



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-005058

First-tier Tribunal No: PA/53958/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

17th January 2024

Before

UPPER TRIBUNAL JUDGE GLEESON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

ABDUL JALIL LAHIN
(NO ANONYMITY ORDER MADE)

Respondent

Representation:

For the Appellant: Mr Amerjit Basra, a Senior Home Office Presenting Officer
For the Respondent: Mr William Khan of Counsel, instructed by Midland Law

Heard at Field House on 9 January 2024

DECISION AND REASONS

Introduction

1. The Secretary of State challenges the decision of the First-tier Tribunal allowing the claimant's appeal against his decision on 9 September 2022 to refuse him international protection pursuant to the Refugee Convention, humanitarian protection or leave to remain on human rights grounds. The claimant is a citizen of Bangladesh.

2. **Mode of hearing.** The hearing today took place as a blended face to face and Microsoft Teams hearing. There were no technical difficulties. I am satisfied that all parties were in a quiet and private place and that the hearing was completed fairly, with the cooperation of both representatives.
3. For the reasons set out in this decision, I have come to the conclusion that the Secretary of State's appeal must fail.

Background

4. The claimant is from Sylhet and is now 20 years old. He left Bangladesh in 2019, on his account, when he would have been just 15 years old. He was encountered in Greece. The Greek authorities made a request to the UK to accept responsibility for him under the Dublin III agreement, because he had a maternal aunt here. The request was accepted, and the claimant arrived in the UK on 10 June 2021. He was still just 17 years old, and did not reach his majority until December 2021.
5. On arrival, the claimant made a protection claim based on an alleged land dispute in Bangladesh. That has been dismissed and he has not challenged the international protection element of the First-tier Tribunal decision. His father, with whom the claimant remains in contact, is still in Bangladesh on the disputed land. His mother and younger brother live with his father in the family home. His paternal uncles and maternal grandparents are also there.
6. On 5 September 2022, the claimant entered into an Islamic marriage with his UK girlfriend, left his maternal aunt's house in Luton, and moved in with his partner in her home in Stratford-upon-Avon.
7. On 8 February 2023, the parties entered into a civil marriage under UK law and there was 'some evidence of cohabitation' when the appeal was heard in the First-tier Tribunal in October 2023.

First-tier Tribunal decision

8. The Secretary of State did not arrange representation for the First-tier Tribunal hearing, nor did he apply for an adjournment to arrange representation. The claimant and his wife both attended and gave evidence. Mr Khan, who appears today, also appeared below.
9. The First-tier Judge dismissed the claimant's protection appeal. The judge expressed surprise that no evidence had been adduced from the claimant's adult relatives, either his UK aunt or his parents and grandparents in Bangladesh. A younger brother was also still in Bangladesh at the family home.
10. The First-tier Judge allowed this appeal under Article 8 ECHR. The Secretary of State had accepted that the marriage with his British wife was genuine: had the Secretary of State not done so, at [41] the Judge

expressed concerns about her hesitant evidence about the relationship. However, there was documentary evidence of ‘now lengthy cohabitation’

11. Paragraph 276ADE of the Immigration Rules HC 395 (as amended) did not avail the claimant. The First-tier Judge did not find that there were ‘very significant obstacles’ to the claimant’s reintegration in Bangladesh: see [40]. He had been away from home for just 4 years, came from a relatively wealthy middle-class family, was not at risk on return and had maintained contact with his parents and family.
12. The First-tier Judge reminded himself of the guidance on ‘insurmountable obstacles’ given by the Supreme Court in *Agyarko v Secretary of State for the Home Department* [2017] UKSC 11 and of the matters which the Tribunal must consider, having regard to part 5A of the Nationality, Immigration and Asylum Act 2002 (as amended) and in particular, section 117B thereof.
13. The claimant’s wife was a ‘young white British woman, who has no experience of living outside the UK at all, still less in the drastically different culture of Bangladesh’. She spoke only English and had a bachelor’s degree in genetics from Birmingham University, with an intention to pursue a Masters’ degree and work in the field of genetics. The First-tier Judge considered that those opportunities ‘would most likely be lost if she had to go and live in Bangladesh’.
14. The claimant’s wife had given ‘forthright and spontaneous’ evidence about her family situation in the UK. She had a younger sister with significant disabilities, and a mother who was her sister’s full-time carer, but who herself had poor mental health and a bad back. Her parents were separated: when the wife’s mother could not cope, it was the claimant’s wife who stepped in:

“44. ... I accept that this is a significant role and responsibility that could not be easily replaced by anyone else in the wider family should she leave the UK with the appellant, and nor could it be provided to the same standard by over-stretched statutory services.

