



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/21974/2016

THE IMMIGRATION ACTS

Heard at Field House  
On 4 September 2018  
Judgment given at hearing

Decision Promulgated  
On 21 September 2018

Before

UPPER TRIBUNAL JUDGE KOPIECZEK

Between

**KHAYRUL ISLAM**  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

Representation:

For the Appellant: Mr M Hassan, Solicitor, Kalam Solicitors  
For the Respondent: Mr T Melvin, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Bangladesh born in 1965. He made an application for leave to remain on human rights grounds on 7 July 2016. That application was made in relation to his family life in the UK although the respondent's decision also considered his private life.
2. By a decision dated 8 September 2016 the application was refused. The appellant appealed against that decision and his appeal came before First-tier Tribunal Judge Widdup ("the FtJ") on 22 February 2018 whereby the appeal was dismissed.
3. I summarise the grounds of appeal in relation to the FtJ's decision and the submissions made on behalf of the parties.

4. By way of preliminary comments, I should say that it is evident that the FtJ considered the facts in detail and came to clear conclusions in relation to the appellant's relationship with his wife whom he married on 22 April 2014. It is important to note that his wife is a British citizen. No submissions were made to the FtJ in relation to the appellant's private life. The FtJ considered section EX.2 of the Immigration Rules in terms of whether there were insurmountable obstacles to the appellant and his wife's family life being continued in Bangladesh. He took into account the various relevant factors. The appellant's immigration history was a significant matter that he referred to in support of the conclusion that there would be no disproportionate breach of the appellant's human rights in the decision refusing leave to remain.
5. The appellant's grounds, in summary, as to ground 1 contend that the FtJ "provided no reasons whatsoever" for finding that the appellant and his partner could overcome the difficulties that they would face on return to Bangladesh or that those difficulties would not entail very serious hardship for them. Various reported decisions are relied on in the grounds in support of the argument that reasons need to be given. Thus, it is argued that there was a material error in relation to the FtJ's decision on the question of insurmountable obstacles. As to ground 2, so far as proportionality under Article 8 is concerned, it is said that there were various matters that the FtJ failed to take into account.
6. In his submissions Mr Hassan relied on the grounds. The principle attack was in relation to the issue of insurmountable obstacles. It was submitted that although at points in the FtJ's decision he referred to various facts, he failed to highlight the factors that led him to the conclusion that there would be no insurmountable obstacles to their continuing family life in Bangladesh.
7. I was referred to various paragraphs of the FtJ's decision, for example [42] where he stated that they would encounter difficulties in continuing their family life outside the UK. However, it was submitted that he did not say why he came to the conclusion that those difficulties could not be overcome or that any hardship experienced by them would not amount to very serious hardship. He had failed to identify the evidence that he took into account in that respect. Although the FtJ had looked at the Article 8 Rules and considered the matter outside the Rules, it was submitted that there was some degree of conflation, my word not Mr Hassan's, in relation to his assessment in this respect. The decision *Agyarko v Secretary of State for the Home Department* [2017] UKSC 11 was relied on in terms of how the FtJ's approach should have been informed in this respect.
8. In relation to the FtJ's proportionality assessment it was submitted that adequate reasons had not been given and the FtJ had failed to explain why the public interest outweighed the appellant's human rights claim.
9. Mr Melvin relied on the 'rule 24' response provided today. It was submitted that neither of the grounds had any merit. It was emphasised that the relationship between the appellant and his wife was entered into when the appellant was unlawfully in the UK for a considerable amount of time. It was submitted that it was only in exceptional

circumstances that such a situation would result in a grant of leave on human rights grounds.

10. Various factors were referred to in the FtJ's decision, for example that Bengali is the appellant's first language, that he has links to Bangladesh and that he had demonstrated some resourcefulness in living and working overseas. The FtJ found that accommodation would be available to the appellant. It was submitted that in terms of insurmountable obstacles, the appellant's case did not get anywhere near establishing that such obstacles existed or that another Tribunal would reach a different conclusion on the facts.
11. Mr Melvin also relied on the decision in *Agyarko* but in addition referred me to *TZ (Pakistan)* and *PJ (India) v Secretary of State for the Home Department* [2018] EWCA Civ 1109 in particular at [25]. He submitted, finally, that read holistically all factors were considered and there was no error of law in the FtJ's decision.
12. In reply, Mr Hassan pointed out that the FtJ had considered paragraph 276ADE(1)(vi) although those aspects of the Rules were not relied on behalf of the appellant and the FtJ's findings in that respect all related to the appellant's private life in terms of integration in Bangladesh, but not the issue of insurmountable obstacles. True it was that the appellant's immigration status was precarious but the appellant and his wife had given credible evidence before the FtJ.

