



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/13564/2016

THE IMMIGRATION ACTS

Heard at Field House
On 2 August 2018

Decision & Reasons Promulgated
On 24 August 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE LATTEER

Between

MOHAMMED ANHAR HUSSAIN
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Syed-Ali, counsel.
For the Respondent: Ms A Everett, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by the appellant against a decision of the First-tier Tribunal issued on 28 November 2017 dismissing his appeal against the respondent's decision of 17 May 2016 refusing his application for leave to remain on the 10-year partner route.

Background

2. The appellant is a citizen of Bangladesh born on 1 January 1984. He entered the UK on 1 February 2010 with leave as a student until 31 August 2012. His leave to remain in that capacity was then extended to 14 December 2015 but on 11 February 2015 it was curtailed to 17 April 2015 when he stopped attending his course of studies. He was advised to make a further application by 17 April 2015 if he wished to remain in the UK. On 27 November 2015 he applied under the 10-year partner route and the private life provisions of para 276ADE of the Rules. Following an interview on 4 May

2016 the respondent concluded that the appellant had obtained by deception his TOEIC certificate issued following an ETS test on 27 June 2012.

3. His application was refused firstly on the basis that he had exercised deception in obtaining his certificate in 2012 and that his presence was therefore not conducive to the public good. Secondly, it was not accepted that he was able to meet the requirements of the Rules for leave to remain under the 10-year partner route. He also failed to meet the requirements of para 276ADE(1) and the respondent was also not satisfied that there were any exceptional circumstances justifying a grant of leave outside the requirements of the Rules.

The Hearing before the First-tier Tribunal

4. At the hearing before the First-tier Tribunal, the judge heard oral evidence from the appellant and his partner and considered the written evidence about the allegation that he had obtained his test certificate by fraud. For the reasons set out in [23]-[24] he concluded that the respondent had not provided evidence of sufficient strength and quality to prove that the appellant probably did not sit the ETS test back in 2012 and that the allegation of deception against him was not made out. The judge then went on to consider the issue of whether the appellant met the requirements of the Rules as a partner.
5. His partner had entered the UK on 2 April 2007 on her probationary year as the spouse of her first husband. In her evidence she explained how she had suffered with her previous husband who was a violent drug addict. She had later met the appellant and said that he was the man for whom she had been looking and he had been very attentive to her needs following her caesarean operation in 2016, when their son was born, and the ensuing complications [14].
6. However, at the time of his application the appellant was not lawfully married to his partner and they had not been together at that time as a couple for at least two years. The judge commented that, as the appellant had only left Bangladesh in 2010 when he was already 26, it was difficult to see why, particularly as a graduate, he would encounter very significant obstacles reintegrating there. His partner had grown up in Bangladesh where she remained until she was 20 and she had been back for a visit. Their son was still well short of his second birthday and the judge said that he would as yet have little appreciation of the world beyond his parents, both of whom were bilingual.
7. The judge took into account the best interests of the child as a primary consideration and said they were generally best served by being looked after by both parents and that could continue if all three relocated in Bangladesh. Both parents had known when they chose to enter into a relationship that the appellant's immigration status was not assured and he knew that the only leave ever granted had been curtailed because he had failed to pursue the course which represented the reason for allowing him to continue to remain.

8. The judge accepted that if all three relocated to Bangladesh it would mean that mother and child would not be able to exercise some important aspects of their entitlement as British nationals but they were not obliged to relocate. He accepted that this would be a very difficult choice for the parents to make and he felt for the appellant's partner, who had been through one wretched marriage and had had a very worrying time post-natally. However, there was no medical reason to prove that she was incapable of working and, if there was indeed such a reason, an application based on that could be made by the appellant from abroad [25].
9. The judge commented that it was not in the interests of effective immigration control for people to be encouraged to believe that if they married a British national and had a child before they were removed for failing to leave after having their leave curtailed, they would then be able to remain without meeting the requirements of the Rules. The judge then said that, whilst one part of the reason for refusing the application was found not to be well-founded, the refusal was justified on other grounds. Having considered all the evidence provided in the case, the judge found that it would not be unreasonable or disproportionate to expect the appellant now to return to Bangladesh where he could make an application to return if he could prove he met all the requirements of the Rules. Such an outcome would be in the interests of effective immigration control and the economic well-being of the UK [26].

