

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

Appeal Number:
VA/11798/2013



THE IMMIGRATION ACTS

Heard at Field House

On 24 July 2014

Determination

Promulgated

On 20 August 2014

**Before
DEPUTY UPPER TRIBUNAL JUDGE DRABU CBE**

**Between
MRS BEGUM Mst SHAHNAJ**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

ANONYMITY DIRECTION NOT MADE

DETERMINATION AND REASONS

Representation:

For the appellant: Mr A Kalam of Kalam Solicitors

For the Respondent: Ms K Pal, Senior Presenting Officer

1. The appellant is a 35 year old female from Bangladesh. She is married to Mr Abdus Sobhan, a Bangladeshi national and from their marriage they have two children aged 17 and 14. She is a housewife but claims that receives an average monthly income of 28000 taka from crops grown on land and rental income of CNG Vehicle. She applied for an entry clearance to come to the United Kingdom with her son Jubel Ahmed as a family visitor to visit her sister for one month. Her application was refused by the respondent and the case papers before me make no mention of the fate of Jubel Ahmed's application. He too was presumably refused and as a dependant of his mother. However the decision to refuse does not state his name and in the notice of appeal either there is no mention of Jubel Ahmed as an appellant. The respondent refused the application because he was not satisfied that "it has been adequately established that the Appellant's circumstances in Bangladesh are as claimed and that their intentions are as stated.."

2. The appellant's appeal against the decision was heard on 15 April 2014 at Birmingham by Judge Nixon, a Judge of the First Tier Tribunal. Judge Nixon dismissed the appeal for reasons given in his determination promulgated on 15 April 2014. The determination states that the sponsor gave evidence before him and was cross-examined. The determination makes no satisfactory finding on that evidence. However Judge Nixon concluded that "as there are unanswered questions as to the appellant's circumstances in Bangladesh" she has "failed to show that she is a genuine visitor who intends to return at the end of her trip." The unanswered questions relate solely to her financial means.
3. The appellant sought and was granted permission to appeal to the Upper Tribunal by Judge Maller, a Judge of the First Tier on 3 June 2014. The grounds assert that the appellant's bundle contained a clear explanation at page 15 about the origin of the funds deposited in her bank account. Crop receipts too had been produced as had many other documents relevant to her financial circumstances but the Judge had ignored these and had focussed on absence of documents which he had assumed should have been available to the appellant and which she should have produced (income tax returns).
4. For the appeal before me, Mr Kalam, the appellant's representative had filed written skeleton argument and copies of Tribunal decisions in **Ogunkola [2002] UKIAT 02238 and AA and Others (Sector Based Work: General principles) Bangladesh [2006] UKAIT 00026.**
5. Mr Kalam relied upon his written skeleton argument and showed by reference to the papers before Judge Nixon that material evidence on the appellant's financial circumstances had been overlooked by the Judge and that the Judge had erred in approving the respondent's decision which was based purely on suspicion and speculation.
6. For the respondent, Ms Pal did not challenge any of the submissions made by Mr Kalam. However she said that she would leave it to me to determine the validity of Mr Kalam's submissions.
7. I have reviewed all the relevant papers and I find that the assertions made in the grounds of appeal are valid and these establish without a doubt that the decision of Judge Nixon was in material error of law for the reasons asserted. The Judge has made no real effort in scrutinising the evidence that had been placed before the respondent. He has gone along with the approach of the respondent that only strong proof of good financial circumstances of the appellant can discharge the burden of proof on the issue of intention to return following a visit. That surely has no basis in law. The fact that there were "unanswered questions" as to the appellant's finances in Bangladesh was grossly insufficient for the Judge to

conclude that the requirement on proving intention to return was not established given that the standard of proof required is on a balance of probabilities. I find that the “unanswered questions” were matters of detail rather than substance. In the circumstances therefore I set aside the decision of Judge Nixon and remake the decision. I am satisfied that the appellant has discharged the burden of proof on the sole disputed issue and that in respect of all other requirements the evidence has shown that these are met. The respondent also has not raised any issue on any of the other requirements under Rule 41. There is no reason to doubt that the appellant is leaving behind her husband and children – at the very least one child behind to visit her sister in the UK. The reasons for the visit are credible and I am satisfied that she intends no more than a genuine visit of finite duration namely one month.

8. The appeal is allowed.

FEE AWARD

Appeal having been allowed, I have considered whether there should be a fee award. I have concluded that the decision of the respondent was of poor quality and in the circumstances I make an award of full fees.

ANONYMITY DIRECTION

None has been sought and circumstances of the case do not warrant such direction.

Judge Drabu
Judge of the First Tier Tribunal sitting as Deputy Judge of the Upper
Tribunal.
17 August 2014