IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-003647

First-tier Tribunal No: HU/59921/2023
LH/03047/2024

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 2 January 2025

Before

UPPER TRIBUNAL JUDGE BULPITT

Between

Joni Begum
(NO ANONYMITY DIRECTION MADE)

Applicant

and

Secretary of State for the Home Department

Respondent

Representation:
For the Appellant: Mr M Mohzam – Counsel instructed by Novells Legal Practice
For the Respondent: Mr S Walker – Senior Home Office Presenting Officer

Heard at Field House on 19 December 2024

DECISION AND REASONS

1. The appellant appeals against the decision of First-tier Tribunal Judge Dixon ("the Judge") promulgated on 29 May 2024, in which the Judge dismissed the appellant's appeal against the respondent's refusal of her human rights claim.

Background

2. The appellant is a 34-year-old citizen of Bangladesh. She came to the United Kingdom on 4 February 2007 with her parents and sister. The family had been granted a visit visa which was valid until 27 May 2007. Whilst her parents returned to Bangladesh in accordance with that visa, the appellant and her sister remained in the United Kingdom without leave.

3. On 24 October 2010 the appellant married Mohammed Balal Uddin in an Islamic Marriage Ceremony. At the time of their marriage Mr Uddin was also living in the United Kingdom without leave. The couple have continued to live together since their marriage. On 4 August 2022 Mr Uddin was granted limited leave to remain in the United Kingdom on the basis of his private life, having been resident in the country for more than twenty years. His leave to remain is valid until 31 December 2024. Whilst he does now have leave to remain in the United Kingdom, he is not therefore "settled" in the United Kingdom.

4. On 19 October 2022 the appellant applied for leave to remain in the United Kingdom on the basis of the private and family life she has established during her time in the country. The respondent refused that application in a decision dated 1 August 2023 concluding that the appellant did not meet the requirements in the Immigration Rules for being granted leave to remain and that refusal would not breach the appellants article 8 Convention right to respect for her private and family life. The appellant appealed to the First-tier Tribunal and her appeal was heard by the Judge on 3 May 2024.

The Legal Framework

5. This ground of appeal is that the respondent's decision is unlawful under section 6 Human Rights Act 1998. Section 6 Human Rights Act 1998 requires the respondent's decisions to be compatible with a person's Convention rights, including the right to respect for a person's private and family life which arises by virtue of Article 8 Convention on the Protection of Human Rights and Fundamental Freedoms (the Convention).

6. When article 8 of the Convention is engaged, it falls to the respondent to justify the proposed interference. The state has a "margin of appreciation" when considering whether a fair balance has been struck when assessing whether an interference with a person's private and family life complies with article 8. The Immigration Rules reflect the responsible Minister's assessment, at a general level, of the relative weight of the competing factors when striking a fair balance under article 8. If the requirements of the Immigration Rules are fulfilled therefore refusal of the appellant's application be disproportionate. If the requirements of the Immigration Rules have not been met, then to produce a decision that complies with the person's article 8 Convention rights, it is necessary to undertake an overarching assessment to determine whether in all the circumstances the interference with the appellant's private and family life in the United Kingdom that refusal of his application involves, is proportionate. When undertaking that proportionality assessment regard must be had to the specific factors set out in section 117B Nationality Immigration and Asylum Act 2002 (NIAA).

The Judge's Decision

7. The Judge issued his decision on 29 May 2024. At [7] of that decision he identified what the parties agreed at the beginning of the hearing were the two issues he had to decide:

> (i) whether the appellant would encounter very significant obstacles to integration in Bangladesh

(ii) whether the refusal gives rise to a disproportionate interference with Article 8, the appellant accepting that she cannot come within the terms of Ex 1 of Appendix FM (of the Immigration Rules).

8. Having identified the evidence that was before him and confirmed that he had considered all that evidence in the round the Judge set out his findings on the disputed issues under the heading "findings." At [11] – [12] the Judge found that the appellant and her husband would not face unsurmountable obstacles to the continuation of their family life in Bangladesh. At [13] the Judge considered evidence about the appellant's mental health and concluded that she was not someone with severe mental health problems. At [14] the Judge found that the appellant would not face very significant obstacles to integration in Bangladesh. At [15] the Judge found the public interest in removal "substantial" and that the appellant's family life on the other hand was of little weight. Accordingly, the Judge dismissed the appeal.

