Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/01722/2019

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 12th November 2019	**On 18th November 2019**

Before

UPPER TRIBUNAL JUDGE LINDSLEY

Between

ASMA BIBI
(ANONYMITY ORDER NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr S Karim, of Counsel, instructed by Saint Martin Solicitors
For the Respondent: Mr C Avery, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The appellant is a citizen of Bangladesh born in February 1933, she is therefore 86 years old. She arrived in the UK in March 2006 as a visitor, and in August 2006 applied for indefinite leave to remain as a relative

of a settled person. This was refused, and she appealed but the appeal was dismissed by First-tier Tribunal Judge Owens in a decision promulgated on 3rd October 2016, and she became appeal rights exhausted in May 2017. In August 2017 she made further submissions and then applied for further leave to remain. These submissions were refused without a right of appeal in February 2018. In April 2018 the appellant made a human rights application which was refused in the decision of 17th January 2019. Her appeal against the decision was dismissed by First-tier Tribunal Judge Wilding in a determination promulgated on the 24th June 2019.

2. Permission to appeal was granted by Judge of the First-tier Tribunal PJM Hollingsworth on 2nd September 2019 on the basis that it was arguable that the First-tier judge had erred in law in failing to provide sufficient reasoning in the proportionality exercise and with respect to the Article 8 ECHR Immigration Rules regarding the salient facts of the case, particularly the appellant's age; her physical and mental health problems; and the available family support and professional care in Bangladesh.

3. The matter came before me to determine whether the First-tier Tribunal had erred in law.

Submissions – Error of Law

4. The grounds of appeal were in part totally unarguable and wisely abandoned by Mr Karim, but what was argued, in summary, was that the First-tier Tribunal had erred in law in finding that there were no very significant obstacles to integration if the appellant was returned to Bangladesh as there was a failure to consider the new medical evidence; and further there was a failure to consider whether there was family life between the appellant and her sons & daughters and their families in the UK, given her vulnerability and inability to support herself in the UK in the context of her medical conditions, and to balance this in an Article 8 ECHR proportionality exercise outside of the Immigration Rules.

5. Mr Avery accepted that there was an error of law in the decision, in at least failing to consider whether there were Article 8 ECHR family life relationships between the appellant and her UK relatives and to factor this into the consideration of the appeal outside of the Immigration Rules on Article 8 ECHR grounds.

6. I informed the parties that I therefore found that the First-tier Tribunal had erred in law, and would set aside the decision and all of the findings. I set out my reasons for the finding that the First-tier Tribunal had erred in law in writing below. Both parties were agreeable to remaking the appeal in the Upper Tribunal, and to doing so promptly given the age of the appellant. Mr Avery wanted some time to consider the further medical report submitted for the remaking hearing and to

review the papers, and it was necessary to arrange a Sylheti interpreter for one of the witnesses, so the remaking hearing took place later that morning.

Conclusions – Error of Law

7. The First-tier Tribunal adopts a totally correct approach to the decision of the previous First-tier Tribunal Judge Owens, setting out the findings at paragraph 8 of the decision, and stating at paragraph 9 that in accordance with Devaseelan that this was the starting point for this decision.

8. The First-tier Tribunal cannot be criticised for not giving significant weight to the statements of the witnesses other than Mr Ohi Uddin as they were not called to give evidence by the appellant's representative, see paragraph 14 of the decision. The findings with respect to Mr Ohi Uddin, at paragraphs 10 to 12 of the decision, not being a credible witness are well reasoned and have not been shown to be irrational by the appellant.

9. I find that it was an error of law, however to have failed to have factored in the medical evidence of the appellant's GP, Dr Ali Dogan, that she suffers from dementia, including poor memory and cognitive impairment with short term memory loss, when considering if it was reasonable not to call her and the weight to be given to her written statement. The First-tier Tribunal also errs, I find, in the consideration of the evidence with respect to the appellant's dementia at paragraphs 20 to 22, as I find that the updated report of Dr Ali Dogan does include a clear diagnosis that the appellant suffers from dementia which leads her to have poor memory and cognitive impairment, and sets out that she has been referred to a memory clinic. Whilst there is no psychiatric assessment, there is no reason to assume that a GP is not able to make this diagnosis as it is a very common condition in the elderly. The failure to consider this evidence leads the First-tier Tribunal to fail to consider relevant evidence for the test under the Immigration Rules at paragraph 276ADE(1)(vi) as to whether she would have very significant obstacles to integration if returned to Bangladesh.

