may not have given adequate reasons for rejecting the documents submitted in support of the appellant's case. Judge Reeds did not give permission to appeal the Immigration Judge's decision under article 8.
9. The respondent provided a rule 24 response to say that the Immigration Judge had reached reasoned findings for dismissing the appellant's appeal and the appeal to the Upper Tribunal merely amounted to a disagreement with the FTT's conclusions.

The Hearing Before the Upper Tribunal

10. The appellant appeared through her Counsel Mr Symes. The respondent was represented by Mr Mills a Presenting Officer. Mr Symes argued that [IMK]'s marriage to the appellant had been against the appellant's parents-in-laws' wishes. She accepted, however, that she had lived in Dhaka. It had also been accepted that the appellant had later lived in Chittagong. However, the appellant and her daughter had come to the UK. Her father-in-law was a police officer and the country evidence indicated that it is perfectly normal for such persons to have a great deal of power in Bangladesh. The respondent was aware of this, as she accepted it at paragraph 59 of the refusal dated 22 December 2016. However, the respondent does also point out there that the appellant had provided no information as to her father in-law's rank in the police service or the extent of the influence that he might be expected to exert. Mr Symes submitted that the Immigration Judge had not been justified in rejecting the appellant's account on the basis that it was not credible. The account that her father-in-law was a powerful man with the Awami League had been consistent with what the appellant had told the respondent.
11. Turning to ground 2 of the grounds of appeal, this states that the Immigration Judge had failed to provide adequate reasoning for rejecting

the various documents emanating from the authorities. These were referred to at paragraph 29 et seq. of the decision. It is pointed out by Mr Symes that paragraph 29 contains a summary dismissal of the documents produced, stating that there were “fundamental contradictions at the heart of this claim” which justified in concluding that their provenance or content was unreliable. The Immigration Judge therefore rejected those documents “purporting to originate from the authorities in Bangladesh”. Mr Symes pointed out that there were no contradictions “at the heart of this claim”. There was no reason for rejecting the reliability of the documents submitted. It was inaccurate to describe them as “originating from the authorities” as the Immigration Judge had in paragraph 29 of his decision. In fact, the documents included abusive messages emanating from the appellant’s father-in-law. By way of example, I was referred to page 10 of the bundle of documents used at the First-tier Tribunal which contained a text message. It was from the father-in-law. Paragraph 29 does not identify which documents the Immigration Judge is referring to. He should have given anxious scrutiny to this matter and looked at all the documents in the case.

12. Moving to ground 3, Mr Symes submitted that the appellant was indeed a vulnerable person, being a divorced woman with a young child. Mr Symes took me to paragraph 27 of the decision, where the appellant simply refers to the fact that it is “by no means certain that he (her husband) is back in Bangladesh, but I proceed on the basis he is”. It was submitted that the Immigration Judge came to no reasoned decision as to the real risks to the appellant on return to Bangladesh. She was a lady who had been the victim of domestic violence. Permission was given on this ground.

13. It was also argued that the Immigration Judge had failed to engage with the requirement of paragraph 339K of the Immigration Rules. That paragraph states that:

“The fact that a person has already been the subject of persecution or serious harm, or direct threats of such persecution or such harm will be regarded as a serious indication of the person’s well-founded fear of persecution or a real risk of suffering serious harm unless there are good reason to consider such persecution or serious harm will not be repeated.”

14. Finally, Mr Symes urged me to revisit ground 5 of the grounds of appeal even though permission to appeal on this ground was expressly refused by Upper Tribunal Judge Reeds. He said that it was incorrect to state, as the Immigration Judge did in paragraph 32 of his decision, that Article 8 had not been raised. It was the subject matter of a detailed skeleton argument/additional grounds. In any event, Section 120 of the Nationality, Immigration and Asylum Act 2002 required an appellant to state any additional grounds for his application if he has made a protection claim or human rights’ claim or has applied to enter the UK where he has been served with a notice requiring him to set out his grounds for so doing.

