IAC-FH-AR-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/23581/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 19 November 2015	**On 7 January 2016**
21 December 2015	

Before

UPPER TRIBUNAL JUDGE GLEESON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

SHAMSUL FARHANA AHMED
(NO ANONYMITY ORDER)

Respondent

Representation:

For the Appellant:	Mr E Tufan and Mr J Parkinson, Senior Home Office Presenting Officers
For the Respondent:	Mr M Burnett, Counsel, instructed by Hunter Stone Law

DECISION AND DIRECTIONS

1. The Secretary of State appeals with permission against the decision of the First-tier Tribunal allowing the claimant's appeal against her decision to refuse leave to remain on family and private life grounds either under the Immigration Rules HC 395 (as amended) or outside the Rules.

First-tier Tribunal decision

2. The First-tier Tribunal heard the appeal in January 2014 and found, so far as material, that the claimant was a Bangladeshi citizen born in 1980 who came to the United Kingdom as a student in December 2006. That visa expired on 31 August 2008. An application to remain under the Tier 1 Post-Study scheme was unsuccessful, appeal rights being exhausted in January 2012.

3. On 8 January 2012, the claimant and her partner, a British citizen of Bangladeshi origin, contracted an Islamic marriage at the East London Mosque. On 20 August 2012, the claimant lodged an application for leave to remain on family and private life grounds, based on her relationship with her husband. On 5 October 2012, the couple married in a registry office. The August 2012 application was refused with no right of appeal on 22 August 2013.

4. On 13 May 2014, following judicial review proceedings, the Secretary of State made a further, appealable, decision refusing leave to remain on Article 8 grounds, both under Appendix FM and paragraph 276ADE and outside the Rules on exceptionality grounds. The basis of the exceptionality element of the claim was the care provided by the claimant and her husband to his elderly parents living in the United Kingdom.

5. The Judge found that there were no insurmountable obstacles to the couple relocating to Bangladesh, save for their role in caring for the claimant's father-in-law. The First-tier Tribunal Judge found that the claimant's parents-in-law were supportive of the marriage. Her father-in-law is registered disabled. The claimant and her husband – but principally the claimant – looked after both her parents-in-law, cooking, cleaning, and helping with mobility in and outside the home. A same-sex carer was considered important for Islamic reasons.

6. The claimant was taking anti-depressants because she was stressed and depressed by her lack of lawful status in the United Kingdom. She had suffered blackouts, suicidal ideation and memory difficulties, and was referred for counselling by her GP. She had seen a psychotherapist to assist her. There is no up to date evidence about her mental health.

7. The claimant's evidence was that her father disapproved of her marriage: her husband was from a village in Sylhet, whereas the claimant was a city girl from Dhaka. There were cultural and language difficulties. Her own mother, and her maternal aunt and uncle in the United Kingdom, supported the marriage, but her father continued to oppose it. She feared that if she were removed to Bangladesh, her father would prevent her getting entry clearance to return, and might try to make her marry elsewhere. Her understanding was that her husband would not accompany her because he needed to care for her parents-in-law. The couple would try for children of their own once her status was resolved.

8. The claimant's husband has lived in the United Kingdom all his life and all his friends are here. The husband had a good job in IT in the United Kingdom, with a salary of £30,000, and had held that job for 8 years: he did not think he would get

such a good one in Bangladesh. He stated that although he was able to speak some Sylheti and Bengali, he did not feel he spoke them well enough to live in Bangladesh.

9. He had travelled to Bangladesh on 5 occasions in his lifetime, the last time in 2014 when he accompanied his father on a visit to their home village. The husband's family had a property in Sylhet, an unoccupied flat in his home village, which was looked after there by a caretaker. His evidence was that he might be entitled to inherit the family property in Bangladesh when his father died, but that he was not interested in doing so.

10. The husband had shoulder and knee problems, and blepharitis, for which treatment in Bangladesh would not be free. He had 3 brothers and 2 sisters in the United Kingdom and Germany, but the claimant's husband was the only one living in London. The couple had moved out of his parents' home because they needed additional space: they went to live with the claimant's aunt for a time, and now had their own rented home.

