



**Upper Tribunal**

**(Immigration and Asylum Chamber)  
HU/16917/2019 (P)**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Decided under rule 34 (P)**

**Decision & Reasons  
Promulgated**

**On 29 October 2020**

**On 4 November 2020**

**Before**

**UPPER TRIBUNAL JUDGE KEKIĆ**

**Between**

**JUBAIR MAHMUD**

**(ANONYMITY ORDER NOT MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation (by way of written submissions)**

**For the appellant: Mr M West of Counsel instructed by PGA  
Solicitors**

**For the respondent: No submissions received**

## **DECISION AND REASONS**

### **Background**

1. This appeal comes before me following the grant of permission to appeal to the appellant by Upper Tribunal Judge Jackson on 9 August 2020 against the determination of First-tier Tribunal Judge Young-Harry, promulgated on 18 December 2019 following a hearing at Birmingham on 10 December 2019.
2. The appellant is a Bangladeshi national born on 16 October 1992. He arrived in the UK as a student in April 2011 with leave until October 2014. He met his wife in January 2017 and they married in July 2018. He appeals against the respondent's decision of 2 October 2019 to refuse his application for leave to remain on private/family life grounds. His wife is a white British national and a Christian. It is maintained that they would, therefore, not be able to enjoy family life in Bangladesh due to the sponsor's race and religion. Additionally, the sponsor suffers from ill health.
3. The appeal came before First-tier Tribunal Judge Young-Harry. She heard oral evidence from the appellant and his wife but concluded that family life could be enjoyed in Bangladesh. Accordingly, she dismissed the appeal.
4. The appellant successfully sought permission to appeal. Although this was refused by First-tier Tribunal Judge O'Garro on 7 May 2020, it was granted upon renewal to the Upper Tribunal.

### **Covid-19 crisis : preliminary matters**

5. The appeal would then have normally been listed for hearing but due to the pandemic this could not be done and instead the grant of permission, sent out on 28 August 2020, included directions in which Upper Tribunal Judge Jackson expressed the view that the appeal could be decided on the papers. The parties were invited to put forward any objections they may have to that proposal and to make further submissions within certain time limits. The appellant has responded to the directions and agreed to a paper determination but there has been no compliance by the respondent. I am satisfied that the respondent was properly served with the directions and that she has had ample opportunity to respond. I also note that the appellant's submissions were forwarded to her on 11 and 25 September 2020 so that would have given her two further reminders to comply. I now proceed to determine the matter on the papers.

## **Discussion and conclusions**

6. I have considered the evidence, the determination, the grounds for permission, the grant of permission and the two sets of submissions forwarded by the appellant's Counsel.
7. Three grounds are put forward. The first is that the judge failed to provide any adequate reasons for her conclusions when assessing the sponsor's medical conditions. The second is that when considering the issue of the interfaith marriage, the judge failed to consider important country information. Third, it is argued that the judge failed to correctly consider public interest considerations. I now consider each in turn.
8. The first complaint arises from the judge's finding that the sponsor would have access to medical health services in Bangladesh or alternatively that her father could assist her to continue receiving treatment in the UK (at paragraph 21). It is correctly argued that the affordability of treatment in Bangladesh was addressed in the skeleton argument to which no reference is made. It was pointed out in the skeleton argument that the UK government's advice was that Bangladesh had extremely limited free medical care. I cannot see any reference in the judge's determination to any consideration of that argument. Indeed, as the grounds argue, the judge fails entirely to give reasons for her conclusion that the sponsor would be able to access medical services in Bangladesh.
9. It is also the case that, as argued, the judge's alternative finding was flawed because the test under paragraph EX.1(b) of Appendix FM considers only the situation for both appellant and sponsor in Bangladesh. The insurmountable obstacles test as defined in EX.2 pertains to circumstances outside the UK and so the judge's finding that the sponsor would have the assistance of her father to help her in the UK has no bearing on the issue the judge was required to consider.
10. Extensive evidence on the sponsor's medical conditions was provided in the appellant's bundle (at 26-82). The sponsor suffers from the frequent dislocation of the temporomandibular joint and synovitis. The judge failed to have regard to whether these conditions would amount to very significant difficulties as per EX.2.

11. Ground 2 deals with the couple's interfaith marriage. As argued in the grounds and submissions, the judge appears to have approached this issue as though a protection claim had been made. Her consideration of a sufficiency of protection is irrelevant to the issue of whether the appellant and his wife would face very significant difficulties to continuing family life outside the UK. Further, the judge failed to have regard to the country evidence on interfaith marriages which are said to be very rare and generally poorly regarded. The fact that the sponsor may not be a practising Christian, which is the basis on which the judge found she and the appellant would have no problems, is irrelevant to how the marriage would be perceived particularly in the context of disapproval by the appellant's orthodox Muslim family. The findings on whether the marriage would add to the very significant problems they may encounter should have been made in the context of all the country evidence.
12. The third ground takes issue with the judge's misunderstanding that the appellant was unlawfully in the UK when he met the sponsor. Whilst the judge records that the appellant was without leave after October 2014, she has entirely overlooked the fact that he had 3C leave at the time he met the sponsor and only exhausted his appeal right in March 2017. Her consideration of s.117B factors was, therefore, made on a factually incorrect premise.
13. For all these reasons, I find that the judge's decision contains errors of law which render it unsustainable. It is set aside in its entirety. Neither party has sought to preserve any findings and the matter is thus remitted for a *de novo* hearing to the First-tier Tribunal. In accordance with the appellant's request the appeal shall be heard at Taylor House.

### **Decision**

14. The decision of the First-tier Tribunal contains errors of law and it is set aside. A fresh decision shall be made by another judge of the First-tier Tribunal.

### **Anonymity**

15. No request has been made at any time for an anonymity order and I see no reason to make one.

### **Directions**

16. Further directions for the hearing shall be issued by the relevant Tribunal in due course.

Signed

R. Kekić  
Upper Tribunal Judge

Date: 29 October 2020