



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/05748/2017

THE IMMIGRATION ACTS

Heard at Field House
On 1st August 2018

Decision & Reasons Promulgated
On 17th August 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

IMRAN ISLAM
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Iqbal of Counsel instructed by Taj Solicitors
For the Respondent: Mr S Kotas, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction and Background

1. The Appellant appeals against a decision of Judge Davidson (the judge) of the First-tier Tribunal (the FtT) promulgated on 16th May 2018.
2. The Appellant is a national of Bangladesh born 2nd December 1991. On 2nd November 2015 he applied for leave to remain in the UK on the basis of his family and private life. His application was refused on 12th April 2016. The Respondent found that he did not satisfy the requirements of the Immigration Rules, and there were no exceptional circumstances disclosed by the application.
3. The appeal was heard by the FtT on 10th May 2018. The judge heard evidence from the Appellant and his spouse, Dina Begum. After the Respondent's refusal decision

and prior to the FtT hearing, the Appellant's wife had given birth to a child. The judge found that the Appellant could not satisfy the requirements of the Immigration Rules, but went on to consider whether there would be insurmountable obstacles to the Appellant and his spouse continuing family life in Bangladesh and concluded that there would not be any such obstacles. The judge considered the best interests of the child would be to remain with his parents. The judge did not find that there were any compelling and compassionate circumstances, or exceptional circumstances, which would justify granting leave to remain outside the Immigration Rules. The appeal was dismissed.

4. The Appellant applied for permission to appeal to the Upper Tribunal. The grounds were prepared by solicitors who had not represented the Appellant before the FtT.
5. In summary it was contended that the judge had erred in law by failing to grant the Appellant a short period of leave, pending the outcome of his spouse's application for leave to remain. The position before the FtT had been that the Appellant's spouse had discretionary leave granted on 3rd February 2015 for a period of 30 months.
6. It was submitted that the Appellant's spouse had been granted humanitarian protection.
7. It was submitted that the judge had erred by incorrectly applying the test of insurmountable obstacles. The judge had failed to appreciate that the Appellant's spouse had been granted humanitarian protection in 2015. The judge had erred by failing to make an assessment under paragraph 117B(6) of the Nationality, Immigration and Asylum Act 2002.
8. It was further submitted that the judge had erred by failing to adjourn the hearing to await the outcome of the application for leave to remain that had been made by the Appellant's spouse. It was submitted that the judge had erred by failing to provide detailed reasons in relation to the best interests of the Appellant's child.
9. Permission to appeal was granted by Judge Ford in the following terms;
 2. It is argued that the Tribunal erred in
 - (a) Not recognising that the Appellant's partner was granted humanitarian protection and therefore in not applying EX.1(b) correctly. This was raised at paragraph 18 of the IAFT-5 and although the Tribunal's attention does not appear to have been drawn to it by the Appellant's representative at the hearing, the matter was properly before the Tribunal.
 3. There is an arguable material error of law.
10. Following the grant of permission directions were issued that there should be a hearing before the Upper Tribunal to ascertain whether the FtT had erred in law such that the decision should be set aside. The Respondent did not lodge a response pursuant to rule 24 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

The Upper Tribunal Hearing

11. I heard oral submissions from Ms Iqbal who confirmed that the Appellant's spouse had not been granted humanitarian protection. Ms Iqbal submitted that the judge had

erred in considering proportionality outside the Immigration Rules. It was accepted that the Appellant could not satisfy the Immigration Rules.

12. The judge had erred by failing to consider that the Appellant's spouse had discretionary leave, and had submitted an application for further leave to be granted. That leave had in fact been granted on 1st June 2018, after the FtT hearing. It was submitted that the judge had not taken this into account in the balancing proportionality exercise.
13. Mr Kotas submitted that the judge had not erred in law. It was common ground that the Immigration Rules could not be satisfied. The judge was aware of the circumstances of the application, having recorded at paragraphs 15 and 16 that the Appellant's wife had discretionary leave to remain, and she was abandoned in the UK by her father.
14. The judge had recorded at paragraph 19 the concerns of the Appellant and his spouse about return to Bangladesh. The judge had properly considered insurmountable obstacles outside the Immigration Rules and had not erred in law in concluding that there were no insurmountable obstacles to family life continuing in Bangladesh. The judge had not erred in considering the best interests of the child, who was one year of age at the date of hearing.
15. In response Ms Iqbal submitted that the judge had not considered or taken into account that the Appellant's spouse had been granted leave in 2015 and was on a pathway to settlement, and had not considered the reasons why she was granted leave.

My Conclusions and Reasons

16. The solicitors who drafted the Grounds of Appeal were wrong to assert that the Appellant's spouse had been granted humanitarian protection. It is accepted by all parties that this was not the case.
17. The judge did not err in concluding that the Appellant could not satisfy the requirements of the Immigration Rules. The Respondent's refusal decision dated 31st March 2017 points out that the Appellant could not satisfy the eligibility requirements of paragraph R-LTP.1.1(d)(ii) and that is not disputed. The judge was correct not to consider EX.1(b) of Appendix FM. This is because although it was accepted that the Appellant had a genuine and subsisting relationship with his spouse, she is not a British citizen, does not have settled status in the UK, and is not in the UK with refugee leave or humanitarian protection.
18. The judge was correct not to consider EX.1(a) because the Appellant's child is not a British citizen and had not lived in the UK continuously for at least seven years immediately preceding the date of application.
19. The judge was correct to go on and consider whether there were insurmountable obstacles outside the Immigration Rules. Paragraph 31 of TZ and PG [2018] EWCA Civ 1109 confirms that this is a relevant factor when considering a case outside the Immigration Rules.
20. I find no error in the consideration by the judge of the issue of insurmountable obstacles. At paragraph 30 the judge noted the Appellant is a citizen of Bangladesh

who has lived most of his life in that country. His wife and child are also Bangladeshi citizens. There will be no cultural or language barriers to their integration. There was no reason why the Appellant could not find work in Bangladesh.

21. The judge at paragraph 31 considered that the Appellant's spouse had been abandoned by her father who is now in Bangladesh, but the judge concluded that this was not an insurmountable obstacle to return, as she would be returning in a family unit and would not need the support of her father.
22. There is no error disclosed in the consideration by the judge of the best interests of the child. At paragraph 37 the judge found that removal of the child to Bangladesh would not cause any significant difficulty, and it was plainly in the child's best interest to remain with their parents.
23. The suggestion in the grounds seeking permission to appeal that an adjournment ought to have been granted is without merit. The Appellant was legally represented and there was no application for an adjournment. The reference to section 117B(6) of the 2002 Act in the grounds is completely misconceived. It is not relevant because the child is not British, and has not resided continuously in the UK for seven years.
24. In my view the judge considered all material evidence before him. He made findings open to him on that evidence and gave adequate and sustainable reasons for those findings.
25. The decision of the FtT discloses no material error of law.

Notice of Decision

The decision of the FtT does not disclose a material error of law. I do not set aside the decision. The appeal is dismissed.

Anonymity

There was no application for anonymity and I see no need to make an anonymity direction.

Signed

Date: 1st August 2018

Deputy Upper Tribunal Judge M A Hall

TO THE RESPONDENT FEE AWARD

The appeal is dismissed. There is no fee award.

Signed

Date: 1st August 2018

Deputy Upper Tribunal Judge M A Hall