The appeal to the Upper Tribunal

9. When granting the appellant permission to appeal against the Judge's decision, Upper Tribunal Judge Mahmood noted that the written grounds of appeal were rather discursive and urged the appellant's representatives to be ready to deal clearly and succinctly with the matters to be argued at the hearing. Mr Mohzam achieved this in his arguments before me. He argued that the Judge erred when considering the proportionality of the interference with the appellant's article 8 rights by failing to consider the practical reality of the appellant's situation, which was that she would be returning to Bangladesh alone as Mr Uddin's would not relinquish the leave to remain in the United Kingdom he has obtained and would not move to Bangladesh. This was described as a failure to consider the "stay scenario." Relying on GM (Sri Lanka) v SSHD [2019] EWCA Civ 1630, Mr Mohzam argued that the proportionality assessment, balancing the public interest in removal against the appellant's private and family life rights, needed to be considered in the "real world" situation, which was that the consequence of the respondent's decision would be the rupture of the couple's family life. He asserted that the Judge's failure to do this amounted to an error of law.

10. In response Mr Walker argued that the Judge had carefully considered the circumstances of the appellant and her husband and reached a conclusion available to him. Mr Walker accepted that the appellant and her husband may choose to separate if the appellant were removed but argued that the Judge could not be bound by the choice the appellant and her husband might make. Mr Walker argued there that the Judge had conducted a proportionality assessment that was free from any error of law.

Analysis

11. The Judge's decision is succinct and targeted to the issues that the parties agreed at the beginning of the hearing were those he had to resolve. This is consistent with the approach set out in TC (PS Compliance – "issue based" reasoning) Zimbabwe [2023] UKUT 00164 (IAC). They were the issues that the appellant had identified in the Appeal Skeleton Argument (ASA) (a document which curiously has been omitted from the consolidated bundle prepared by the appellant for this hearing) and which the respondent had engaged with in the Respondent's Review, both of which were served in advance of the hearing

before the Judge, following the process set out in Practice Statement No 1 of 2002. The case advanced in the ASA was that the appellant would face very significant obstacles to her integration in Bangladesh as a result of her poor mental health, the length of her absence from the country and the absence of family support she would have there. The ASA also argued that for the same reasons there would be insurmountable obstacles to the appellant and her husband's relationship continuing outside the United Kingdom. The ASA does not positively assert the "stay scenario" that the appellant's husband would choose to stay in the United Kingdom and therefore that the appellant would be returning to Bangladesh alone through choice.

12. The arguments in the ASA reflected the contents of the witness statements submitted by the appellant and her husband in which they said that they *could not* return to Bangladesh but did not say that the appellant's husband would choose not to return. In the hearing before me Mr Mohzam mis-characterised the contents of the appellant's husband's statement, suggesting that Mr Uddin had said in his statement that he *would not* return to Bangladesh because he was unwilling to relinquish the limited leave to remain in the United Kingdom he has been granted. That is not however what the statement says. At [8] of Mr Uddin's statement he says *"It is not possible for my partner to go and live in Bangladesh"* at [9] of his statement he says *"I cannot go and live in Bangladesh with her because we both have no home or support"*, at [10] he says *"It would simply not be possible for us to rebuild our future and start a life in Bangladesh"*. Mr Mohzam did not refer to the appellant's statement which includes at [42] *"If I was asked to leave the UK with my partner, we both would have to go to a country where we have no home, support and no income".*

13. It is clear therefore from the evidence that was before the Judge, the ASA and Respondent's Review that were served in anticipation of the hearing, and the agreed position of the parties at the hearing, that the "principle important controversial issues" that the Judge was being asked to resolve were whether the appellant would face very significant obstacles to integration in Bangladesh and whether the appellant and her husband could continue their family life in Bangladesh. Those were exactly the issues the Judge addressed in his decision. The Judge cannot now be properly criticised for failing to consider an alternative scenario (the "stay scenario") which was never advanced before him.

14. Neither can there be any valid criticism of the Judge's assessment of those principle important controversial issues. The Judge begins the "findings" section of the decision by carefully analysing what obstacles to continuing their family life in Bangladesh the appellant and her husband would face. The Judge's findings include that they "would face difficulties in establishing their life there" and that for the appellant's husband "relocation would be a considerable challenge" but he goes on to conclude that "there is no evidence that they would encounter obstacles which would be impossible for them to overcome or which could only be overcome entailing very serious hardship." The Judge explains this conclusion by reference to the fact that they are both familiar with the culture and norms of Bangladesh, both speak Bengali Sylheti, they could live in the appellant's "ancestral home" at least during a period of re-settlement and they could maintain links with members of the family who live in the United Kingdom as those family members visit Bangladesh regularly. These findings have not been challenged by the appellant and are clearly rational findings which are adequately explained.

