



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/18121/2016

THE IMMIGRATION ACTS

Heard at Field House
On 17th May 2019

Decision & Reasons Promulgated
On 21st May 2019

Before

UPPER TRIBUNAL JUDGE MARTIN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

H P

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Ms L Kenny (Senior Home Office Presenting Officer)

For the Respondent: Mr S Harding (Visa Inn Immigration Specialist)

DECISION AND REASONS

1. This is an appeal to the Upper Tribunal by the Secretary of State in relation to a decision of First-tier Tribunal Judge Oliver promulgated on 27 February 2019 in which he allowed an appeal by the respondent on human rights grounds.
2. For the sake of clarity and continuity I will in this judgment refer to Miss P as the appellant and the Secretary of State as the respondent as they were before the First-tier Tribunal.

3. The grounds upon which the Secretary of State appeals to the Upper Tribunal and the basis upon which permission was granted are that the judge arguably erred in finding that the appellant had established a family life with her friend and her friend's children. The Secretary of State submitted this did not amount to family life for the purposes of article 8 as there is no family relationship. It is further submitted that the judge erred in failing to consider the statutory considerations outlined in section 117B of the Immigration and Asylum Act 2002, which rendered his balancing exercise in the assessment of proportionality flawed.
4. In as much as the judge found that the Secretary of State's proposed interference with the appellant's private and new family life would be disproportionate I do not find the reference to family life to be a material error of law. Even if it does not amount to family life it certainly amounts to compelling private life and the judge allowed the appeal also on private life grounds.
5. However, I agree that the judge's failure to deal at all with section 117B, which he was required to do, amounts to an error of law which could be material to the outcome.
6. The First-tier Tribunal was considering Article 8 outside the Immigration Rules.
7. For that reason I set aside the decision of the First-tier Tribunal and, both representatives accepting it was the appropriate way forward, indicated that I would redecide the appeal on the evidence that was before the First-tier Tribunal as set out in the judge's decision and not disputed by the Secretary of State.
8. The appellant, born on the 23 February 1993 arrived in the UK on 23 October 2010 with leave as a student, which was then extended until 6 November 2015. Although an attempt was made to curtail her student leave, that was never served upon her and so she has at no time been without leave. That was the finding of the First-tier Tribunal and has not been challenged by the Secretary of State.
9. On 20 September 2015 the appellant applied for further leave to remain, relying on her article 8 private life rights, in particular her mental health difficulties.
10. The appellant, although a national of Bangladesh, was born in Dubai where her father worked. She has never lived in Bangladesh and does not speak Bengali.
11. The appellant is the youngest of five sisters born to a father who wanted boys. They were forced to study Islamic studies at school in Dubai. The appellant's mother had been married at the age of 9 to an older man and had suffered miscarriages before marrying the appellant's father who used to beat her. In turn, the appellant's mother used to beat the appellant, while at other times showering love upon her. The appellant had come to the realisation that her mother had a mental disorder. The appellant recalled a time when her second elder sister was tied to a bedpost screaming while she was exorcised by clerics. The appellant herself was bullied at school and as her mother was diabetic there was a lot of medication around the house which the appellant would steal to make herself sick and hope to die. Her father told that she was adopted because as a dark-skinned girl she could not possibly be his daughter.

12. The appellant recalled an occasion when her father took her to a strange place where there were other men. She was on the floor crying and her dress kept going up and she wanted to keep it down. She did not remember what happened afterwards but said that she felt disgusted and embarrassed even to write it down and later to tell doctors. Although her father gave the impression of being a strong Muslim he was not a good man.
13. The appellant's mother suffered a stroke and after that was kind to the appellant.
14. The appellant's eldest sister was forcibly married to a man in Bangladesh and was trapped in an abusive marriage.
15. There came a time when the appellant's mother said she felt guilty and told the appellant that she had helped her sister start a new life in the UK and she facilitated the appellant's application for entry clearance to enter the UK to study.
16. In the UK the appellant started to self-harm and became paranoid. She lost her faith, convinced she was possessed by some Jinn and rebelled against everything she had been taught as a child. She got three tattoos on the same day, including one with verses from the sora of the Koran. Although she has several tattoos that one was particularly offensive to Muslims and she had been screamed at in Whitechapel by a Muslim woman.
17. The appellant's mental health issues became worse and was diagnosed with an emotionally unstable personality disorder and has been admitted to psychiatric units under sections of the Mental Health Act. The First-tier Tribunal determination refers three such admissions but the appellant's representative informed me that there have been five.
18. Although initially living with her sister, brother-in-law and their child in the UK she has more recently come to live with a friend, Mrs P and her children. That lady is the only person to whom the appellant has told all the details of her life. She encouraged the appellant to try counselling for her childhood sexual abuse and introduced her to hypnotherapy.
19. The appellant has come to the belief that she might be asexual and has an aversion to physical relationships. She does not consider herself Muslim anymore and has joined the Council of ex-Muslims of Great Britain.
20. The First-tier Tribunal heard evidence from Mrs P, who explained that she had been the appellant's close friend for 2 ½ years. She was widowed seven years earlier and the appellant came to live with her family in response to an advertisement for a tenant.
21. She bonded with her children and gradually started to describe her troubled early life.
22. On one occasion the appellant moved away temporarily and her sister contacted Mrs P informing her that she been sectioned after trying to take her own life. Mrs P supported the appellant while she was in hospital and welcomed her home when she was discharged. The appellant has attempted to take her own life on more than one

