



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

Appeal: PA/09129/2017

THE IMMIGRATION ACTS

Heard at Glasgow
on 21 March 2019

Decision & Reasons Promulgated
on 10 April 2019

Before

**Mr C M G OCKELTON, VICE PRESIDENT
& UT JUDGE MACLEMAN**

Between

MOHAMMAD [U]

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr I Halliday, of McGill & Co, Solicitors
For the Respondent: Mr A Govan, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. This is an appeal against the determination of FtT Judge Clough, promulgated on 15 June 2018, following a hearing on 29 January 2018. The decision should have included an explanation for a delay of that length, but none is provided.
2. In a letter dated 20 March 2019 the respondent suggests that the judge failed to make clear findings, and that the case should be remitted to the FtT. However, we advised Mr Halliday (prior to the case coming on for

hearing) that we were not inclined to agree, and that we would require to hear from him on the merits of the grounds.

3. Having considered the grounds and Mr Halliday's submissions, we indicated that the decision did not fall to be set aside.
4. Even on generally favourable credibility findings, there was no evidence before the FtT by which the claim on protection grounds might rationally have been allowed. There was nothing to show that there would be insufficiency of protection from the alleged risk. Even more obviously, there was nothing to substantiate that the alleged persecutors, the appellant's children in Bangladesh, would have the interest or ability to trace him on his return to such a populous country, or that it would be unduly harsh for him, as a man of 75, with only minor medical problems, and a source of income, to relocate.
5. The case in the FtT naturally focused around the state of health of the appellant's wife, and on the situation if the spouses were to return together. It is sadly the case that the appellant's wife died between the date of the hearing and the date of the determination. This information was communicated to the FtT, as the judge notes at [19], but no application was made for a supplementary hearing. Sensibly, in light of absence of such application, Mr Halliday refrained from submitting that this is one of those exceptional cases where delay amounted to error of law.
6. There was nothing before the FtT by which the appeal might have been allowed on article 8 grounds either; and if that matter were to be revisited, there was no evidential basis for finding difficulty over the appellant's integration in Bangladesh.
7. The SSHD has not been asked to consider the appellant's current position, which is very different from when his wife was alive, in terms of article 8. Mr Govan indicated that consent would not be given under section 85 of the 2002 Act for the matter to be considered for the first time by a tribunal. If the UT or the FtT were to reach the stage of making a fresh decision, that would be an artificial and pointless exercise.
8. The appellant cannot advance through the present proceedings, for all or any of these reasons:
 - (i) the FtT's findings are sufficiently clear to support its conclusions, so no error of law was made; or
 - (ii) if the findings are insufficiently clear, there was no evidence before the FtT by which the appeal might have been allowed, and therefore no basis for setting its decision aside; or
 - (iii) if the decision were to be set aside, the new matter which should be at the heart of the case cannot be considered, and in its absence the appeal is again bound to fail.

9. We are not in a position to resolve the case according to current circumstances, but we have thought it worth recording that these are very different. The appellant would now return as a widower, with no issue of arranging for the care of his wife. Time has passed, perhaps increasing his links in the UK, including his bond with his daughter, which may be his strongest remaining tie. His wife's grave is here. We understand that he is likely to make further submissions to the respondent in the very near future. We do not say that such submissions are likely to succeed, as that must firstly be decided by the respondent on fully updated evidence, but we would not rule out success, and we would be extremely surprised if the SSHD did not recognise matters as at least amounting to a fresh claim.
10. The decision of the First-tier Tribunal shall stand.
11. No anonymity direction has been requested or made.

A handwritten signature in black ink, appearing to read 'Hugh Macleman'. The signature is written in a cursive style with a large, stylized initial 'H'.

8 April 2019
UT Judge Macleman