



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/20324/2016

THE IMMIGRATION ACTS

Heard at Field House
On 18 June 2018

Decision & Reasons Promulgated
On 25 June 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE HILL QC

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR JUBAER AHMED
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Mr E Tufan, Senior Home Office Presenting Officer
For the Respondent: Mr T Aitken, Counsel, instructed by Novells Legal Practice

DECISION AND REASONS

1. This is an appeal brought by the Secretary of State from the decision of First-tier Tribunal Judge Walker promulgated on 4 January 2018. The appellant (as he was before the First-tier Tribunal) is a citizen of Bangladesh who appealed the Secretary of State's decision of 9 August 2016 refusing his application for leave to remain in the

United Kingdom. The appeal related to Appendix FM paragraph 276ADE, and Article 8 of the European Convention of Human Rights.

2. The judge dealt fully with the facts and came to the conclusion that although a number of arguments were raised as to why there would be insurmountable obstacles the only one which he considered to be of substance was his wife's pregnancy. In paragraph 29 the judge says:

"The relevant question is with regard to 'insurmountable obstacles' and whether the reasons put forward by the appellant and his witnesses amount to such. I find that of the various reasons the appellant has put forward for not being able to return to Bangladesh with his wife do not amount to insurmountable obstacles other than the current situation with regard to his wife's pregnancy. Her previous pregnancy unfortunately ended with a miscarriage and as a result with her current pregnancy she is being regularly monitored by both the GP and hospital. Given her medical history then it would be wrong for her to move now to Bangladesh to continue her family life there with her husband. I consider her current pregnancy and her past medical history to amount to an insurmountable obstacle."

3. At paragraph 37 the judge says:

"In summary I find that the only insurmountable obstacle is what could possibly be a temporary one and which is the appellant's wife's state of health and pregnancy."

4. The Secretary of State obtained permission to appeal on the basis that pregnancy, an inherently temporary condition, could not of itself amount to an insurmountable obstacle.
5. Mr Aitken reminded me that the test to be applied is that pertaining at the time the decision was made. He took me to documents at pages 69 and 72 of the appellant's bundle that was before the First-tier Tribunal Judge, which dealt with the medical condition of the appellant's wife.
6. Assessing what may or may not amount to an insurmountable obstacle is entirely within the province of the First-tier Tribunal. Other judges may not have come to the same conclusion as the judge did here. But there was material before the judge, particularly in relation to the wife's more general state of health, sufficient to justify a finding of insurmountable obstacle. This reviewing function of the Upper Tribunal affords deference to First-tier decision makers who hear the evidence and decide matters on the facts before them.
7. I am not persuaded by the arguments of the Secretary of State that the conclusions reached by the judge in this instance constituted an error of law such as to enable me to set aside the decision. The analysis correctly applies the step-by-step approach in

Razgar, and although very briefly expressed the conclusion that the interference with the appellant's Article 8 rights is disproportionate, was adequately reasoned and expressed. This Secretary of State's appeal is therefore dismissed.

Notice of Decision

The appeal is dismissed

No anonymity direction is made.

Signed *Mark Hill*

Date 20 June 2018

Deputy Upper Tribunal Judge Hill QC