11. The First-tier Tribunal's findings concerning the claimant's parents are set out at paragraphs 38-40:

> "38. [The claimant's father-in-law'] says in his letter…that the [claimant] is part of his family following her marriage to his son. He says that the [claimant] visits them every day and does cooking, cleaning and household jobs. He and his wife are both unwell. He had a traffic accident with a serious injury to his right leg and now permanently uses crutches to get around and his wife is due to have an operation on her right hand shortly. He says there is no one else to provide support except the [claimant and her husband]. The GP notes for [the claimant's father-in-law] …corroborate that he had a fracture of the femur and also set out that he has had a number of heart attacks and other heart problems, chronic kidney disease, hypertension, type 2 diabetes and epilepsy. [The claimant's father-in-law] is 68 years old. …[the claimant's husband] supports his father's day to day needs; helps him with his appointments and to manage his finances. There is also a letter from the DWP in the [Secretary of State's] bundle, confirming [that the claimant's father-in-law] receives Disability Living Allowance including elements for personal care and getting around.
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> 29. I find that [the claimant's father-in-law] is an extremely unwell elderly gentleman with multiple care needs, which are currently provided for on a daily basis by [the claimant and her husband]. I accept that his wife is also elderly and not able to meet her husband's care needs. I find the evidence of [the claimant and her husband] that his siblings are not able to meet these needs as they do not live in London and have family commitments credible. I accept that [the claimant's parents-in-law] would be distressed if these needs were met in their own home by non-family members, particularly if the carers were of the opposite sex. Whilst social services would no doubt make sure that medications were taken and make brief visits to ensure that [the claimant's father-in-law] was safe, they would not offer the complete service performed by [the claimant and her husband], for instance including the managing of finances. Social services could not provide the same level of individualised care – for instance buying the precise shopping and making the precise meals [the claimant's parents-in-law] like. Social services carers certainly could not offer the level of companionship which [the claimant and her husband] provide through their family

> relationship and by virtue of understanding and speaking Sylheti/Bengali and the time they are able to give.
>
> 40. I find that given the long-term, daily commitment to the personal care for [the claimant's parents-in-law] in the context of [the claimant's father-in-law's] very serious ill health it is right to conclude that this is an exceptional case where the relationship of both [the claimant and her husband] to these elderly parents and the role they perform in their lives means that there would be insurmountable obstacles to their family life continuing outside the United Kingdom. "

12. The Judge allowed the appeal within the Rules, holding that the care given to the claimant's parents-in-law amounted to an insurmountable obstacle to her removal to Bangladesh and that she met the requirements of Appendix FM. At paragraph 41 of her decision, she noted the factors under section 117B of the 2002 Act, prefacing her remarks with 'for completeness' but it is plain from that language and from the context that she did not take into account the part VA factors before reaching her conclusion on Appendix FM and Article 8 within the Rules.

Permission to appeal

13. The Secretary of State was granted permission to appeal on the basis that the First-tier Tribunal Judge had arguably erred in law in the application of the criteria in section 117B of the 2002 account and the weight attached to those criteria at paragraph 41 of the decision. When granting permission, First-tier Tribunal Judge PJM Hollingworth considered that 'an arguable error of law arises in relation to whether the statutory criteria should permeate the reasoning in the decision to a greater extent than being noted for completeness'.

14. That was the basis on which the appeal came before me, initially for a decision on material error of law, and now for substantive remaking of the decision.

Upper Tribunal proceedings

Material error of law decision

15. On 24 July 2015 I found a material error of law and gave directions for the future conduct of this appeal. I did so for two reasons: first, because at paragraph 32 of her decision, the First-tier Tribunal Judge had misdirected herself in treating as spent the claimant's conviction for shoplifting, contrary to the provisions of section 56A of the Legal Aid Sentencing and Punishment of Offenders Act 2012 (LASPO 2012), and second, because I considered that the First-tier Tribunal Judge had failed correctly to direct herself by reference to the provisions of part VA of the Nationality, Immigration and Asylum Act 2002 (as amended), in particular sub-paragraphs 117B(4) and 117B(5).

16. The error in respect of section 56A of LASPO 2012 means that the Secretary of State was entitled to find that the claimant could not meet the requirements of the Rules since as a convicted shoplifter, the Secretary of State was entitled to find that she did not come within the suitability requirements.