This, Mr Symes contended, is what had occurred as in response to the “One-Stop Notice” the appellant had specifically referred to Article 8 of the ECHR. It was submitted that the country guidance evidence was relevant and that the appellant had settled into the UK with her child in the UK education system. I note that the respondent considered whether there were any circumstances that would mean the appellant’s removal from the UK would place the UK state in breach of its obligations to respect family and private life under Article 8 of the ECHR in paragraphs 83 et seq. of the refusal letter. However, the respondent concluded that the appellant did not qualify under the Immigration Rules and that there were no exceptional circumstances for granting leave to remain outside the Rules. It was therefore inaccurate for the Immigration Judge to describe the Article 8 claim as “not advanced”.

15. The respondent, represented by Mr Mills, submitted that ground 1 (the Immigration Judge being wrong to find the account embellished and/or failing to appreciate the importance of the appellant’s father-in-law’s police background) was incorrect. There were two inconsistent statements made by the appellant: that the in-laws wanted to terminate the life of the appellant’s child prior to his birth and wanted “nothing to do with that child” and the contrary statement that they wanted to “abduct” that baby after it had been born. It was submitted that the Immigration Judge had been entitled to conclude as he there was no adequate explanation for these contradictions are. It was pointed out that the Immigration Judge simply did not believe the appellant’s case and the appeal to the Upper Tribunal was simply an attempt to re-litigate matters. The background evidence did not entirely support the appellant’s case. It was not enough simply to show that the appellant’s father-in-law was a policeman.
16. In relation to ground 2, the Immigration Judge had set out in paragraph 29 that he did not accept the credibility of the documents produced. It may not be correct to describe them as contradictory but whatever words the Immigration Judge used he did not accept those documents were credible and should be given weight. This was within his discretion having regard to the principles on which such documents are routinely considered in the FTT (see **Tanveer Ahmed [2002] UKIAT 00439**, IAT 19 February 2002). It was submitted that there was nothing in the grounds which justified the criticism of the Immigration Judge in relation to this finding. The Immigration Judge had been entitled to make an adverse finding in relation to these documents, therefore.
17. Turning to ground 3 of the grounds, Mr Mills stated that there had been a separation between the appellant and her husband not a divorce. The Immigration Judge had said that he was aware of the “experiences of divorcees, single parents and other vulnerable women in Bangladesh” in paragraph 30 of his decision. However, he did not accept that this appellant would be at risk due to her separation from her husband. She had loving and supportive parents and came from a stable home in Chittagong. It was not accepted that she was vulnerable, as she claimed,

or that her husband or his family would pursue her or threaten her. If she was the subject of adverse attention by her in-laws or their families, she would be protected by her own family.

18. In relation to ground 4 (which states that the FTT did not make clear findings on central aspects of the claim including threats by the parents-in-law) it was submitted that the Immigration Judge had fully dealt with the potential threats in-laws, but he explained in paragraph 25 of his decision why the appellant would not be at risk from the parents-in-law. Because he did not accept the past alleged persecution the case did not fall within paragraph 339K of the Immigration Rules. In this regard I was referred to paragraph 25 of the decision which appears to contain clear findings in relation to this aspect of the case.
19. Mr Mills argued that if the appellant wished continued to pursue any claim under Article 8 of the ECHR the correct procedure would have been to challenge the refusal of permission to appeal by applying for judicial review of the decision.
20. Mr Mills acknowledged that if fundamental credibility findings were not allowed to stand then it may be necessary to remit the matter to the FTT for a fresh decision.
21. I reserved my decision as to whether or not there was a material error of law and if so what steps should be taken to address that.

