



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

Appeal Number: HU /18649/2019
HU/19991/2019

THE IMMIGRATION ACTS

**Heard at Field House
Via Teams
On 5 August 2021**

**Decision & Reasons Promulgated
On 21 September 2021**

Before

UPPER TRIBUNAL JUDGE LANE

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**AZAM AURANGIB
NADIA RAHMAN**

Respondents

Representation:

For the Appellant: Mr Youssefian

For the Respondent: Mr Walker, Senior Presenting Officer

DECISION AND REASONS

1. I shall refer to the appellant as the 'respondent' and the respondents as the 'appellants', as they appeared respectively before the First-tier Tribunal. The appellants are a married couple and citizens of Bangladesh born in 1983 and 1990 respectively. They appealed to the First-tier Tribunal against a decision of the Secretary of State dated 20 November 2019 refusing their human rights applications. The First-tier Tribunal, in a decision promulgated on 15 January 2021, allowed their appeals. The Secretary of State now appeals, with permission, to the Upper Tribunal.

2. The judge found [98] that there existed no very significant obstacles to the family reintegrating in Bangladesh. Accordingly, the appellants could not satisfy the Immigration Rules and the judge went on to find that there exist compelling circumstances which required her to allow the appeal on Article 8 ECHR grounds [111]. She found that the matter of delay on the part of the Secretary of State in determining the appellants' human rights application (3.5 years) was a significant factor [111] as it had led the appellants to believe (erroneously) that they were not overstayers. This, in turn, diminished the public interest concerned with the removal of the appellants.
3. The grounds make a number of challenges to the judge's reasoning. As regards delay, the Secretary of State argues that, whatever the appellants may have considered to be their immigration status, they were overstayers and that, in the absence of exceptional circumstances, their appeals should have been dismissed.
4. In my opinion, that ground is without merit. The judge makes it clear [109] that the appellants did not believe that they had indefinite leave to remain (and therefore did know that their leave to remain remained precarious) but it was open to her to find that they thought that 'their life in the United Kingdom was taking on a more permanent form' because they genuinely believed that their application had been made in time [109] and that that finding justified giving 'more than a little weight' to their private life in the Article 8 ECHR proportionality exercise. Having thus determined that delay was a relevant factor in this way, the weight attaching to that factor was a matter for the judge; that she attached significant weight was not an error of law and the Secretary of State's challenge no more than a disagreement with the Tribunal (see *EB (Kosovo)* [2008] UKHL 41 at [16]).
5. I agree also with Mr Youssefian, who appeared for the appellants before both Tribunals, that the Secretary of State's complaint that the judge has not clearly found whether either or both of family life and private are engaged does not amount to an material error of law. The same factors are likely to apply in both cases and there is no indication that, in her thorough decision, the judge has taken account of irrelevant matters or ignored relevant ones.
6. The outcome reached by the judge was plainly available to her on the evidence. In particular, having properly considered that delay was a factor, the judge correctly took account of the effect which it had on the appellants and their subjective view of their own immigration status was not irrational. There is nothing in the First-tier Tribunal's decision which requires correction of interference by the Upper Tribunal (see *SSHD v AH (Sudan)* [2007] UKHL 49 at [30]: 'Appellate courts should not rush to find such misdirections simply because they might have reached a different conclusion on the facts or expressed themselves differently.'). In the circumstances, the Secretary of State's appeal is dismissed.

Notice of Decision

The Secretary of State's appeal is dismissed.

Signed

Date 5 August 2021

Upper Tribunal Judge Lane