17. The claimant has not challenged the First-tier Tribunal's finding that there were no insurmountable obstacles to her returning with her partner to Bangladesh other than the circumstances of her parents-in-law.

18. The question remains whether the circumstances of her parents-in-law are such as to bring into play *Nagre/Gulshan* exceptionality. The remaking of the appeal was expressly limited to the question whether the support which the claimant and her partner provide for his parents in the United Kingdom amounts to exceptional circumstances in respect of which the Secretary of State should have exercised her discretion to grant leave to remain outside the Rules pursuant to Article 8 ECHR.

19 November 2015 hearing

19. The appeal came before me for hearing on 19 November 2015. It was not ready for hearing, due principally to the claimant's solicitors failure to follow the 24 July directions and agree a bundle of documents for the hearing with the Secretary of State's representative. The directions given at the 24 July 2015 hearing, with the agreement of the parties, were as follows:

> "(1) The appeal will be listed for the first available date with a time estimate of 2 hours. No interpreter is required.
>
> (2) Not later than 7 days before the resumed hearing, the parties shall file skeleton arguments setting out all arguments and matters on which they seek to rely at the hearing, together with a joint bundle of documents, not to exceed 150 pages without the prior leave of the Tribunal. "

20. As the hearing was to be on 19 November 2015, the agreed bundle of documents should have been filed by 12 November 2015 and efforts should have been made on behalf of the claimant to agree it before then. Nothing happened.

21. On Friday 13 November 2015, Mr Parkinson, who had conduct of this appeal, endeavoured to discover whether further documents were being produced, by telephoning the claimant's solicitors. No documents were then forthcoming. Mr Parkinson was unable to appear for the Secretary of State on Thursday 19 November 2015, and she was represented by Mr Tufan.

22. Two bundles of documents were filed by the claimant's solicitors on 16 November 2015, without any attempt to agree them or make them available to the Secretary of State in advance. They were linked to the Upper Tribunal file in my possession on 18 November 2015. Both parties handed up skeleton arguments at the hearing.

23. It became clear that the claimant intended to call 2 witnesses, the claimant and her husband, and to rely on a significant number of new documents not previously seen by Mr Tufan or Mr Parkinson. I considered that the only proper course having regard to the overriding objective was to adjourn this hearing for as short a period as possible.

24. I therefore directed that the appeal be relisted before me on the first open day with reference to the availability of Counsel, Mr Burnett, and made further relevant directions, reserving the question of costs to the substantive hearing. The hearing was relisted for remaking on 21 December 2015.

21 December 2015 hearing

25. At this hearing, the Secretary of State was represented by Mr John Parkinson. The claimant and her husband gave oral evidence and were cross-examined. The skeleton arguments served at the hearing on 19 November 2015 stood as skeleton arguments for the 21 December hearing.

26. In reaching my decision, I have had regard to all of the written and oral evidence before me, whether or not I have referred to it expressly. I have also taken into account the written and oral submissions of Mr Parkinson for the Secretary of State and Mr Burnett for the claimant.

Claimant's evidence

27. The claimant adopted her witness statement of November 2014. That statement was the one which was before the First-tier Tribunal and is taken into account in the First-tier Tribunal's findings. There is no need therefore to set it out in detail here. The claimant had not prepared an updated statement, but she had prepared what she described as a Care Plan, with the assistance of her husband, setting out the kind of tasks that they both carry out for her parents-in-law.

28. In cross-examination, the claimant said that she had come to the United Kingdom in 2006 to study and had done so. Her father had paid for her studies. The claimant confirmed that she had another sponsor, an uncle in Bangladesh, whose business was good and who was able to produce the required evidence of £50,000 in a bank account. Her uncle and her father were in business together but the funds were in her uncle's account, not her father's, so he had to help. The claimant had 7 aunts and 6 uncles in Bangladesh, including that uncle.

29. The claimant's father in Bangladesh spoke both Bengali and English; his written English and his understanding of the language were better than his spoken English. Her aunt, who had also supplied an affidavit in English, spoke the language. The claimant had 2 maternal aunts living in Birmingham. They had not approved of her coming to the United Kingdom as a single woman, considering that unsafe: they would have preferred for her to come with a husband. She had not accepted any help from them until 2009/2010 when the relationship between her and her aunts had improved.

