



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number IA/28860/2015

THE IMMIGRATION ACTS

Heard at Centre City Tower  
On 12<sup>th</sup> July 2017

Determination Promulgated  
On 7<sup>th</sup> August 2017

**Before**

DEPUTY UPPER TRIBUNAL JUDGE PARKES

**Between**

SAHEED ALI  
(ANONYMITY DIRECTION NOT MADE)

**Appellant**

**And**

SECRETARY OF STATE FOR THE HOME DEPARTMENT

**Respondent**

For the Appellant: Mr M Mustafe (Solicitor, Kalam Solicitors)  
For the Respondent: Ms H Aboni (Home Office Presenting Officer)

DETERMINATION AND REASONS

1. The Appellant's appeal against the Secretary of State's refusal of his application for leave to remain in the UK was dismissed by First-tier Tribunal Judge Beg in a decision promulgated on the 22<sup>nd</sup> of September 2016. The Appellant sought permission to appeal to the Upper Tribunal in grounds dated the 4<sup>th</sup> of October 2016, permission was granted by Kelly on the 19<sup>th</sup> of April 2017.
2. The Appellant had sought leave to remain in the UK on the basis of his relationship with the Sponsor and their children. The application had been refused for a number of reasons, original documentation had not been provided despite being requested. The Appellant did not meet the requirements of Appendix FM and so paragraph EX.1 did not apply. The Appellant did not qualify under paragraph 276ADE of the Immigration Rules and there were no very significant obstacles to his reintegration into Bangladesh.
3. The evidence at the hearing was set out in paragraphs 5 to 10 of the decision. The Appellant gave a number of reasons why he could not return to Bangladesh. He had come on a visit intending to leave but met his wife and married, in contrast her evidence was that he had come to the UK to marry her, her parents having told her of that intention in Bangladesh in 2007, and having married he had decided not to go back and get a spouse visa.

4. The Judge's findings are set out in from paragraph 11 of the decision. The Judge found that the Appellant had not sent the original documentation that had been requested. There was evidence of an Islamic marriage in August 2009 and a civil marriage in November 2011, the Judge accepted that the relationship was genuine and subsisting and that couple have 3 children. However, as the Appellant could not meet the eligibility requirements paragraph EX.1 did not apply having come to the UK on a visit visa.
5. The Judge went on to consider the Appellant's circumstances outside the Immigration Rules. at paragraph 16 the Judge the difference between the evidence of the Appellant and his wife and in paragraph 17 found that the fact he had come with the intention of settling in the UK cast serious doubt on his overall credibility. He had not been truthful on his visit visa application and his primary intention had been to avoid the normal entry clearance route as a spouse. In paragraph 18 the Judge rejected the claim that the Appellant could not return as his wife would not be able to cope and set out the evidence that suggested otherwise.
6. In the following paragraphs the Judge considered ZH (Tanzania), E-A (Nigeria) and Zoumbas before setting out section 117b of the 2002 Act and AM (S117B) Malawi [2015]UKUT 260 (IAC). Summarising the findings and conclusions in paragraph 27 the Judge found that the marriage was arranged and the marriage entered into when they knew he was an overstayer with no leave to remain and the family life was established in that context. The Appellant did not speak English and there was no evidence that he was financially independent, the Sponsor was on benefits in local authority accommodation. It was proportionate that the Appellant should return to Bangladesh and make an entry clearance application.
7. At the start of the hearing before hearing submissions I observed to the representatives that there was clear evidence of a breach of the visit visa and no evidence that the earnings threshold was met. For the Appellant it was submitted that an exception to the £18,600 requirement is where there is a genuine and subsisting parental relationship. I raised the question of the effect of the cases of Dereci and Sanade. Mr Mustafa referred to Treebhowen and section 117B (6) and said that there was hypothetical question to be answered and there was no finding of deception by the Judge. The Secretary of State could have refused the application on suitability grounds but had not done so. It was submitted that the reasoning in paragraph 12 of the decision was a material error. The Appellant met the requirements. The Appellant met the definition of a partner.
8. When the decision was made suitability had not been considered, there was no evidence of the relationship, evidence that should have been submitted with the application was missing despite the requests made. The Judge had doubted the credibility of the witnesses including with regard to the Appellant's ties to Bangladesh. The public interest had been considered. In paragraph 27 there were proportionality findings. It was submitted that the Appellant's immigration history could not be described as serious and the Judge had not addressed section 117B (6) referring also to Treebhowen. In SF the policy was considered. In conclusion it was suggested that the appeal should be allowed or remitted for rehearing.
9. As was to be expected the Home Office took the opposing position. Suitability had not been considered as there was no evidence to confirm the stated relationship and the marriage certificates had come late. The Appellant would fail under suitability. The Refusal Letter focussed on the partner route as did the decision, proportionality had been properly considered and not all the evidence had been accepted. The Judge had considered the evidence including his intention to stay and get married. There was no suggestion the children would have to leave they could remain with their mother. Chen applied, this was not an inadvertent error as he had done all he could to circumvent the rules, his presence being unlawful and precarious.