occasion and on one occasion Mrs P and the nanny had to prevent the appellant trying to jump out of a third-floor window. That precipitated a further admission to hospital

23. There was ample evidence before the First-tier Tribunal of the severity of the appellant's mental health and repeated suicide attempts and continuing suicidal ideation. There was also background evidence before the Tribunal confirming that tattoos are not accepted by Muslims. Although requesting an oral hearing the appellant did not in fact attend the hearing before the First-tier Tribunal, the judge concluding that was as result of her vulnerable state.
24. The factual background to this case was not disputed by Ms Kenny. It was her submission that taking into account the requirements of section 117B the appellant's removal was proportionate. Her main argument was the public interest and in particular the high cost to the taxpayer of her severe mental health issues. She submitted there was no evidence that they could not be dealt with in Bangladesh. The appellant was unable to support herself and was unlikely to be able to do so for the foreseeable future. She said there was no evidence the appellant could not access shelter and support in Bangladesh and have her medical needs met there.
25. In assessing a human rights claim, it is trite law that this must be done through the lens of the Immigration Rules. It is accepted that the appellant cannot bring herself within the provisions of Appendix FM. It was however argued that she could bring herself within the provisions of paragraph 276 ADE (1) (vi) namely that she has lived in the UK for less than 20 years but there are very significant obstacles to her integration into the country to which she would have to go if required to leave the UK.
26. Although she has visited Bangladesh the appellant has never lived there and does not speak the language. She does not read or write Bengali. Her mother is now deceased and her father remarried. Her birth father's behaviour towards her as a child was appalling and indeed included sexual abuse. She has a sister in Bangladesh who is herself in an abusive marriage and would not be in a position, it would appear, to assist the appellant.
27. The appellant has extremely severe mental health difficulties, leading as they have to numerous compulsory admissions to hospital and she has attempted suicide on more than one occasion and clearly presents a significant suicide risk.
28. It is unclear how the appellant could access any support in Bangladesh or accommodation or support herself.
29. The appellant has tattoos, at least one of which causes offence to Muslims
30. She is no longer a practising Muslim and indeed has joined the Council of ex-Muslims of Great Britain.
31. The First-tier Tribunal referred at paragraph 31 to the appellant's tragic and cruel family upbringing in a country not of her nationality, which has not been disputed. That left her very damaged and ill-prepared to deal with adult life but particularly

ill-prepared to deal with the seismic challenges she would meet on removal to Bangladesh. The damaged state in which she arrived in the United Kingdom has previously led to bulimia and suicidal ideation. Whilst the Letter of Refusal referred to a lack of evidence about that, evidence in abundance has subsequently been provided and indeed that is not now disputed by the Secretary of State.

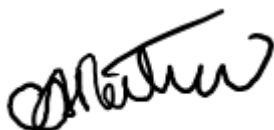
32. For all these reasons I find that there would be very significant obstacles, even recognising that represents a high hurdle, to the appellant's integration into Bangladesh. It would be hard indeed for a young single woman without close family support to integrate into a country in which she has never lived and does not speak, read or write the language. It would to be doubly so for a young woman with this appellant's problems.
33. Given that the appellant meets the requirements of paragraph 276 ADE I do not need to go on to consider Article 8 outside the Immigration Rules because TZ (Pakistan) and PG (India) [2018] EWCA Civ 1109 confirms that if an appellant meets the Immigration Rules that is dispositive of the human rights appeal where Article 8 is engaged. Clearly Article 8 is engaged in this case. That being the case there is no necessity to consider s.117B
34. Paragraph 276 ADE is the immigration rule which deals with private life and she succeeds on the basis that she meets the requirements of that.

Notice of Decision

The Secretary of State's appeal to the Upper Tribunal is allowed to the extent that the decision of the First-tier Tribunal is set aside as the conclusions are tainted by error of law. However, in redeciding the appeal on the undisputed facts, the Appellant's appeal against the Secretary of State's decision to refuse her leave to remain on Human Rights (Article 8) grounds is allowed.

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 20th May 2019

Upper Tribunal Judge Martin