30. The claimant stated that she was scared of her father and had always hidden things from him, including the missing £1500 which her first college asserted it had not received for her fees, causing her to transfer her studies to Cambridge College of Learning, on the recommendation of a friend. She had undertaken a Business Information Technology Diploma course at Cambridge College of Learning, then

begun studying Chartered Accountancy at Kaplan Financial in approximately 2008, or perhaps January or February 2009, she could not be sure. She agreed that her Tier 1 application had been made on 29 August 2008.

31. Asked whether the reason that application had been refused related to the Cambridge College of Learning course, which the Secretary of State did not accept was genuine, the claimant asserted that she had studied it as claimed. She was unaware of the problems with that college. She had gone there on the recommendation of a friend and studied for a Postgraduate Diploma in Information Technology. She believed herself to be an honest witness in this respect.

32. The claimant expanded on the difficulties with her father in Dhaka. He had identified a suitable husband for her there. The claimant had not returned to her family: she wanted to fight to stay in the United Kingdom and her application was pending. She wanted to resolve that and then make a decision about whether to return to Bangladesh. Her father had asked her to leave everything in the United Kingdom and come home, but she had refused. Fortunately, the proposed marriage arrangement in Bangladesh had broken down and now her relationship with her father was improving.

33. She had not read her father's affidavit, which she considered 'pathetic', and she wondered how he could say such things. She was surprised and disappointed to learn that her father considered that she had begun to have a bad life, was beyond his control, and had left for England without informing him and without his consent: her father knew perfectly well that he was her financial sponsor for her studies here and that she came with his consent and permission. She had not read the affidavit at all.

34. The claimant had represented herself in the First-tier Tribunal in relation to the Tier 1 application and won. However, when notice of the decision came through, she was staying in Birmingham where her grandmother was visiting her aunt, and she did not receive notice of the Upper Tribunal hearing until after it had taken place. She lost. She attempted to appeal in person to the Court of Appeal but again was unsuccessful. She did not embark, despite having no leave: in 2010, she met her now husband and wanted to marry him. He proposed in February 2011 and the Islamic marriage was in January 2012. Her husband's paternal relatives were all in the United Kingdom and his maternal relatives in America. As far as she knew, her husband had no relatives in Bangladesh.

35. After the Islamic marriage, she approached a barrister to get a spouse visa. She had been working all the time up to this point but the barrister told her that as she did not have leave to remain, she should not do so, and the claimant then stopped working. She stated that she had never worked more than 20 hours a week. If she were again given leave which entitled her to work, the claimant would leave it up to her husband whether she should continue to care for her parents-in-law, or go to work.

36. The couple did not need wages from the claimant: her husband earned good money and maintained her well, so she had no need to work at present. It was true that as a couple they did have some loans and credit card bills, telephone bills and so on, but they were paying those off gradually. The claimant was asked about the Individual Voluntary Arrangement into which her husband had entered: she said she understood that it would be a criminal offence if they did not keep up the payments. She knew they had debts but her husband dealt with the banking and financial matters.

37. The claimant and her husband had not contacted social services to see what additional help might be available for her parents-in-law. He was entirely against that. Social services help was already in place for her father-in-law but not her mother-in-law. Her husband complained all the time of the way his father was treated by social services: the nurse came once a day to look after her father-in-law's legs, change bandages and so forth. Her mother-in-law helped, but it needed a professional to deal with the leg ulcers. At present, no visits were required because her father-in-law had been admitted to hospital on Thursday or Friday of the preceding week: her husband had stayed with him all night when he was admitted. His doctor considered that he needed observation for 2 weeks at least.

38. The claimant is pregnant, as evidenced by documents in the bundle. She underwent an antenatal combined test on 10 November 2015, and said in answer to questions from me that she was then about 11 weeks pregnant. The claimant's expected date of delivery may be deduced from her maternity exemption certificate which is due to expire a year after the birth and bears an expiry date of 22 May 2017, so that the baby is expected to arrive in May 2016.