15. At [13] and [14] the Judge goes on to consider the argument that the appellant would face very significant obstacles to her integration in Bangladesh. This

argument was primarily dependant on the assertion that the appellant had severe mental health problems which would hinder her attempts to reintegrate. At [13] the Judge rejects that assertion finding that *"I do not therefore regard the suggested diagnosis as accurate and do not consider it appropriate to assess the appellant's situation as involving a person with severe mental health problems."* This finding has not been challenged by the appellant and is adequately explained by the Judge by reference to the absence of any reference to severe mental health issues in her medical notes and the limited talking therapy sessions the appellant has had. Having determined that the appellant's mental health issues are not as serious as claimed, the Judge determined at [14] that she would not face very significant obstacles to integration in Bangladesh, as she grew up there, retained familiarity with the culture and norms of the country, had accommodation available to her and was likely to have regular visits from her siblings. Again, this reasoning cannot be properly challenged.

16. Having resolved those principle controversial issues the Judge turned at [15] of his decision to the proportionality assessment that is required for a decision to comply with article 8 of the Convention, balancing the public interest in the appellant's removal against the private and family life she has established in the United Kingdom. For the reasons I have already explained I am not satisfied that the Judge was required to assume that the appellant's husband would choose not to go to Bangladesh with the appellant when undertaking that assessment, as that was not the basis on which the appellant's case was advanced. Even if he had made such an assumption however, on the findings the Judge had already made about the principle controversial issues, the conclusion that the public interest in removal outweighed the appellant's private and family life rights was inevitable.

17. The Judge notes first the "substantial public interest in the maintenance of immigration control." This is unquestionably correct having regard to section 117B(1) of the 2002 Act which provides that effective immigration control is in the public interest, and in the specific circumstances which involve the appellant being in the United Kingdom unlawfully for more than a decade and never having a legitimate expectation of being permitted to remain or settle in the United Kingdom.

18. The judge then notes by contrast that "relatively little weight" attaches to the appellant's relationship with her husband because the relationship was formed at a time when the appellant and her husband had "no status in the UK." Mr Mohzam criticised that finding on the basis that the appellant's husband was granted limited leave to remain, in 2022. However, as Mr Mohzam had to accept, the Judge's finding involved the correct application of section 117B(4) of the 2002 Act which states that: *"Little weight should be given to (a) a private life, or (b) a relationship formed with a qualifying partner, that is established by a person at a time when the person is in the United Kingdom unlawfully."* The appellant's entire stay in the United Kingdom has been unlawful and although he now has leave to remain, the relationship with her husband was established while they were both in the United Kingdom unlawfully. Mr Mohzam's initial criticism of this finding, based on a passage from GM (Sri Lanka) discussing section 117B(5) which applies to people with precarious immigration status, was misguided.

19. Ignoring the fact that it was not an argument presented to the Judge and so was not something that the Judge could be expected to consider, the suggestion that the weight to be attached to the appellant's private and family life side of the scales should be increased by her husband's choice not to go to Bangladesh with the appellant is, in any event, hopeless. As Mr Mohzam accepted, article 8 of the

Convention does not give a couple the right to choose in which country they continue their relationship (see the decision of the European Court of Human Rights in Jeunesse v Netherlands (12738/10) [2015] 60 E.N.R.R.17 at [107]).

20. To support his contention that the weight to be attached to the appellant's article 8 rights was increased by the consequence of her removal being the rupture of the relationship, Mr Mohzam referred to GM (Sri Lanka) where at [42] – [44] Lord Justice Green said that the First-tier Tribunal Judge in that case had erred by ignoring the implications of the husband of the appellant choosing not to leave the United Kingdom with his wife. That passage of GM (Sri Lanka) is however dealing with the paramountcy of the interests of the children and therefore a very different context to the situation in this case. The law is clear that the choices of parents in an immigration context should not be held against their children. Here, where there are no children whose interests must be treated as paramount, and where the Judge had found that there were no insurmountable obstacles to the relationship continuing in Bangladesh, the weight to be attached to the consequences of a choice by the appellant's husband to rupture a relationship which itself was formed at a time when both parties were in the United Kingdom unlawfully, was inevitably negligible.

21. Overall therefore, the Judge was unquestionably entitled to conclude that the strength of the public interest in removal outweighed the appellant's article 8 right to respect for her private and family life, indeed it is hard to see how any other conclusion could have rationally been reached given the Judge's unchallenged findings on the principle controversial issues.

Notice of Decision

The appellant's appeal is dismissed.

The decision of the First-tier Tribunal Judge did not contain an error of law and will stand.

Luke Bulpitt
Upper Tribunal Judge Bulpitt

Judge of the Upper Tribunal
Immigration and Asylum Chamber

20 December 2024