



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/12496/2017

THE IMMIGRATION ACTS

Heard at Field House  
On 8<sup>th</sup> May 2018

Decision Promulgated  
**On 13 June 2018**

Before

DEPUTY JUDGE UPPER TRIBUNAL FARRELLY

Between

MR.N.M.  
(ANONYMITY DIRECTION MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Mr M Aslam, Counsel, instructed by SB Solicitors.

For the respondent: Ms A Everett, Home Office Presenting Officer

DETERMINATION AND REASONS

Introduction

1. The appellant has been given permission to appeal the decision of First-tier Tribunal Judge McClaren. The judge had dismissed the appellant's appeal in a decision promulgated on 11 January 2018
2. The appellant is a national of Bangladesh born on [ ] 1976. He is a Muslim. On the 12 February 2005 he married Miss [S] in Bangladesh. He then applied unsuccessfully for entry clearance under the then work permit scheme. His appeal

was heard before Immigration Judge Peart on 4 October 2005. His prospective employer attended and assured the judge he would comply with the terms of entry, particularly as he had a wife to return to. Based on this, his appeal was allowed. The appellant came to the United Kingdom on 1<sup>st</sup> December 2006 with entry clearance until 28<sup>th</sup> November 2009. Thereafter he overstayed.

3. On the 10<sup>th</sup> May 2015 he went through a religious ceremony of marriage in the United Kingdom to another Bangladesh national, Miss [AC]. She is referred to in the papers as Miss [A] but I will refer to her as Miss [C] being the surname used in the marriage certificate. She came here on 6 September 2015 and has overstayed. The appellant states he told the Imam and Miss [C] he was single.
4. Miss [C] was born on [ ] 1984 and is a Bangladeshi national from Sylhet. She came here on a visit Visa on 6 September 2014 and then overstayed. She claims at the time of their marriage in she was not aware the appellant was married and only learned of this shortly afterwards. He told her he tried to divorce his wife but she refused. Miss [C] is worried about the validity of her marriage and because the Imam had been told the appellant was single.
5. In May 2017 the appellant made a claim for protection, with Miss [C] as his dependent. His claim included a claim he is at risk from his wife in Bangladesh and her family as they have learned about his relationship with Miss [C]. He also claimed to fear the Bangladesh authorities who will consider his relationship with Miss [C] to be adulterous.
6. The respondent refused his application in November 2017. The respondent referred to the penal code of Bangladesh and section 497 which refers to sexual intercourse between a man and a married woman without the consent of her husband as an offence of adultery. The punishment is imprisonment up to 5 years or a fine. The respondent concluded this did not cover the appellant's situation. It was directed towards adultery with a married woman rather than adultery by a single woman with a married man.
7. First tier Judge McLaren did not find the claim well founded and that it did not engage the Refugee Convention. Going through a second ceremony of marriage and being in an adulterous relationship did not place him in a particular social group. The judge rejected his claim of ongoing harassment from his wife's family and did not accept they had influence as the appellant claimed. The judge found there was State protection.
8. The judge at paragraph 54 accepted the appellant had gone through a second ceremony of marriage. The judge rejected a report submitted on behalf of the appellant to counter the respondent's view that the criminal sanctions only applied to married women.

### Permission to appeal

9. The application for permission primarily related to the consequences of having gone to a second ceremony of marriage and contended that the appellant had committed an offence under Penal and Qurinic law. In support of the application an extract from the penal code numbered 494-496 was provided. It was also argued that the judge failed to consider whether Miss [C] belonged to a particular social group.
10. Granting leave it arguably the judge had misunderstood the penal code though there was concern fresh evidence about the code was being introduced. It was noted the judge understood the appellant would be returning to Bangladesh with Miss [C]. She had not been married before and it was arguable that the judge should also have considered her position.

### The Upper Tribunal

11. At hearing the presenting officer accepted the situation of Miss [C] had not been properly considered. As she was his dependent on her situation. Also needed to be dealt with. It was arguable that she could be caught under the penal code. The appellant representative also sought to introduce a new ground, namely that the judge unduly relied upon section eight and the delay in claiming. The presenting officer submitted it was clear the judge had not considered this provision as determinative.
12. The judge at paragraph 54 found the appellant had been married twice. At paragraph 55 the judge considered the argument put forward by the appellant that the penal code and the notion of Zina covered the appellant situation. The judge rejected this and did not very credible if it did his situation that the appellant would be unaware.
13. No argument was advanced in relation to the position of Miss [C]. Although there was repeated reference to the appellant 'marrying' a second time there was no reference as to whether this would be recognised in Bangladesh. There was also no reference to the laws of Bangladesh in respect of his having more than one wife or obtaining a divorce from his first wife. If the situation were that the appellant and Miss [C] are in an irregular union and the appellant was already married then they would be living in an adulterous relationship. This would have implications in Bangladesh not only for the appellant but for Miss [C].
14. In fairness to the judge the focus at the hearing was on the more narrow question of the interpretation of the part of the penal code cited. I find the failure to consider in the wider context the relationship and the effect upon Miss [C] amounts to an error of law in the decision, which means it cannot stand.

## Decision

The decision of First-tier Tribunal Judge McLaren materially errs in law and is set aside. The appeal is limited for a rehearing de novo in the First-tier Tribunal.

Francis J Farrelly  
Deputy Upper Tribunal Judge

## Directions

1. Relist before the First-tier Tribunal for a de novo hearing at Hatton Cross, excluding First-tier Tribunal Judge McLaren.
2. The appellant's representative should advise on the need for an interpreter. A hearing time of less than two hours is anticipated.
3. For the rehearing the representatives should seek country information about the laws and customs in Bangladesh in an attempt to establish whether the appellant and Miss [C] would be viewed as being in an irregular union and if so, the likely consequences. The case put forward is that they have gone through a religious ceremony of marriage in the United Kingdom by an Imam whilst the appellant has a wife in Bangladesh. This would involve consideration of whether Bangladesh would permit someone to have more than one wife in the circumstances described. If the union is irregular, then the parties should seek to provide information about whether it can be regularised, for instance, by the appellant divorcing and then entering into a marriage with Miss [C]. Skeleton argument should be prepared on this issue and consideration should be had to obtaining advice from a lawyer with knowledge of Bangladesh law. The information should consider matters not only for the position of the appellant but also that of Miss [C]. Presumably she is Muslim also but to avoid doubt this should be confirmed

Francis J Farrelly  
Deputy Upper Tribunal Judge