Claimant's husband's evidence

39. The claimant's husband adopted his statement of 15 May 2015, which was supplemental to the statement before the First-tier Tribunal. In his new statement, the husband set out the circumstances as they were in May 2015.

40. The husband had been looking after both of his parents and caring for them since he was 18 years old. If he and his wife returned to Bangladesh, he did not see why his parents should be forced to choose between their care and that of social services. It was well documented in national media that social services are at breaking point, and family care was much better. He and his wife cared for his parents' physical and emotional needs, which social services would not do.

41. His father had suffered a transient ischaemic attack (a type of heart attack) and was partially paralysed on his left side. He had in the past had several heart attacks and had 3 arterial stents. He had been diabetic for almost two decades and required insulin injections to cope with that and now had a chronic diabetic leg ulcer requiring surgical debridement, blood transfusion, and a two week stay in the specialist vascular ward at the Royal London Hospital. His father also had Stage 3 chronic kidney disease and chronic pancreatitis, and labile blood pressure of long standing,

which required close monitoring given the number of medicines required to regulate it.

42. His father's femur fracture after the car accident had required lengthy surgery and 5 weeks at the Royal London Hospital, but due to the onset of osteoporosis and vascular disease, it had healed poorly. His father had a pronounced limp and exceptional pain levels for many years. A bone graft was being discussed but would not be appropriate until his father was in better health. The claimant's husband understood all these conditions well and knew what was required to alleviate his pain: he would be surprised if any other carer could quickly understand and take responsibility for all of them.

43. His parents, both British citizens for many decades, could not be expected to accompany him and the claimant if they left the United Kingdom: they had 5 children here, including the claimant's husband, and if they left, the rest of his siblings would have to make arrangements to live in Bangladesh too, or take their annual holidays only there, in order to maintain contact. His parents had no family in Bangladesh now. His parents would not be able to move to Bangladesh due to their health, and if they did, he was unlikely to earn enough to pay for their medical care in Bangladesh. The treatment his father currently received, including operations, would not be free there as it is in the United Kingdom.

44. His father had travelled to Bangladesh in 2014 against family and medical advice, and that was when his ulcerated leg had become infected. Appropriate medical care was unavailable in Bangladesh when his father tried to access it. His father had had to return to the United Kingdom for proper care. The infection continued and remained dangerous to his father's health, but his father was slowly improving under their care. Social services could not cope with his father unaided: his wife had to help the nurse every day as they could not spare 2 nurses to change the bandages. His father now accepted his doctor's advice that he would never be able to travelling outside the United Kingdom again.

45. The claimant and her husband had moved out of his parents' home because his father needed one bedroom and his mother another, due to his father's health problems. The small remaining bedroom was insufficient for the claimant and her husband to sleep, or for him to work from home when he needed to. They had managed to cope in those difficult circumstances for over a year. They remained actively involved in caring for his father, particularly the claimant, now that she no longer worked, and they lived only a short drive away.

46. The husband claimed not to speak the languages of Bangladesh or to have any knowledge or experience of the country. He had never lived there and could not understand why he was expected to do so, simply because his wife was in the United Kingdom illegally when he married her. He would be like a foreigner, and the lifestyle was not at all what they were used to. His evidence was that the claimant's father objected to the marriage on the basis that they were of different castes.

47. In the United Kingdom, the husband had worked for City and Islington College for 8 years and had professional friendships with colleagues there, as well as having attended numerous courses to help him improve his work and be a better person. He had professional responsibilities at work, as well as personal responsibilities to his parents. The claimant had applied for a promotion and was waiting for an interview. If he were successful, his salary would be increased, which would help his life and that of his wife and family. Interviews were due to take place in July 2015.

48. If he were to leave the United Kingdom, which, he stated, he could not and would not do, it was unclear who would take over his responsibilities. His siblings had all moved away from London to study and would not know how to look after his parents, even if they were willing to do so, and they had their own responsibilities. The Home Office should suggest where they could live in Bangladesh, given that they had no family support available on either side and there was no welfare system in Bangladesh.

