



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-001142
First-tier Tribunal No:
PA/03228/2020

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 16 May 2023

Before

UPPER TRIBUNAL JUDGE HANSON

Between

SAHIN AHMED
(NO ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Holt instructed by TMC Solicitors LTD.

For the Respondent: Mr C Bates, a Senior Home Office Presenting Officer.

Heard at Manchester Civil Justice Centre on 18 April 2023

DECISION AND REASONS

1. The appellant appeals with permission a decision of First-tier Tribunal Judge Higgins ('the Judge') promulgated on 15 November 2021 following a hearing at Taylor House, in which the Judge dismissed the appellant's appeal against the refusal of his application for international protection or for leave to remain in the United Kingdom on any other basis.
2. The accepted chronology of events reads:

"The Appellant entered the UK in February 2011 with his Bangladeshi national mother. His mother had a visit visa for the UK and the Appellant was dependant on her, being under 18. His mother returned to Bangladesh but he remained in the UK ever since. He was arrested in January 2014 as an overstayer and on suspicion of illegal working in a restaurant's kitchen. The Appellant then made three unsuccessful applications for EEA Residence Card as extended family member of his EEA national uncle. He eventually claimed asylum in the UK on 26 June 2018 which was unsuccessful. He unsuccessfully appealed the decision and became appeal rights exhausted. The Appellant made further submissions, with a view to fresh claim, under Article 3 (medical) and also renewed his protection claim. His further submissions were accepted as a fresh claim but the

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Respondent refused his fresh claim with a right of appeal on 09 March 2020. The Appellant lodged in-time appeal. He subsequently entered into a relationship with a Bangladeshi national, Ms Choudhury, who holds indefinite leave to remain in the UK on the basis of being a victim of domestic violence at the hands of her now ex-husband. Since this was a new matter, to which the Respondent consented for FTT determination, a supplementary refusal decision was served to the Appellant on 25 June 2021. At the time of this decision, the Appellant was still unmarried but his Islamic partner was pregnant from him. She later had a miscarriage. The Appellant had a civil marriage with his partner on 06 October 2021. At the FTT hearing on 02 November 2021, the Appellant dropped his Article 3 (medical) and protection claim and requested that his appeal be considered on the basis that the Respondent's supplementary decision dated 25 June 2021 was unlawful under section 6 of the Human Rights Act 1998. Following the hearing, the FTTJ Higgins dismissed his appeal and determinations were promulgated on 15 November 2021."

3. The Judge in assessing the merits of the appeal found the appellant's partner, Ms Choudhury, a credible witness but did not make the same finding in relation to the appellant. The claim for protection was dismissed and it found the appellant and Ms Choudhury could continue their family life in Bangladesh and that removal pursuant to Article 8 ECHR was proportionate.
4. Permission to appeal was refused by another judge of the First-tier Tribunal but granted on a renewed application by Upper Tribunal Judge Kamara on 30 May 2022, the operative part of the grant being in the following terms:
 2. Given that the judge found that the appellant's partner was a fairly recent victim of domestic violence and that her former husband resided in Bangladesh, it is arguable that the judge fell into error in finding there to be no insurmountable obstacles to family life continuing in Bangladesh. It is further arguable that the judge ought to have had regard to information in the public domain contained in the respondent's CPIN.
 3. Permission is granted on all grounds
5. The Secretary of State has filed a Rule 42 reply dated 3 November 2022 opposing the appeal in the following terms:
 3. The grounds in essence contend that the FTTJ gave inadequate consideration to the spouse's risk from her ex-husband as an accepted victim of domestic violence within the context of an 'insurmountable obstacles' assessment under Art 8 and proportionality.
 4. The Appellant's home was in Sunamgong district [5] in Bangladesh. His family remained there and he was not at risk in his home area [6], this was not challenged at the hearing [12]; beyond a claimed lack of contact [17] which was rejected [29]. The sole basis of challenge was Art 8 family life. The spouse's ex-husband was a resident of the UK [9].
 5. The Spouse accepted she had received no threats from her ex-husband (who resided in London; contrary to the suggestion made in the Grant of Permission, the Spouse had joined her ex-husband in the UK because he was settled and resident here there is no reason to believe 'her former husband resided in Bangladesh') since July 2019 (the appeal hearing being November 2021) [21]. The Spouse does have contact with her family in Bangladesh [23]. There is seemingly no suggestion of her family having any problems as a consequence of her divorce?
 6. The burden of proof was on the Appellant and the standard was the balance of probabilities as this appeal was pursued solely under Art 8. The grounds do not elaborate on where the Spouse's home area (& family) is in Bangladesh, nor does it indicate the home area in Bangladesh of her ex-husband, and no attempt is seemingly made to establish the proximity between those locations and the Appellant's home area in Sunamgong district (& family).