45. In all of the circumstances, and on the balance of probabilities, I accept that there are insurmountable obstacles to the appellant and his wife enjoying their family life outside of the UK. The requirements of EX.1(b) are therefore met, and the appellant qualifies for leave to remain under the partner route of the immigration rules. Applying the ratio of TZ (Pakistan), the appellant’s removal from the UK would necessarily be a disproportionate interference with his family life, and his Article 8 appeal falls to be allowed.”

15. The Secretary of State appealed to the Upper Tribunal.

Permission to appeal

16. The Secretary of State’s challenge relates only to the Article 8 decision. His grounds of appeal are presented as a reasons challenge to the First-tier

Tribunal decision. The Secretary of State in his grounds of appeal accepted that the First-tier Judge's findings of fact should be preserved. He argued, however, that the negative findings on the credibility of the claimant's international protection account should damage his credibility in relation to his private and family life with his British citizen wife.

17. The First-tier Judge's findings about the wife's family circumstances were based on the oral evidence of the claimant, and his wife. The Secretary of State argued that the findings were not corroborated by anything in the hearing bundle supporting the account of the claimant's mother-in-law's caring responsibilities or her health problems, or those of his sister-in-law and his wife's involvement with that.
18. The same was true of the First-tier Judge's concerns about the wife's academic and employment future in genetics research. The Secretary of State relied on *Younas (section 117B(6)(b); Chikwamba; Zambrano) Pakistan* [2020] UKUT 129 (IAC) and *Rhuppiah v Secretary of State for the Home Department* [2018] UKSC 58.
19. Permission to appeal was granted because:

"It is arguable that the Judge may have materially erred in the assessment of the insurmountable [obstacles] to family life continuing abroad, and the reasonableness of an application for entry clearance as set out in the grounds. "

20. There was no Rule 24 Reply on the claimant's behalf.
21. That is the basis on which this appeal came before the Upper Tribunal.

Upper Tribunal hearing

22. The oral and written submissions at the hearing are a matter of record and need not be set out in full here. I had access to all of the documents before the First-tier Tribunal and in addition to a skeleton argument on behalf of the claimant, filed the day before the hearing.
23. In his skeleton argument for the claimant, Mr Khan argued that the First-tier Judge's decision was sustainable on the facts and that the credibility of the claimant's evidence about his family life was severable from the lack of credibility about his international protection claim. The First-tier Judge had found that the claimant's wife could not go and live in Bangladesh, and further, that requiring him to go to Bangladesh and make an application to rejoin his wife, with entry clearance, was disproportionate.

Conclusions

24. The Secretary of State did not provide any representation at the First-tier Tribunal. He accepts that the First-tier Judge's findings of fact and credibility must stand. He cannot be heard to say that the First-tier Judge erred in what he accepted in the oral evidence of the parties. Mr Basra in

his oral argument in the Upper Tribunal made points which could have been made, had representation been arranged. However, as there was none, the Secretary of State is right to accept that the findings of fact and credibility are to be preserved.

25. The success of this appeal turned on the claimant's relationship with his wife, who is a British citizen and thus a qualifying partner for the purposes of section 5A of the 2002 Act. Given that the claimant entered the UK as a minor, with the UK accepting responsibility for him under Dublin III, it has not been argued (and could not be) that he was not here lawfully. Section 117(4)(b) is not applicable. No other element of his private life may be relied upon as the claimant was in the UK precariously throughout and section 117(5) of the 2002 Act applies.
26. The question then is whether the Judge's approach to the circumstances of the claimant's wife can be sustained, on the factual and credibility findings that he made. The findings are certainly generous, but they were open to the First-tier Tribunal on the oral and written evidence of the parties. The First-tier Judge is not required to seek corroboration and the Secretary of State failed to exercise her right to attend and challenge the witnesses, or to make oral submissions.
27. In this case, the Judge made a finding of fact which was open to him on the evidence and with which an appellate Court or Tribunal may not interfere, unless it is 'rationally insupportable': see *Volpi & Anor v Volpi* [2022] EWCA Civ 464 (05 April 2022) at [65]-[66] in the judgment of Lord Justice Lewison, with whom Lord Justice Males and Lord Justice Snowden agreed.
28. That high standard is not reached here. The Secretary of State's appeal must fail.

Notice of Decision

29. For the foregoing reasons, my decision is as follows:

The making of the previous decision involved the making of no error on a point of law

I do not set aside the decision but order that it shall stand.

Judith A J C Gleeson
Judge of the Upper Tribunal
Immigration and Asylum Chamber

Dated: 14 January 2024