49. The couple's financial position in the United Kingdom was difficult. They had many debts, about £8000 in total. His United Kingdom family were not under any legal obligation to pay these debts. He set out his commitments, which included a direct debit for his outstanding credit card debt and another for a loan from City and Islington College. The couple wished to pay off their debts as soon as they could but would not be able to do so if they left the United Kingdom.

50. The husband was awaiting surgery on his injured shoulder, in which he had torn a muscle and cracked a shoulder blade. That surgery would be free in the United Kingdom but would not be free in Bangladesh: because of the need to repair the shoulder blade, his rehabilitation time would be long. In the meantime, the husband was receiving regular injections from the hospital to control the pain.

51. The husband was then tendered for cross-examination. He stated that he was an IT manager in a higher education college. He had 5 siblings but they were not really in touch. His older sister lived in Scotland somewhere, and he was estranged from his other sister, who lived somewhere in Germany. His mother's family were all in the United States. His father only had one brother: his paternal uncle had died a couple of years ago. He confirmed that his only contact with social services was in relation to his father's care plan for wound dressing. He also had to contact them often about missed appointments. Social services said they did not have enough staff to provide more care and that his father was not a priority for them. He had never approached social services to see what would be available if his wife were not his father's carer.

52. The husband stated that he was providing for his wife and that both of them cared for his parents. They lived 5-10 minutes away and were at his parents' home every single day. The claimant was there from when the husband went to work, until his return in the evening. His mother did very little, because now she had cysts in her wrists so that movement was quite restricted. Her mother was everything to his father but she herself needed help with bathing and could not walk far. If the claimant were granted leave to remain and could work, she would not do so.

53. His father had been destroyed by the leg ulcer: he could not now walk properly and was in hospital with fluid on his lungs, liver, and both his legs. His leg ulcer had returned to the way it was before it was debrided, he had stage 3 kidney disease, and the doctors were considering what options remained. His father had experienced 4 heart attacks and 2 strokes: the last heart attack had been 5 years ago and the strokes even longer ago.

54. The husband's father suffered from varicose veins, high blood pressure, and took around 30 tablets 3 times a day. He had type 2 diabetes and needed 4 insulin injections a day. His medication was constantly being changed by the GP: the GP would visit, or the claimant would take her father-in-law to the surgery. His father was taking diuretic medication to deal with the fluid on his lungs and liver. Recently, he had not taken his medication for almost 2 weeks and that had caused spasms.

55. His parents' home had been flooded but the council would not assist them with the damage. The medical evidence in the bundle concerning the claimant's father-in-law was wrong. The assessment was out of date and he was now in much worse health. His father needed help to dress, and no longer went outside to pray, saying his prayers on the sofa instead. He could still go to the lavatory and perform both functions himself.

56. If the claimant were returned to Bangladesh, the husband said first that he would have to stay and care for his parents. If he went to Bangladesh, he would lose his college job. He was being forced to choose between his parents, his wife, and his unborn child. He had not really considered what he would do, but 'if push came to shove I would have to do something'.

57. There was no re-examination.

Submissions

58. For the Secretary of State, Mr Parkinson relied on his skeleton argument. There were significant issues of immigration control in this appeal and the Secretary of State did not accept that people should fail to attend college when admitted to do so then simply do nothing about it. The claimant's father's affidavit should not be given any weight since it was factually inaccurate: the claimant had not got into bad ways and left for the United Kingdom without his permission, on the contrary, her father and uncle had sponsored her to come here and she had done so with their knowledge and approval.

59. He relied on the decision of the Upper Tribunal in *NA & Others* (Cambridge College of Learning) Pakistan [2009] UKAIT 00031 in relation to the course which the claimant said she had attended. *NA & Others* found that:

> "Cambridge College of Learning (CCOL) never ran a Postgraduate Diploma in Business Management course or a Postgraduate Diploma in IT course. Accordingly for a person applying for leave to remain under the Tier 1 (Post-Study Work) scheme to rely on a certificate of an award of such a diploma following a course will amount to a

> false representation and so will fall foul of para 322(1A) of the Statement of Changes in Immigration Rules HC 395. Such a person will also be unable to meet the requirements of para 245Z because he or she could never have undertaken such a course."

The claimant's statement that she had studied for a Diploma in IT there could not be relied upon and it followed that she had used deception in order to gain further leave.

