



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

Appeal Number: HU/19316/2018

THE IMMIGRATION ACTS

Heard at Bradford

On 9 September 2019

**Decision & Reasons
Promulgated**

On 19 November 2019

Before

UPPER TRIBUNAL JUDGE LANE

Between

H A B

(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Brown, instructed by Parker, Rhodes Hickmotts
For the Respondent: Mr Diwnycz, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant was born on 1 January 1950 and is a female citizen of Bangladesh. She appealed to the First-tier Tribunal against a decision of

the Secretary of State to refuse to grant her leave remain under paragraph 276ADE of HC 395 (as amended). The First-tier Tribunal, in a decision promulgated on 7 February 2019, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. I find that the judge has erred in law such that his decision falls to be set aside. The judge found [23.10] that the appellant, although an adult, enjoyed family life with her son and daughter in the United Kingdom (see *Kugathas [2003] EWCA Civ 31*). However, his analysis thereafter is inadequate. The judge found that little weight should be given to the private life of the appellant at a time when her immigration status is precarious. However, he failed to give any or any adequate reasons for rejecting the appellant's appeal in respect of her family life. His conclusions at [24] are, in reality, no more than assertions unsupported by proper reasoning.
3. Moreover, I agree with the appellant that the judge has failed to give proper weight to the appellant's mental condition as a factor in determining whether there exist very significant obstacles to the appellant's integration in Bangladesh. It was apparent from the evidence that the appellant's mental problems have a very real effect upon her health and upon those seeking to offer her day-to-day personal care. Judge accepted the medical evidence which shows that family (as opposed to third party) assistance is essential in offering care to the appellant during any acute phase of her mental illness. The appellant has a fear of black magic and a paranoid dread of third parties attempting to poison her or 'do black magic on her.' (son's statement at [11]). However, without any reference to the evidence, the judge concluded that 'in a large thriving city like Dhaka there must be many mature ladies (*sic*) who are unemployed and would welcome the opportunity to earn money by caring for the appellant. In my conclusion, carers could be engaged at a relatively modest cost and indeed the selection and recruitment of suitable carers could all be closely supervised by [the appellant's son].' There was no basis in the evidence for the judge to reach such a finding which amounts, frankly, to nothing more than speculation. In any event, the finding ignores the evidence which indicated that the appellant would resist being cared for by a non-family member during periods of acute mental illness.
4. In the light of the inadequacies in the analysis which I have identified above, I set aside the decision. I set aside the judge's findings of fact but, like him and for the same reasons, I accept the evidence which has been provided hitherto by the appellant's children and the medical evidence of Dr Parker. Also following the First-tier Tribunal, I accept that there is family life between the appellant and her United Kingdom-based children. I have proceeded to remake the decision. As regards new evidence, I have a letter from the consultant psychiatrist, Dr Michael Parker, which is dated 6 September 2019. That letter indicates that the appellant 'suffering from an acute relapse of our recurrent psychotic depression and requires intensive treatment.' I have also considered the evidence before the First-tier Tribunal from the family members and from Dr Parker which

unambiguously shows the difficulty, if not impossibility, of non-family members having to care of the appellant during any acute psychotic episode. I find that there are, as at the date of remaking the decision, very significant obstacles to the appellant's integration in Bangladesh, notwithstanding that that is the country of her nationality and in which she has lived the greater part of her life. I accept the submissions made behalf of the appellant would not be reasonable to expect her United Kingdom-based family members to live with her in Bangladesh; her primary carer here, a daughter, is unable to travel to Bangladesh because she is a refugee. I find that, at the present time, it would be disproportionate for the appellant to be removed to Bangladesh where, following a relapse of her psychotic depression, she would be unable to access effective and adequate personal care. In the circumstances, I allow the appeal on human rights grounds (Article 8 ECHR).

Notice of Decision

The decision of the First-tier Tribunal is set aside. I have remade the decision. The appeal is allowed on human rights grounds (Article 8 ECHR).

Signed

Date 30 October 2019

Upper Tribunal Judge Lane