10. In addition I find that the consideration of the appeal on Article 8 ECHR grounds outside of the Immigration Rules errs in law as it fails to consider and make findings on whether the appellant has family life ties in the UK, which was necessary given her accepted age and vulnerability and the large number of close relatives she has in the UK with whom she lives, and to balance these family ties in the proportionality exercise. Once again a relevant factor was not considered in the application of the legal process.

Evidence and Submissions - Remaking

11. Mr Karim called two witnesses in support of the appellant, Mr Mohammed Zuber Ahmed, son of the appellant, and Mr Mohammed Zohir Uddin, grandson of the appellant. Mr Ahmed gave his evidence through the Tribunal interpreter whom he confirmed he understood.

12. The evidence of Mr Mohammed Zuber Ahmed is, in short summary, as follows. He was born in 1966, and is a British citizen. He is married with four children. He had four brothers and four sisters, but one brother sadly died. One brother and two sisters are British citizens, these siblings are all married and living in the UK with their spouses and children. Two brothers live in Saudi Arabia, and two sisters remain in Bangladesh, where they are married with grown up children. Mr Ahmed works as a chef for one of his brother's, who owns a restaurant. His mother suffers from many medical conditions including: cirrhosis and chronic liver disease, dementia, diabetes, hyperlipidaemia, hypertension, thrombocytopenia, osteoporosis, B12 deficiency, cataract and aortic aneurysm. She is old and weak, and confused, and suffers from joint pain throughout her body. She needs twenty four hour attention and particularly help with walking, dressing, eating, and using the toilet. She is cared for by the whole UK based family and particularly her UK based sons, but lives mostly with him and his family. She is mostly cared for on a day to day basis by his wife, although he helps when he is not at work and does things such as drive her to the doctor.

13. Mr Ahmed's view is that the appellant should not have to return to Bangladesh as his sisters there could not provide the care that she is given here by the family due to their responsibilities to their families. He accepts that there is a family home there, but argues that she would not get good medical treatment in Bangladesh. He accepts that the family in the UK have financial resources between them but argues the appellant should not have to leave because the bonds that the appellant has with the UK family are profound and that she should be given their care so she can have dignity in her last few years of life and be allowed to remain with all of them in the UK.

14. Mr Uddin's evidence is, in summary, as follows. He is a British citizen born in 1988. He has a BSc business degree, and works as an executive with Lloyds of London. He is well paid for this work. He is the appellant's grandson. He says that his grandmother, the appellant, is hardly able to walk, and suffers from confusion and depression. She needs constant supervision and help with things such as moving, eating, dressing and using the toilet, which is provided by his father and uncle and their family members. She could not return to Bangladesh as she could not live alone there in the family home; she would not have access to proper medical treatment; and his aunties there could not care for her as they have their own family responsibilities. He believes that she would die if returned to Bangladesh. She is used to being in the UK now and moving her to Bangladesh would be upsetting and destabilising. Further the appellant is deeply connected with his father and uncle, and

their families, including him, in the UK. She is always present at the frequent family celebrations such as weddings and birthdays. They are a very close family in the UK and she has a central part in that family. What she has here could not be replicated elsewhere.

15. Mr Avery submitted that he relied upon the reasons for refusal letter, which in summary states that the appellant would not have very significant obstacles to integration as she can speak the relevant languages and has lived in Bangladesh until she was 73, and therefore for most of her life, and so she does not qualify under paragraph 276ADE (1)(vi); and that it would not be a breach of Article 8 ECHR when looked at more broadly because there is no evidence that she could not be treated for her medical conditions in Bangladesh and she would be able to reintegrate there, possibly with the financial support of her children who provide for her in the UK, and that it was not considered that she had family life with her children and grandchildren in the UK. Mr Avery accepted, however, that there are family life relationships in this case due to the degree of dependency of the appellant on her UK family.