60. The connection between the claimant and her parents-in-law amounted to private life, not family life, and had been developed while she was in the United Kingdom unlawfully, or at best, precariously. It must therefore be given little weight, applying section 117B(4)(a) of the 2002 Act. Further, it was clear from the claimant's witness statement that she began looking after her parents-in-law only once she was unable to work.

61. Neither the claimant nor her husband had made any attempt to discover what social care packages might be available to her parents-in-law. They had no right to expect to receive care from someone with no leave to remain in the United Kingdom, and appropriate care would, he argued, be available from social services. There was no up to date medical evidence about the condition of the claimant's father-in-law or mother-in-law: the evidence before the Tribunal was a series of assertions in written and oral evidence, and the medical evidence in the bundle was acknowledged to be out of date. As at 11 November 2015, the letter from the claimant's father-in-law stated that she 'helped' his wife with chores and shopping, not that she undertook them exclusively.

62. Mr Parkinson noted that the 'no insurmountable obstacles' finding in relation to the couple relocating to Bangladesh had been preserved. This was not a *Chikwamba* case: the claimant here had a particularly poor immigration history and had remained for many years without leave. There was no certainty that an application for entry clearance as a spouse would succeed: the Secretary of State would be entitled to refuse to grant entry clearance on the basis that she had intentionally frustrated immigration control and used deception. He asked me to dismiss the appeal.

63. On the question of costs, the claimant's conduct in relation to the previous hearing was a plain breach of directions and Mr Parkinson asked the Upper Tribunal to order the claimant to pay the Secretary of State's costs of that hearing.

64. For the claimant, Mr Burnett sought to persuade me that I was not bound by, nor entitled to rely upon, the Upper Tribunal's finding in *NA and others* that Cambridge College of Learning had never taught the course the claimant said she studied. He asked me to accept the father's affidavit as genuine and a truthful representation of a salient and key issue, that he had formally disowned her. It need not be factually accurate: her father might have heard that the claimant was to be removed to Bangladesh and need to justify his position before other family members there. The question turned on the credibility of the claimant overall.

65. The evidence was now that the claimant was pregnant and if removed she would have to cope with her pregnancy without family support. Her father had disowned her, she was married to a British citizen, and she was involved in caring for her parents-in-law. The test of exceptional compassionate circumstances was made out and the claimant, on *Chikwamba* principles, should not have to make an application from Bangladesh for re-entry to the United Kingdom. Her husband was earning enough to support her and enough to satisfy the financial requirements of the Immigration Rules. They were in a valid, genuine and subsisting marriage.

66. In relation to costs, he relied on the statement of truth from Abdul Hasad Chowdhury and on the small Costs Submission Bundle. The claimant should not have to pay the costs of that hearing and indeed, Mr Chowdhury's statement sought the claimant's costs of the adjournment to be paid by the Secretary of State.

Discussion

67. I deal first with the costs point. The claimant was represented at the hearing on 24 July 2015 and throughout. There was a plain direction to *agree* a bundle of documents which could not be met by serving an unagreed bundle, even had that taken place 7 days before the hearing as I directed. The lateness of the bundle, and the failure to agree it, was the sole reason why that hearing was adjourned.

68. The statement of Mr Chowdhury indicates that his firm did not begin to prepare bundles for the substantive hearing until 4 November 2015. However, as stated at paragraph 7, on 11 November 2015 the husband provided scanned copies of the documents to be adduced at the resumed hearing. Those documents could have been disclosed by email and agreed by Mr Parkinson on 12 November 2015, especially as the evidence is that Mr Parkinson was actively preparing the appeal and telephoned the claimant's solicitors on 13 November seeking to agree the bundle or at least discover what evidence would be relied upon at the hearing 6 days later.

69. I am not remotely satisfied by Mr Chowdhury's explanation of his firm's failure to comply with the direction made on 24 July 2015. Put at its highest, in paragraph 18 he says the unagreed bundle was delivered to the Secretary of State 3 days before the resumed hearing. As indicated at the hearing, and having regard to the guidance in *Secretary of State for the Home Department v SS (Congo) & Ors* [2015] EWCA Civ 387 and *JA (Ghana) v The Secretary of State for the Home Department* [2015] EWCA Civ 1031 regarding compliance with directions, I am satisfied that it is appropriate to order the claimant to pay the Secretary of State's costs of the hearing on 19 November 2015, to be assessed if not agreed.