Discussion

22. The burden rests on the appellant to show that the decision of the FTT contained a material error of law which would justify the Upper Tribunal interfering with that decision within the terms of Section 12 of the Tribunals, Courts and Enforcement Act 2007.
23. The Immigration Judge did not accept the appellant's case that her parents-in-law had been guilty of "the most egregious activities" of which she accused them. The Immigration Judge was satisfied that the appellant and her husband had a relationship and had married against their wishes but pointed out in his decision that they had been able to live contentedly together in Dhaka, where the appellant had worked as a nurse. Many of their difficulties as a couple flowed from the appellant getting pregnant with a girl, born in 2011. It seems the appellant's husband returned to his family, although it was not accepted by the respondent that the appellant's husband had necessarily left the UK. In common with several aspects of the appellant's claim, little detail was supplied to enable the other party to check its authenticity. The Immigration Judge found the appellant's case to be "worryingly inconsistent" (see paragraph 24). He did not accept that all the actions alleged had even taken place. Having regard to the low standard of proof which applied, he nevertheless

concluded the appellant had not satisfied the Tribunal that the threats had been uttered. The Immigration Judge noted a number of contradictions as he saw them but in reality, they may have been better described as inconsistencies and matters going to the issue of credibility. Crucially, in my view, the Immigration Judge did not accept that the appellant needed protection from her in-laws given that she had a supportive family at Chittagong, with whom she had lived in the past. This central finding is not essentially attacked in this appeal.

24. The Immigration Judge had to demonstrate in his decision that he has sufficient grasp of the issues to have considered the appellant's case fully. He had to show how he reached the he reached. In my view, the Immigration Judge did that. He can be criticised for not dealing more fully in his decision with the documents that were filed. But, it is clear that he reached his decision having considered but rejected the appellant's evidence. Whereas more detail could have been given, and perhaps should have been given, he does not appear to have erred in law. The Immigration Judge did not accept the appellant's father-in-law was a corrupt policeman and he was entitled to reject that evidence. Following the principles in **Tanveer Ahmed**, the Immigration Judge did not have to accept documents at face value, and did not do so here.
25. The appellant is an educated individual who would be returning to Bangladesh with a good command of English. However, I acknowledge that she would have a young child and that life for single separated or divorced mothers is difficult. It is right that the Immigration Judge should not have said, as he did, that the case under Article 8 had not been pursued. I find nothing in the notes of evidence to suggest it was formally abandoned and indeed it had been raised in response to the One-Stop Notice and in a separate written submission. Nevertheless, Upper Tribunal Judge Reeds did not give permission on this point on the grounds that it was not advanced with any vigour before the FTT. I find that it would not appear to be contrary to the child's best interest to return to Bangladesh with the appellant. The mother and child only came to the UK in 2014 and therefore fall far short of the requirements in family life provisions contained in the Immigration Rules, which provide a benchmark. It would have been open to challenge the refusal of permission, as Mr Mills submitted. However, in the circumstances outlined I would consider that the Article 8 argument to have very little prospect of success and even if the article 8 claim was mistakenly overlooked by the Immigration Judge it would not have made a material difference the outcome of the appeal were it to have been fully considered by him. The respondent was and is entitled to insist on strict immigration controls and ensure that the appellant satisfied the requirements of the Immigration Rules in full before entertaining any application under article 8 of the ECHR.

Conclusion

26. The Immigration Judge was entitled to reject this incredible claim which was advanced extremely late, only one day before the appellant's leave expired. The Immigration Judge was entitled to conclude that there was a safe place for the appellant to live in Bangladesh, either with her parents or, given that it contains an area of more than 55,000 square miles, in another part of that country. For these reasons I have concluded that the decision of the First-tier Tribunal was one it was entitled to come to on the evidence it heard.

Notice of Decision

27. The appeal against the decision of the FTT is dismissed on all grounds.

28. I continue the anonymity direction made by the FTT as follows.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date: 9 November 2017

Deputy Upper Tribunal Judge Hanbury

TO THE RESPONDENT FEE AWARD

I have dismissed the appeal and therefore make no fee award.

Signed

Date: 9 November 2017

Deputy Upper Tribunal Judge Hanbury