16. Mr Avery argued that the starting point is the decision of Judge Owens and that no additional evidence had been produced from the appellant's daughters in Bangladesh and there was no substantial oral evidence showing discussions with them from the witnesses. As a result the findings of Judge Owens that she would not have very significant obstacles to integration in Bangladesh stand, even in the context of the evidence about the deterioration in her medical condition. She could reintegrate with the financial assistance of the UK family, in the family home in Bangladesh and/or with her daughters who live there. As a result the appellant could not succeed by reference to paragraph 276ADE (1)(vi) of the Immigration Rules. With respect to the appeal outside of the Immigration Rules the appellant's removal remains proportionate as although she has family life with her UK family she does not speak English, her private life ties with the UK have little weight and she could have family life with her daughters in Bangladesh, and so her removal is proportionate given the weight that must be given to the public interest in immigration control.

17. Mr Karim submitted that things have moved on from the position when Judge Owens considered the evidence three years ago. At that time there was no evidence of cognitive impairment and she was able to do the majority of her own personal care. There is now evidence that she has vascular dementia and that her mental health as deteriorated significantly. Similarly, with her physical well-being she has deteriorated so that she now needs 24 hour care and her mobility is significantly less. Mr Karim referred me to the definition of integration at paragraph 14 of SSHD v Kamara [2016] EWCA Civ 813, and argued that the appellant would clearly have difficulties integrating and participating in life in Bangladesh as due to her dementia and deteriorated physical health she could not recreate her private and family life ties in that

country. Whereas in the UK the evidence shows that she is at the centre of family events.

18. If looked at outside of the Immigration Rules Mr Karim argued that her family life ties in the UK can be given proper weight under s.117B of the Nationality, Immigration and Asylum Act 2002. The appellant has been removable since 2007, and the fact that she has not been removed, despite having continued to report to the Immigration Service, means that the respondent's delay has led to her family life ties in the UK strengthening, applying the principles in EB (Kosovo) v SSHD [2008] UKHL 41. In the balance is not only the appellant's family life ties but those of all of her UK based relatives with her. Although she does not speak English she is financially independent. She is in her final years of life and it would not be proportionate in all of the circumstances to remove her from her family ties in the UK given her health conditions.

Conclusions – Remaking

19. My starting point in this decision is the decision of Judge of the First-tier Tribunal Owens promulgated on 3rd October 2016 in which her key findings were that: (i) the witness she heard was not credible (but he was not a witness called before me); (ii) that the family owned their own home in Bangladesh; (iii) the appellant had some chronic conditions which were controlled by medication and did not suffer from cognitive impairment; (iv) that the appellant had limited mobility; (v)she needed limited personal assistance with dressing and washing; (vi) she does not need long term personal care to perform everyday tasks; (vii) she could live with her daughters in Bangladesh or independently in the family home with paid for carers and visits from family members; (viii) the UK family could fund cheap domestic assistance for their mother and she could have support from her daughters, their grown up children and grandchildren in Bangladesh; (ix) that the medical treatment and personal care she needs would be available to her in Bangladesh.

20. I find that the evidence given before me from Mr Ahmed and Mr Uddin (who was not the same Mr Uddin who gave evidence before Judge Owens) was credible and honest. There was no attempt to deny that the family had a house, and the appellant had daughters in Bangladesh or that the UK family had funds which could be applied to support the appellant. I do not find there was any exaggeration of the degree of support the appellant required as an 86 year old wheelchair user with the medical conditions her GP has set out, as their evidence was entirely commensurate with this medical evidence.

21. My first task is to consider whether the appellant meets the requirements of the private life Immigration Rules at paragraph 276ADE(1)(vi), by showing that she would have very significant obstacles to integration if returned to Bangladesh where she lived until she was 73 years old. As set out in Kamara this is a broad evaluative judgment about whether the appellant would have capacity to participate in society and to build up, within a reasonable period of time, a variety of human relationships to give substance to her private and family life. I find that the appellant no longer has the capacity to start again and reintegrate herself into life in Bangladesh, and so would have very significant obstacles to integration in that country, for the following reasons.

