



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

Appeal Number: IA/09044/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 15 October 2013**

**Determination
Promulgated
On 25 October 2013**

.....

Ex Tempore Judgement

Before

**THE PRESIDENT, THE HON MR JUSTICE MCCLOSKEY,
UPPER TRIBUNAL JUDGE WARR**

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MRS RESNA BEGUM

Respondent

Representation:

For the Appellant: In attendance but unrepresented

For the Respondent: Ms E Martin, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appeal has its origins in a refusal letter written by the UK Border Agency directed to Mrs Begum, the Respondent to this appeal. This letter records that Mrs Begum applied for leave to remain in the United Kingdom as the unmarried partner of Masud Ahmed. This application was refused by letter dated 6 March 2013. In this letter it was recorded that Mrs

Begum had been granted permission to enter the United Kingdom on 6 March 2012 for a period of six months as a visitor. It was further recorded:

“We acknowledge that you have a genuine and subsisting relationship with your spouse and you have a child together”.

The conclusion made was that the Respondent was unable to satisfy the relevant requirements of the Immigration Rules. Some consideration was also given to Article 8 ECHR. It was noted that the Respondent had not demonstrated any insurmountable obstacles that would prevent her from continuing her family life outside the United Kingdom. Beyond that the consideration given to Article 8 is properly described as scanty.

2. The Respondent exercised her right of appeal, giving rise to the first instance Determination promulgated on 19 August 2013. She was unrepresented at the hearing. Some evidence was given by her and her husband, Mr Ahmed, through an interpreter. The very brief summary of this evidence in the text of the Determination suggests that it was of limited content and dimensions. The First-tier Judge made two principal conclusions. The first was that the Respondent did not satisfy the requirements of the Immigration Rules. The second was that the refusal decision would infringe rights under Article 8 ECHR.
3. The Secretary of State appeals to this Tribunal against the latter conclusion. In granting permission to appeal it was considered arguable that there were inadequate reasons contained in the determination. It was suggested that there was an obligation to provide more detailed reasons in support of the judge’s Article 8 assessment and conclusions. In the body of the determination the judge records, firstly, in what is couched as a finding in paragraph 18 (h):

“There is no evidence that it would be unreasonable to expect the child to leave the United Kingdom if it left with its mother”.

Next the judge states in paragraph 18 (i):

“There is no evidence from someone other than the Appellant or her husband to establish any insurmountable obstacles to family life with the Appellant’s husband continuing outside the United Kingdom.”

Following this, the judge found there was no satisfactory evidence that the Respondent has no ties, social, cultural or family in Bangladesh, in paragraph 18 (j). This was followed by a finding about the extant established family life, in paragraph 18 (k). The judge said the following:

“Family life with which this appeal is concerned is the mutual family life of the Appellant, her husband and child. If the Appellant returns to Bangladesh, even for a short time, it will interfere with the family life.”

And in the following paragraph, 18 (l), the judge begins with the words:

“On the assumption that the interference with family life engages Article 8 ...”.

It is within these passages, in paragraph 18 sub-paragraphs (k) and (l), that one finds the foundation of what we consider to be a significant and material error of law on the part of the First-tier Tribunal Judge.

4. It was incumbent on the Tribunal to undertake the exercise of enquiring into and making findings about the question of interference with family life. This in every case is a forecasting exercise. It also requires an assessment of reasonable expectations. It was necessary for the Tribunal to juxtapose the impugned decision with all of the evidence pertaining to these considerations and to make findings accordingly.
5. In Article 8 cases the first question is whether there will be an interference with the family life pursuant to the impugned decision. The enquiry necessary to provide answers to that basic question was not undertaken in this case. The Determination ought to have recorded the nature of the enquiry undertaken and, most important, the specific findings made by the court pursuant thereto. In particular, the judge was required to address the question of whether the established family life of the three members in question, father, mother and child would in some way be fragmented, broken or undermined by the impugned refusal. The judge was also required to address the issue of reasonable expectation. There is no indication at all that the necessary enquiry was carried out and there are no findings in the Determination bearing on these fundamental issues. The closest one comes to a finding is that to which I have already adverted in paragraph 18 (h) namely, there is no evidence that it would be unreasonable to expect the child to leave the United Kingdom if it left with its mother, the Respondent ; and in paragraph 18 (i) that there is no evidence from someone other than the Respondent or her husband to establish insurmountable obstacles to family life with the husband continuing outside the United Kingdom.
6. On the face of the Determination it seems to us that a clear finding was made that there was no evidence at all from any source that there would be any obstacle, insurmountable or otherwise, to full family life continuing outside the United Kingdom pursuant to the refusal order. We conclude that the necessary enquiry under the first stage of the Article 8 assessment was not conducted by the judge. The determination is bereft of the necessary findings pursuant to the first stage Article 8 enquiry viz the question of interference. This is a clear error of law. This error of law is compounded by the judge’s preoccupation with the question of legitimate aim and proportionality which merely serves to expose the gravity of the fundamental error which, in our view, permeates and infects the whole of the decision made. The materiality of the error of law is self-

evident. A necessary, indispensable exercise was not carried out by the judge.

7. It follows from this assessment and these conclusions that we must allow the appeal. We set aside the decision of the First-tier Tribunal. This gives rise to the question of whether this Tribunal should retain the matter with or without preserved findings or should remit to a differently constituted Tribunal. We have given some consideration to this. Subject to any submissions from either party we are minded to remit since we consider that a properly conducted first instance hearing must be carried out before any question of recourse to this appellate tribunal arises afresh.

Decision

8. We set aside the decision of the First-tier Tribunal. Having considered the parties' representations, we remit the matter to a differentially constituted FTT.

Signed: 

Mr Justice McCloskey,
President of the Upper Tribunal
Dated: 20 October 2013