#### *Assessment and Conclusions*

13. I am not satisfied that there is any error of law in the FtJ's decision for any of the reasons advanced on behalf of the appellant or otherwise. I do not accept what is said at [3] of the grounds to the effect that the FtJ provided no reasons whatsoever for his finding that the appellant and his partner could overcome the difficulties they would face or that those difficulties would not entail very serious hardship for them.
14. At paragraph [30] of his decision the FtJ said this:
 

"the Appellant must have adapted to living and working in Oman where he spent 12 years before he came to the UK. He then remained in the UK, and on his own account established a private life, even though it was an unfamiliar country, he did not speak English and he was an illegal resident."
15. He concluded that the appellant was resourceful enough to live in a country where he was very much an outsider. In contrast, even though he was now 16 years older than when he came to the UK, he would be returning to the country where he lived and worked until he left work overseas. At [37] he referred to the high threshold needed to establish insurmountable obstacles. He said that it must be shown that there are very significant difficulties and that they cannot be overcome or that they would entail very serious hardship for the appellant and his partner.
16. At [42] is the synthesis of the FtJ's findings albeit, in a rather attenuated form. The FtJ said that he accepted that the appellant and his wife would encounter difficulties in

continuing with their family life outside the UK but having regard to the evidence before him he was not satisfied that those difficulties could not be overcome or that any hardship experienced by them would amount to very serious hardship.

17. The evidence before the FtJ included, for example, that the appellant had lived and worked in Oman and so forth, and I have already set out matters that the FtJ referred to at paragraph [30] of his decision. He said that the appellant gave evidence about recent contact with his brother and sister in Bangladesh even though that evidence might have been to the detriment of his appeal but there was evidence that he might be able to stay with them for a short period.
18. The appellant's evidence was also that he had older siblings in Bangladesh. Even if they could not assist him with accommodation for more than a short time he would not be entirely socially isolated in Bangladesh on his return, the FtJ concluded ([35]).
19. Thus, when the FtJ said at [42] that he was satisfied that having regard to all the evidence before him he was not satisfied that there were insurmountable obstacles, the matters he had previously referred to were part of that evidence. It is true to say that those appear to have been findings in relation to the appellant's private life but they were nevertheless evidence that the FtJ had before him and which he was entitled to take into account.
20. It may be that it would have been better had the FtJ explicitly drawn together the threads of the evidence in order to provide a clearer expression of his conclusions at [42] but his failure to have done so does not amount to an error of law on his part.
21. So far as proportionality outside the Rules is concerned, it is important to bear in mind what was said in *TZ (Pakistan)*. At [25] it was said that:

"The settled jurisprudence of the ECtHR is that it is likely to be only in an exceptional case that article 8 will necessitate a grant of leave to remain where a non-settled migrant has commenced family life in the UK at a time when his or her immigration status is precarious."

There was then an extract from *Agyarko* quoted to the following effect that in general, in cases concerned with precarious family life, a very strong or compelling claim is required to outweigh the public interest in immigration control.

22. It is said in the grounds that the FtJ failed to take into account the appellant's lawful entry into the UK. However, the fact is that he took into account that his status in the UK had been unlawful for some considerable period of time. He arrived in the UK in 2002 and then overstayed, so the lawful entry, it seems to me, is a matter that is hardly of much significance. It was not necessary for the FtJ to refer to that fact in his reasons. He was obviously aware of it because he referred to it at [1] of his decision.
23. It is also said that he failed to take into account the efforts made by the appellant to regularise his immigration status in the UK. However at [34] under his "Findings of fact and conclusions" section he did refer to the fact that the appellant made one attempt to regularise his status before making the application which was the subject of the appeal. He referred to an unsuccessful application 2009 for leave to remain on

Article 8 grounds. Again however, in the context of the appellant's immigration history overall, that was not a significant matter and was not a matter that the FtJ needed expressly to advert to in his express conclusions in relation to proportionality.

24. Likewise, in relation to the complaint that the FtJ failed to take into account that there was nothing in the appellant's conduct, character or associations which made it undesirable to grant him leave to remain in the UK such that he satisfied the suitability requirements of the Rules, there is little merit in that contention in view of the appellant's poor immigration history.
25. There *might* have been something in the point if the FtJ had said that the appellant's character or conduct or associations militated against the grant of leave to remain but he did not make any such finding against the appellant.
26. In terms of the appellant's English language ability or the prospects of his obtaining employment and thus being financially independent, those are not matters that could avail the appellant in a positive sense having regard to the decision in *AM (S 117B) Malawi* [2015] UKUT 0260 (IAC). Those are not factors which are anything other than neutral factors.
27. Finally, when one steps back from the complaints made about the FtJ's decision and considers the decision overall, on a holistic basis, as submitted on behalf of the respondent, it is apparent that the FtJ's decision contains a clear assessment of the relevant facts and an application of those facts to the law leading to sustainable conclusions under the Rules and otherwise under Article 8 in the proportionality assessment.

*Decision*

28. In all those circumstances, I am not satisfied that there is any error of law in the FtJ's decision. That decision did not involve the making of an error on a point of law and the decision to dismiss the appeal therefore stands.