70. Turning to the substance of this appeal, the first point is that the claimant cannot succeed under the Rules. That is no longer in dispute: she has a shoplifting conviction and the Secretary of State was entitled to rely upon that. It also appears that she used deception in relation to the Cambridge College of Learning diploma which she alleges she studied.

71. The finding that there are no insurmountable obstacles to the claimant and her husband living in Bangladesh, save in relation to the circumstances of her parents-in-law, was expressly preserved.

72. I turn, therefore, to consider whether the care which the claimant provides for her parents-in-law is such as to amount to exceptional circumstances. I remind myself that the maintenance of effective immigration controls is in the public interest and there is no doubt in my mind that this claimant has flouted those controls on more than one occasion. She has remained in the United Kingdom for over 7 years since she last had extant leave in August 2008.

73. The claimant speaks English and is not a burden on taxpayers, because her husband keeps her. The private life which she has established with her parents-in-law attracts little weight, because it was established when she was in the United Kingdom unlawfully, or at best (while her Tier 1 application was pending), precariously.

74. Nor am I satisfied that the services which she performs for her father-in-law amount to exceptional or compelling circumstances. It is true that he is not young, and that he suffers from a number of medical conditions. There is no proper medical report on his condition but there is an Adult Community Health Team Initial Assessment, showing that he has bilateral leg ulcers, adequate housing, and lives with his wife. He has 'family support', presumably a reference not just to his wife but to his son and the claimant. Under 'mobility' the assessment indicates that the claimant's father-in-law is mobile at home, mobile outside the home with aid, can transfer independently from chair to bed and bathe himself. He has a limited range of movement but he had not fallen in the last year. He is independent in the toilet, able to perform personal care, and his family does his shopping, laundry and housework. The copy report is incomplete since at the bottom of the second page there is a heading 'Roles and Routines' but the rest of the form, including the date and signature, is missing. There is no evidence from the patient's GP or his social services carers, and nothing recent.

75. The evidence concerning the claimant's care for her father-in-law is weak and what she does (as set out in the 'care plan' she and her husband prepared) is not incapable of being performed by someone else. The weakest point in this element of the case is that the parties have made no attempt to discover what packages could be put together to assist her father-in-law, when and if he is discharged from hospital, and that, in fact, at the date of hearing the obligation to look after him was in abeyance since he was in hospital, not at home. When he is discharged in due course, there presumably will be a further assessment of his needs as they then stand.

76. The only other issue is the claimant's pregnancy. I note that in her witness statement in October 2014, she stated that she and her husband would start a family when her status was settled. It appears that they have changed their mind and that the claimant became pregnant in or around the beginning of September 2015. That may present practical difficulties for the Secretary of State in removing her to Bangladesh but the Secretary of State has not yet had any opportunity to make a decision about

that because no further submissions have been made about the pregnancy and any attendant difficulties.

77. Pregnancy for a married woman is not an exceptional circumstance. The claimant did not rely on her pregnancy in her evidence in chief or in cross-examination until I asked her about the dates, nor is it relied upon in her skeleton argument. Having regard to the husband's evidence that he has not really considered what he would do if this appeal is unsuccessful but that 'he would have to do something' and the finding that there are no insurmountable obstacles to them living in Bangladesh together, I do not consider that the claimant's pregnancy amounts to *Nagre* exceptional or compassionate circumstances.

78. The evidence before me is not sufficient to establish compelling exceptional and compassionate circumstances for which, on *Nagre/Gulshan* principles, the removal of this claimant from the United Kingdom would be disproportionate and therefore unlawful.

Decision

79. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law. I set aside the decision.

80. I substitute a decision dismissing the appeal on all grounds.

81. The claimant shall pay the Secretary of State's costs of the hearing of 19 October 2015, to be assessed if not agreed, on the standard basis.

Signed: Judith AJC Gleeson Date: 6 January 2016
Upper Tribunal Judge Gleeson