



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

Appeal Number: HU/05641/2017

**THE IMMIGRATION ACTS**

**Heard at Manchester CJC  
On 24 September 2018**

**Decision & Reasons  
Promulgated  
On 17<sup>th</sup> October 2018**

**Before**

**UPPER TRIBUNAL JUDGE LANE**

**Between**

**MD FOYJUL AHMED  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mrs Barton, instructed by Sabz Solicitors LLP

For the Respondent: Mr Tan, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant, Md Foyjul Ahmed, was born on 1 January 1983 and is a male citizen of Bangladesh. He entered the United Kingdom in January 2007 as a working holidaymaker. More than four years after his visa had expired he applied for leave to remain as the spouse of a person settled in this country. His application was refused in April 2013 with no right of appeal. In February 2016 he was served with a notice IS96 as an overstayer. On 3 March 2016, he made a human rights application to remain in the United Kingdom on the basis of his family life with his spouse

(Ms Yasmin) who is a British citizen. His application was refused by a decision dated 18 April 2017. He appealed to the First-tier Tribunal (Judge Wyman) which, in a decision promulgated on 31 May 2017, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. Judge Wyman's decision is problematic. The analysis of Article 8 ECHR (the ground upon which the appeal was brought before the First-tier Tribunal) is lacking in structure and at times confusing. In granting permission, Deputy Upper Tribunal Judge Davey found that it was arguable that the judge's decision did not properly address Article 8 ECHR and he may have applied "too high a threshold" for Article 8.
3. It was also pleaded that the judge considered EX1 of Appendix FM when the appellant's representative had already conceded that the appellant could not meet the requirements of that provision.
4. The appellant's immigration history is by, any standards, appalling. Having arrived as a working holidaymaker, the appellant has not returned to Bangladesh but has chosen to make his life in the United Kingdom without any reference to laws concerning residence. The public interest concerned with the removal of the appellant is a strong one. I acknowledge that the judge has become somewhat confused as regards the *ratio* of *Agyarko* [2017] UKSC 11 and it is not entirely clear when the judge's consideration of EX1 finishes and his analysis of Article 8 begins. However, as regards the challenge concerning EX1, I find that this is without merit. There may have been no need for the judge to consider EX1 following the concession by the appellant's representative but his analysis of this issue is, at worst, superfluous. The judge's analysis does not contradict in any way the concession made and it would seem that the judge continued with the assessment of EX1 because he felt that he needed to be satisfied that the appellant could not meet the requirements of the provision and that a finding was required on that point before the judge could consider Article 8. In any event, the judge's consideration of EX1 does not constitute an error of law such that the decision falls to be set aside.
5. Likewise, despite the judge's confused analysis, I find that the outcome of the appeal to the First-tier Tribunal was in little doubt. This is a case where two individuals have chosen to get married in the United Kingdom at a time when the appellant's immigration status was highly precarious. I note that the appellant did not tell his wife of his immigration status (or rather lack of it) until after their marriage. Ms Yasmin suffers from epilepsy and has also been undergoing fertility treatment. I do not find that the judge's albeit brief analysis of these facts is flawed. As Judge Robertson observed when refusing permission in the First-tier Tribunal, it was for the appellant to adduce evidence to show that these medical conditions could not be treated in Bangladesh. He has not done so. Further, the appellant has adduced no evidence at all to show that Ms Yasmin would encounter any degree of hardship should she accompany

him to live in Bangladesh. The judge has made a clear finding that family life may be continued in Bangladesh. On the facts of this case, I consider that any Judge of the First-tier Tribunal, on the basis of the evidence adduced, would reach the same conclusion. That was Mr Tan's primary submission and I agree with it. I find, therefore, that notwithstanding problems in the First-tier Tribunal judge's analysis, I should refrain from setting aside his decision.

**Notice of Decision**

This appeal is dismissed.

No anonymity direction is made.

Signed

Date 1 October 2018

Upper Tribunal Judge Lane

**TO THE RESPONDENT**  
**FEE AWARD**

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date 1 October 2018

Upper Tribunal Judge Lane