



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/12232/2017

THE IMMIGRATION ACTS

Heard at Liverpool
On 16 July 2018

Decision & Reasons Promulgated
On 10 September 2018

Before

**DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL**

Between

**RUBEL [A]
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr P Thornhill, instructed by Thornhills Solicitors
For the Respondent: Mrs H Aboni, Home Office Presenting Officer

DECISION AND REASONS

1. In a decision posted on 19 January 2018 Judge Chowdhury of the First-tier Tribunal (FtT) dismissed the appeal of the appellant, a citizen of Bangladesh, against the decision made by the respondent on 2 October 2017 refusing leave to remain.
2. The appellant came to the UK as a spouse in November 2010 but that marriage broke down and it was dissolved in June 2013. The appellant's partner is Ms JH whom he met in December 2014. They underwent an Islamic religious ceremony in June 2015

and registered their marriage on 13 March 2017 at the registry office in Flintshire, and they had a civil ceremony on 13 May 2017. The appellant's partner has medical problems. These were summarised by the judge at paragraph 17 as follows:

"His wife has been diagnosed with Idiopathic Cerebral Intercranial Hypertension with Papilloma which causes temporary loss of vision, visual problems leading to blindness if no response to treatment, memory loss, loss of spatial awareness and severe head pain, whooshing noises in the ears and pain behind the eyes, sleep deprivation and bouts of severe confusion, anxiety and episodes of depression due to the almost constant symptoms. The Respondent states that they have no insurmountable obstacles to relocate from the UK to Bangladesh however, the Appellant submits that the illness of his wife should be considered as an insurmountable obstacle for her relocation".

3. The appellant had applied for leave to remain on the basis of his relationship with Ms JH in June 2015. That application was refused. The appellant's appeal was dismissed by FtT Judge Garbett on 18 January 2016 who found, inter alia, that the appellant's wife would be able to obtain medical treatment in Bangladesh (paragraph 30). The appellant was unsuccessful in onward appeal efforts.
4. The appellant's grounds first of all contend that the judge erred in considering that she was required to treat the findings of fact made by Judge Garbett as her starting point in that, whereas the present appeal was under the Immigration Rules (the ten year route as a partner), the appeal before Judge Garbett was brought outside the Rules, as a consequence of which the health problems suffered by the wife relevant in respect to whether compelling circumstances or reasons existed. The judge failed to observe that the guidance in Devaseelan concerned the first Adjudicator's "assessment of claim the appellant was then making ... at the time of the determination". It was submitted that the findings made by Judge Garbett on compelling circumstances related to a different type of claim.
5. I do not find this ground holds water. It is correct that the legal issue before Judge Garbett was a different one, relating to whether there were any compelling circumstances outside the Rules, but Judge Garbett's findings relating to the ability of the appellant's partner to obtain medical treatment in Bangladesh was one of fact and was of relevance to the principal legal issue before Judge Chowdhury under the Rules, which concerned whether the couple would face insurmountable obstacles on return., Having noted at paragraph 33 Judge Garbett's finding that the appellant's partner's medical condition was not a compelling circumstance, Judge Chowdhury stated at paragraph 38:


"I am bound by the findings of the immigration judge (see paragraph 6 of Devaseelan above) in that I am being asked to consider the same evidence with regard to Ms Hallmark's medical condition. This issue cannot be re-litigated before me. It was found medical facilities exist in Bangladesh for Ms Hallmark. In this context I cannot identify any additional insurmountable obstacle or exceptional circumstances which renders the respondent's decision disproportionate. It is for these reasons I must dismiss the appeal".

6. Of course, on Devaseelan principles, the judge overstated things by saying the issue could not be re-litigated simpliciter, since if there had been cogent new evidence indicating that medical treatment would not be available, the issue could have been reconsidered. However, that was not an argument advanced in the grounds nor was it supported by a reading of the background country evidence. Mr Thornhill sought to argue that the judge overlooked that the medical evidence that was before her was not the same as before Judge Garbett, who emphasised that it was incomplete. There is truth in the statement that the medical evidence was incomplete, but it cannot be said that Judge Chowdhury downplayed or underestimated or misdescribed the appellant's partner's medical problems. Mr Thornhill accepted that the summary given by Judge Chowdhury at paragraph 17 was accurate.
7. The grounds advance a second ground, namely that by reference to Home Office guidance on the meaning of "insurmountable obstacles" the judge failed to make a rational assessment of whether the partner would suffer "very serious hardship" in Bangladesh. The difficulty with this contention is that it does little more than express disagreement with the judge's clear finding that the availability of medical treatment did not constitute an insurmountable obstacle (see paragraph 38), and there was no reason to think the judge discerned any serious hardship for this reason. It is arguable that a different judge may have taken a different view but Judge Chowdhury's assessment was plainly within the range of reasonable responses. It must also be borne in mind that although in the appeal before Judge Chowdhury one key issue concerned whether the appellant met the insurmountable obstacles test, the appellant did not meet all the requirements of the Rules (he did not meet the English language requirement) and following the guidance given in Hesham Ali [2016] UKSC, the weight attaching to the public interest factors was significant. Further, the appeal was limited to human rights grounds.
8. For the above reasons I conclude that the judge did not materially err in law and accordingly the decision of Judge Chowdhury shall stand.

No anonymity direction is made.

Signed

Date 31 July 2018



Dr H H Storey
Judge of the Upper Tribunal