



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

Appeal Number: IA/23940/2013

THE IMMIGRATION ACTS

Heard at Bradford

On 8th May 2014

**Determination
Promulgated**

On 30th May 2014

Before

UPPER TRIBUNAL JUDGE D E TAYLOR

Between

AKTARUN NESSA KHATUN

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mrs Hussain, Maya Solicitors

For the Respondent: Mrs R Pettersen, HOPO

DETERMINATION AND REASONS

1. This is the Appellant's appeal against the decision of Judge Hague made following a hearing at Bradford on 3rd December 2013.

Background

2. The Appellant is a citizen of Bangladesh born on 21st May 1934. She entered the UK as a visitor with a visa due to expire on 23rd August 2012.
3. On 14th August 2012 she applied for leave to remain outside the UK due to compelling and compassionate circumstances. The application was refused on 7th June 2013 and it is this decision which was the subject of the appeal before Judge Hague.
4. The application was refused under paragraphs 322(1) of HC 395 as it was one being sought for a purpose not covered by the Immigration Rules and under paragraph 276ADE, private life grounds and outside the Immigration Rules on compelling and compassionate grounds with respect to the Appellant's health.
5. The Appellant's late husband had indefinite leave to remain in the UK and she came to join him in 1982 as a spouse. They then returned to live in Bangladesh and so, after two years' absence, she lost her right to enter. After her husband died in 1990 she lived with her son in Bangladesh and says that she now wishes to stay in the UK because her daughter-in-law there was very cruel to her.
6. The judge heard oral evidence from the Sponsor who said that his brother was no longer willing to look after their mother who suffers from a number of challenging medical conditions including loss of memory. He had before him a letter from the Appellant's GP which says that she has diabetes, hypertension, ischaemic heart disease and is taking appropriate medication.
7. The judge said that he approached the evidence in particular that of the Sponsor's son with caution because it appeared to him to be skewed in order to achieve the desired objective. The evidence that his mother's health had declined from the time of his father's death was not credible because she was widowed 22 years ago and there was a discrepancy as to the reason why the Appellant was unable to give oral evidence. The Sponsor said it was because of memory loss and his wife said it was because she was nervous. The judge noted that she was able to go to the solicitors and make a statement and he rejected the Sponsor's description of her.
8. The Appellant's daughter-in-law also gave oral evidence confirming that she thought that the son and daughter-in-law in Bangladesh would not accept her back. However the judge found it not credible that the Appellant only complained of cruelty after four or five months in the UK. As she had been living with her other son for 22 years and the Sponsor had been visiting her every year or two since that time, he would have known about it far earlier had it been true. It was clear to him that the application was not as a result of recent developments.
9. The evidence of the daughter-in-law made it plain that there was no intention of return when she came to the UK. He found as a fact that the

visit visa was obtained fraudulently, which was probably done because she could not satisfy the requirements of the Rules.

10. The judge found there was no protected family life in this case. The Appellant's family life was with her family in Bangladesh. He recognised that she was elderly but the public interest in her removal derived from the visit visa being obtained fraudulently with the objective of circumventing the Immigration Rules. ECO's must be able to rely upon assurances given in visit visa applications and it was very damaging to effective immigration control if visit visas become perceived as a means of setting up a *fait accompli* in the UK. That could only result in greater suspicion of elderly applicants and the refusal of many innocent and genuine family visits.
11. The public interest greatly outweighed the private rights of the Appellant and on that basis he dismissed the appeal.

The Grounds of Application

12. The Appellant sought permission to appeal on the grounds that the judge had failed to consider the relevant case law of Beoku-Betts v SSHD [2008] UKHL 29 in that requiring the Appellant to return to Bangladesh to make the correct entry clearance application was contrary to the principles set out in that case. Neither did the judge take into account the Appellant's ill-health and the high standard of care she was receiving in the UK, nor the fact that such level and quality of care was not available to her if on return to Bangladesh. The judge did not give reasons for preferring the evidence of the daughter-in-law to that of the son, given that he did not accept her evidence that the family in Bangladesh would not accept her back. Finally, although the judge stated that the daughter-in-law and son from the UK could accompany the Appellant back to Bangladesh he failed to take into account that they could not reasonably be expected to give up their rights in the UK in order to care for her there.
13. Permission to appeal was granted on 26th March 2014 by Judge Osborne for the reasons stated in the grounds.

Submissions

14. Mrs Hussain relied on her grounds and submitted that the judge had failed to take all of the relevant evidence into account, in particular the letter from Dr Ahmed dated 8th November 2013 which states that the Appellant is a frail elderly lady who needs help with all her daily activities and 24 hour surveillance from a member of the family due to frailty and short memory impairment. She also suffers from panic attacks and acute anxiety. There was no challenge to the veracity of the letter. The judge's failure to consider it properly impacted on his assessment of the evidence; his mistake in its assessment affected his assessment of the emotional and dependence on the Sponsor in the UK and on his consideration of Article 8.

15. Mrs Pettersen defended the determination and submitted that the Appellant's representative was cherry picking the daughter-in-law's evidence. The judge had properly summarised the Appellant's various illnesses and was entitled to take into account the contradiction between the son and the daughter-in-law as to the reason why the mother was not in court. She noted that the Entry Clearance Officer had not been informed of any health difficulties.
16. It was open to the judge to find that the situation in Bangladesh had at best been exaggerated and to conclude that there had been fraud in the visit visa application which was a strong factor in the Secretary of State's favour.
17. There was no suggestion that the Sponsor and his wife would have to relocate to Bangladesh simply that they could accompany her there but in any event the doctor's letter did not say that she was unfit to travel.
18. By way of reply Mrs Hussain said that the daughter-in-law's evidence was consistent with her husband in relation to the situation in Bangladesh and there had been a genuine change of circumstances. There were simply no family members willing to look after her there. Moreover the judge's assumption that the application had been made in-country in order to circumvent the requirements of the Rules was unfounded since the Sponsor was a wealthy man who could meet the maintenance requirements.

Findings and Conclusions

19. There is no error of law in this determination.
20. With respect to the medical evidence, although the judge's summary of the letter from the GP is brief, it is not inaccurate.
21. He was entitled to state that some of the information in the letter derived from what had been told by the relatives. The issue as to whether the Appellant did not give evidence because of nervousness or because of memory loss is not central to this appeal. There is no inherent contradiction between the doctor stating that the Appellant had short term memory impairment and the judge's observation that she was nevertheless able to provide a statement to the solicitors.
22. The judge gave proper reasons for rejecting the evidence of the witnesses that the son, with whom the Appellant had lived for 22 years in Bangladesh, was no longer willing to look after her. There was no such suggestion at the time of the visit visa application. The inference that this family had not been straightforward with the Entry Clearance Officer when the visit application was made was wholly open to him. The judge's reasoning is unassailable i.e had the claim been true and the Appellant had been cruelly treated by her son in Bangladesh, it is inconceivable that the Sponsor would not have been aware of the problems during his

frequent visits to Bangladesh over the past twenty years and implausible that no mention would have been made of them until shortly before the visit visa was about to expire.

23. The fact that the Sponsor might be able to meet the maintenance requirements of the Rules is immaterial since, on the judge's findings, she could not meet the requirement that she had no close relatives to whom she could turn to in Bangladesh.
24. This is a sustainable decision and the grounds disclose no arguable error of law.

The Decision

25. The appeal is dismissed.

Signed

Date

Upper Tribunal Judge Taylor