22. Her GP, Dr Ali Dogan, who has seen her regularly since 2010, describes in his letter of 20th December 2018 that: she is "severely frail both physically and mentally"; she "requires support for 24 hours as she is at risk of falls/ self-harm, neglect if left alone"; "she has poor mobility and it declined further since last year"; she has "Dementia: Poor memory and cognitive impairment. She has short memory loss and cannot recall/ remember recent events"; her "wellbeing heavily depends on her carers (family) and health care services at present. She is not capable of living, travelling or functioning independently". The dementia diagnosis was confirmed by Dr Reshad Malik, consultant old age psychiatrist of the Enfield Memory Service in his letter of 5th August 2019 which records that she had a history of deteriorating cognition over the previous 6 to 12 months with difficulties with remote and recent memory, impaired concentration, impaired registration, disorientation to time, topographical disorientation and word finding difficulties. She has a diagnosis of vascular dementia. I find that this medical evidence supports Mr Karim's submission that the appellant's physical and mental condition has worsened significantly since the decision of Judge Owens three years ago when she only need limited physical assistance and had no cognitive impairment. It follows that the decision I reach may be different from that of Judge Owens.

23. The appellant would have a home to return to in Bangladesh, she does speak Sylheti and it would be possible to arrange for carers and medical services given the financial resource of the UK family and their concern for her and loving commitment, and no doubt her daughters and their families would provide her with social visits. However, at this stage in the appellant's life and in the context of her extreme physical and mental frailty I find that she would not have the capacity to reintegrate herself and create a private and family life in Bangladesh with them. The medical evidence before me is that she does not have the sufficient memory or registration and would be disorientated by this change in her circumstances due to her dementia, and is lacking the mobility and physical energy to start again to rebuild any semblance of a private and family life in Bangladesh with her daughters and their family. I thus find that she fulfils the requirements of paragraph 276ADE(1)(vi) of the Immigration Rules.

24. As I have found that the appellant meets the requirements of the Immigration Rules there is no public interest in her removal and she is entitled to succeed in her Article 8 ECHR appeal, however for completeness, and in case I am wrong in my assessment under the Immigration Rules, I consider the appeal on wider Article 8 ECHR grounds as well.

25. In this broader assessment I acknowledge that I can give little weight to the appellant's private life ties with the UK formed over the past 13 years, and that it stands against her in this assessment that she cannot speak English. She is financially independent as she is fully supported by her family, but this is a neutral matter. In her favour is her extensive family life in the UK with her two daughters and two sons and her 23 grandchildren many of whom are now adults. All of these people are British citizens. I find that the appellant is at the centre of family life between these people, being taken to very frequent family celebrations and get togethers, and being the focus of love and affection from all family members. This was clear from the evidence of both of the witnesses. I find, applying EB Kosovo, that these family life ties have strengthened due to the fact that the appellant has not been removed despite being prima facie removable since 2007 and reporting to the Immigration Service regularly, although I appreciate that she made a number of applications, which given they were not dealt with promptly prevented this for much of this time. If I am wrong about the appellant being able to satisfy the Immigration Rules at paragraph 276ADE(1)(vi) I must balance the public interest in upholding immigration control against the family life ties of this appellant and her British citizen relatives, in the context of her having at the very least serious difficulties in returning to her country of origin and re-establishing her family and private life in the last years of life whilst coping with a panoply of physical and mental health problems which result in complete dependency on others. On consideration of all of the evidence I find that the removal of the appellant would not be proportionate to the legitimate aim, and thus also allow the appeal when considered outside of the Immigration Rules on Article 8 ECHR grounds.

Decision:

1. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.

2. I set aside the decision of the First-tier Tribunal

3. I re-make the decision in the appeal by allowing it on Article 8 ECHR human rights grounds.

Signed: Fiona Lindsley Date: 13th November 2019
Upper Tribunal Judge Lindsley