10. The Judge did err in respect of the eligibility requirements as the application was made after his visit visa had expired. However for the reasons that follow that error is not material. It appears from the way that the Home Office considered the case and then the manner in which the evidence came out at the hearing that the Home Office had no reason to consider the Appellant's suitability. The Appellant had failed to provide the required evidence to the Home Office to support the claim that he was in a relationship.
11. The evidence at the hearing clearly showed that the Appellant's coming to the UK was in order to get married and to circumvent the rules that apply to such arrangements. The Judge explicitly found that to be the case in paragraph 17 where he stated "I find that the fact that the appellant came to this country on a visit visa with the intention of settling in this country casts serious doubt on his overall credibility. I find that he was not truthful on his visit Visa Application Form by stating that he was visiting the UK for a limited period of time... I find that whilst he undoubtedly visited his sister it was his intention primarily to get married and to settle in this country without going through the normal entry clearance route as a spouse."
12. Those findings were clearly open to the Judge in the light of the evidence from the Appellant and in particular his spouse. That finding has not been challenged and given the evidence recorded it is difficult to see a basis on which a challenge could have been made. The Home Office in submissions rely on that finding as part of the argument to justify the decision made by the Judge.
13. Given the Appellant's deliberate evasion of immigration control and his having overstayed his visit visa it would follow that everything that he established after that time was when he was in the UK illegally. This was with the connivance of his partner who cannot complain about the effect of her part in that exercise by them and the subsequent diminution of her position. The Appellant's attempt to remain on an EEA basis had been rejected by First-tier Tribunal Judge Snape and no effort was made by the Appellant to comply with the obligation to leave at that time.
14. This is an area which has been considered by the Supreme Court in Agyarko [2017] UKSC 11 which included a review of ECtHR decisions. But for the exceptional circumstances identified in the case of Jeunesse it was concluded in the ECtHR that there were no insurmountable obstacles to family life continuing outside the EU and from paragraph 114 of the Jeunesse decision, cited in paragraph 54 of Agyarko removal in circumstances where the individual has been in the UK precariously [and in this case illegally] removal of the non-national would be incompatible with article 8 in exceptional circumstances. The circumstances in Jeunesse are a useful comparator.
15. The suggestion that the Appellant's deliberate evasion of immigration control should not be regarded as very serious cannot be maintained. Both the Appellant and his wife connived in the evasion of controls that they both knew applied to the Appellant in circumstances where it appears that the Appellant could not, and still does not meet the requirements. In addition he cannot speak English and is dependent on state benefits. His family could live in Bangladesh if they choose, it has to be remembered that the Appellant is not a victim of circumstances he is in a situation entirely of his own making.
16. Whilst the route that the Judge took may be open to question his findings that the Appellant's removal would be a proportionate response is beyond criticism. In the circumstances I am satisfied that the error in approach is not material. The unchallenged findings made in the

decision, when compared with Agyarko or Jeunesse, more than justify the conclusion and in the circumstances I decline to interfere with a perfectly sustainable decision.

## **CONCLUSIONS**

The making of the decision of the First-tier Tribunal did not involve the making of a material error on a point of law.

I do not set aside the decision.

### **Anonymity**

The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and I make no order.

### **Fee Award**

In dismissing this appeal I make no fee award.

Signed:

Deputy Judge of the Upper Tribunal (IAC)

Dated: 4<sup>th</sup> August 2017