7. For the FTTJ to consider whether a 'real risk' remained at date of hearing if the Spouse returned to Bangladesh with her current husband (clearly she was not returning as a lone woman/divorcee, but as an Islamically married woman) it is reasonable to assume the likely destination for cultural reasons would be her current husband's home area of Sunamgong [see 32].
8. The grounds direct the reader to no evidence in support of the 'reach' or 'influence' of the Spouse's ex-husband based on the evidence before the FTTJ. Nor do they elaborate on where the ex-husband's family are based in Bangladesh? The FTTJ was faced, therefore, with attempting to assess risk on the Spouse via Art 8 insurmountable obstacles based seemingly solely on a threat made in the UK over 2yrs earlier [33]. The Spouse would clearly expect to have the protection of her current husband and his family upon return.
9. The grounds(1) assert 'that the FTTJ did not have sufficient information available before him to make the adverse finding in paragraph 33'. With respect it was for the Appellant to adduce the necessary evidence to establish a 'real risk' in the context of Art 8 'insurmountable obstacles' to family life continuing in Bangladesh. The SSHD would contend that selfevidently they failed to do so. The witness statements were not even updated for the hearing [13] and yet the Representatives clearly had opportunity orally to develop their case to discharge the burden of proof.
10. The grounds (2) rely on CPIN material they had not adduced in support of their case and an assertion as to enhanced risk due to the involvement of UK police that it is not clear was advanced in argument before the FTTJ? The Spouse's Witness Statement (WS) of 21.5.2021 was brief and does not indicate where her or her ex-husband's family were located in Bangladesh or explain how her ex-husband would be able to make good on any threat he made to her in the event she returned to her current husband's home area?
11. Put simply if the FTTJ had allowed the appeal on the basis of risk to the Spouse based solely on the limited evidence before them it is likely that the SSHD would have challenged the decision as the informed reader is left wondering:
 - Where the ex-husband's home area/family is in relation to the current husband home district of Sumangong?
 - What, if any, influence the ex-husband has in Bangladesh such that he would make good on any threat made elsewhere in Bangladesh?
 - Why the Appellant and his family in their local community would be unable to resist such a threat in protecting their wife/daughter-in-law?
12. The Spouse would of course be returning as a married woman with her husband who was fit & healthy to seek employment [32] with the support of his family. Such a context is far removed from many of those considered in the CPIN material.
13. The SSHD would contend that ground (3) is mere disagreement over the outcome of a cogently reasoned proportionality assessment where the Appellant & Spouse were Bangladeshi nationals, familiar with the language, religion and culture and both enjoying family support there. The FTTJ's ultimate conclusion [40] was clearly open to them on the evidence (or lack thereof) for the cogent reasons given.
14. The SSHD would contend that the Appellant had failed to establish a 'real risk' to his wife on return at date of hearing even to the lower standard, let alone against the civil standard.

Discussion and analysis

6. The Tribunal is grateful to Mr Holt for the sensible way in which he approached the appeal in that, notwithstanding the content of the grounds on which permission to appeal was sought, the appellant's partner's subjective fear of being returned was itself an insurmountable obstacle to the appellant and his partner returning to continue with their family life in Bangladesh.
7. The Judge dealt with the situation of the appellant's partner and any difficulties they may face at [33 - 34] of the decision, where it is written:
 33. Ms Chowdhury left Bangladesh only two and a half years ago. She is not estranged from her family there. If she calls them, they talk to her. She worked full-time in a