The Grounds and Submissions

10. In the grounds it is argued that the judge did not consider the application of the 10-year route to settlement either as a partner or as a parent. The grounds cite at length from SF and others (guidance, post-2014 Act) Albania [2017] UKUT 120. Permission to appeal was granted by the First-tier Tribunal on the basis that it was arguable that the judge failed to have regard to the respondent's policy and to the decision in SF and others in coming to his conclusion that it was reasonable for the appellants' child to accompany him to Bangladesh.
11. Mr Syed-Ali accepted that the grounds did not fully express the core of his submissions on whether the First-tier Tribunal had erred in law. His argument was that the judge had failed properly to consider the application within the Rules relating to the 10-year route to settlement or outside the Rules under article 8. In the light of the reliance on SF and others I asked whether reliance was being placed on any particular policy. After a short adjournment, Mr Syed-Ali produced the Home Office guidance published for staff dated 22 February 2018 on Family Life (as a Partner or Parent) and Private Life: 10-Year Routes and the Overview of the 10-year route. He conceded that the appellant could not meet the parent route and confirmed that it was his submission that the judge had failed to deal adequately with the 10-year route including whether it was reasonable to expect the child to leave the UK. There was no other policy or guidance he sought to rely on.
12. Ms Everett submitted that judge had made a finding that there was no reason why the appellant's partner and child could not return to Bangladesh with him or, in the

alternative, the appellant could return and make an application in accordance with the Rules. The grounds, so she argued, did not disclose any error of law.

Assessment of the issues

- 13 The issue I must consider is whether the judge erred in law such that the decision should be set aside. The substance of the argument made on behalf of the appellant is that the judge failed to consider application of the 10-year route to settlement either as a partner or as a parent. In submissions, Mr Syed-Ali accepted that the claim could not succeed as a parent but argued that it could succeed as a partner.
14. In order to qualify under the 10-year partner route the appellant must meet the requirements of R-LTRP.1.(a) .(b) and .(d) of Appendix FM. One of the requirements in R-LTRP.1.1.(d) is that para EX.1.(a) or .(b) applies. The relevant part of EX.1 is the need to show under EX.1(a)(ii) that "it would not be reasonable to expect the child to leave the UK". Hence, the reference to the reasonableness test in the grant of permission to appeal.
- 15 The judge was fully aware that the application was for leave to remain under the 10-year partner route. He referred to this in terms in [2]. He also, when referring to the law in [16], identified R-LTRP.1.1 and EX.1 of Appendix FM as relevant Rules.
16. However, R-LTRP .1.1.(d)(ii) requires the appellant to meet the eligibility requirements in E-LTPR1.2 as a partner but the appellant could not meet these requirements as his partner did not meet the definition of partner in Gen.1.2. As the judge set out in [25], they were not lawfully married and had not been together at the date of application for two years. For this reason, the appellant could not succeed under the Rules. There is, therefore, no substance in the ground that the judge failed to consider the 10-year route. He explained why that part of the appeal could not succeed.
17. The judge went on to consider the position outside the Rules. His findings and assessment of this issue are set out in [25] and [26]. He took into account the child's young age, being just short of his second birthday, and the fact that he would have little appreciation of the world beyond his parents. He also took note of the fact that the appellant's partner had been unwell and had had a difficult time for many months following her caesarean operation but her GP had made it clear that the healing of the infected wound was completed by January-February 2017 and there was no medical evidence to show that she was in any way incapacitated and no evidence of her inability to take employment or look after herself and her child.
18. The judge reminded himself in [26] that the best interests of the child were a primary consideration and that they were generally best served by being looked after by both parents. He said that this could continue if the three of them relocated in Bangladesh but he noted that they were not obliged to relocate.
19. It was also argued that the judge had failed to consider the exercise of discretion outside the Rules but this is not the case. It is clearly implicit in his findings and

conclusions in [25] and [26] that he was not satisfied that there were any compelling or exceptional circumstances to justify the grant of leave outside the Rules and that it would be reasonable for the child to leave the UK. He accepted that whether the appellant's partner and child should go with the appellant to Bangladesh would be a very difficult choice for them to make and that an application could be made from abroad. The judge was entitled to give weight to the fact that the relationship was entered into when the appellant's status was precarious and to conclude for the reasons he gave that it would not be unreasonable or disproportionate to expect him to return to Bangladesh where he could make an application to return if he could prove that he met all the requirements of the Rules. I am satisfied that the judge's findings and conclusions were properly open to him.

20. When granting permission to appeal the issue was raised of whether the judge failed to have regard to the respondent's policy and the decision in SF and others when assessing whether it would be reasonable for the child to leave the UK. However, the guidance referred to in [7] of that decision deals with the situation where a British child is forced to leave the UK as a result of a decision relating to a parent or primary carer, so giving effect to the ECJ judgment in Zambrano. That situation does not arise in the present case as there is no obligation on the appellant's partner or child to leave.
21. In summary, I am satisfied that the judge reached findings and conclusions properly open to him. He has explained why the appellant could not meet the requirements of the 10-year partner route and why the appeal could not succeed outside the Rules. The grounds do not satisfy me that he erred in law.

Decision

22. The First-tier Tribunal did not in law and its decision stands.

Signed: H J E Latter

Dated: 13 August 2018

Deputy Upper Tribunal Judge Latter