laundry from November 2020 until June 2021. She gave up that job four months ago as a consequence of her miscarriage. She still feels low when she thinks about what might have been, and she has headaches when she dwells on the past. But other than taking a painkiller in the event that she suffers a headache, there was no suggestion she has required any other treatment. The Appellant and she are in a committed relationship. He has been supportive of her and she has been looking for work. Her concern about returning to Bangladesh stems from the threat her former husband made to her in July 2019. His threat was, however, delivered at a time of acute stress. Two and a half years have since elapsed. There has been no contact between them in the intervening period and their marriage has since been dissolved. Although I acknowledge Ms Chowdhury suffered domestic violence at the hands of her former husband, I am not satisfied there is a realistic prospect her former husband would now carry out the threat he made in 2019 bearing in mind the changes in their circumstances and the passage of time, and there is no objective justification for Ms Chowdhury's reluctance to return to Bangladesh.

34. There will undoubtedly be difficulties for the Appellant and Ms Chowdhury to overcome if they are to continue their family life in Bangladesh. I am not however satisfied those difficulties may properly be characterised as very significant. Nor, were I wrong about that, would I have been satisfied that overcoming such difficulties as there may be will entail very serious hardship for either the Appellant or Ms Chowdhury. Paragraph EX.1 of Appendix FM does not therefore apply and the Appellant is not eligible for a grant of limited leave to remain as a partner under the Rules.
8. The Judge therefore specifically considered the claimed subjective objection to the appellant's partner returning but found the same not be objectively well-founded.
9. In the case of Cathrine Lal v Secretary of State the Home Department [2019] EWCA Civ 1925 to Court of Appeal considered an argument that an individual would not be able to relocate with his wife to India if she was required to leave the UK, for various reasons, which themselves amounted to insurmountable obstacles.
10. The Court of Appeal find at [36] that a logical approach if the question of insurmountable obstacles arises is first of all to decide whether the alleged obstacle to continuing family life outside the UK amounts to a very significant difficulty. In the current appeal the Judge specifically considered this issue and concluded it did not for the reason stated. If it had the Judge would have been required to consider whether it was a difficulty which would make it impossible for the applicant and the partner to continue their family life together outside the UK, which the Judge clearly found it did not.
11. In relation to the subjective/objective element the Court of Appeal find at [37], when discussing the test under paragraph EX.2:
- “.... We do not accept, however, that an obstacle to the applicant's partner moving to India is shown to be insurmountable - in either of the ways contemplated by paragraph EX.2. - just by establishing that the individual concerned would perceive the difficulty as insurmountable and would in fact be deterred by it from relocating to India. The test cannot, in our view, reasonably be understood as subjective in that sense. To treat it as such would substantially dilutes the intended stringency of the test and give an unfair and perverse advantage to an applicant whose partner is less resolute or committed to their relationship over one whose partner is ready to endure greater hardship to enable them to stay together.”
12. The appellant's partner's fear is said to arise from the domestic violence to which she was subjected in the UK, which is the basis of the grant of discretionary leave in accordance with the Secretary of State's Domestic Violence Policy, and threats that have been made to her if she returned to Bangladesh. These were matters considered by the Judge who has given

adequate reasons for finding that such subjective fear is not objectively well-founded.

13. As to the submission any reaction to the fear may be a significant difficulty for the appellant's partner if she returned to Bangladesh, it was not established before the Judge that it would entail very serious hardship or amount to an insurmountable obstacle. The partner will not be returning to Bangladesh as a sole unaccompanied female, where she may be more vulnerable, but in the company of her husband.
14. Having considered the submission made with the required degree of anxious scrutiny I reject the claim the Judge did not properly assess the partner's subjective fear, as clearly that was considered in the determination. It has not been made out that the overall conclusion in relation to whether such a fear amounts to an insurmountable obstacle is a finding outside the range of those reasonably open to the Judge on the evidence.
15. It is also not made out that there are exceptional circumstances based upon the facts as found by the Judge sufficient to make the decision disproportionate.
16. I find the appellant has failed to establish the Judge has erred in law in a manner material to the decision to dismiss the appeal.

Notice of Decision

17. The First-tier Tribunal has not been shown to have materially erred in law. The determination shall stand.

C J Hanson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

19 April 2023