Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Numbers: HU/04052/2018**

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THE IMMIGRATION ACTS

Heard at Field House **Decision & Reasons Promulgated**
On 1 July 2019 **On 16 July 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE JORDAN

Between

MR MD ZAZBIR ALAM SIDDIKI
MRS SULTANA JAHAN
(ANONYMITY DIRECTION NOT MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr K. Mustafa, Legal Representative
For the Respondent: Mr E. Tufan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Bangladesh who was born on 8 March 1988. He is now 31 years old. He appealed against the determination of the Secretary of State of 23 January 2018 following his application made on 10 July 2017 for indefinite leave to remain outside the Immigration Rules.

2. The appellant entered the United Kingdom on 27 September 2009. He was then aged 21. He was given leave to remain as a student until 6 September 2016. Thereafter he applied for leave to remain outside the

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Rules claiming that it would be a breach of his human rights to remove him. By then he had been in the United Kingdom for some seven years.

3. The appellant was then studying for an MSc in Accounting and Finance at BPP University. However, that category of student leave was not one that in itself leads to settlement. Consequently, according to the decision of the Secretary of State, the appellant never had any expectation that he would be allowed to stay permanently in the United Kingdom once his studies had been completed.

4. The picture is further made complex by the fact that his wife and son were also in the United Kingdom. Their son had been born on 22 October 2016. He was 15 months old at the time the decision was made and he is now aged 2. None of the members of the family is a British citizen. All are Bangladeshi citizens.

5. The factual matrix upon which the judge made his decision took into account the fact that the appellant had himself visited Bangladesh on two occasions in 2014 and 2016. Both had post-dated the marriage which had taken place in September 2012. The wife had also visited Bangladesh on at least one occasion. It appears from the stamps in her passport that part of that period coincided with the time the appellant had spent in Bangladesh.

6. It also has to be remarked that, in the decision letter, the Secretary of State noted that when the appellant had first applied for leave to remain outside the Rules on 5 September 2016, he had indicated that it was his intention to return to Bangladesh and that the only purpose for the application then made was that he wanted to have more time to complete his studies.

7. That was the basis upon which the current application was made. I say here at the outset there is simply nothing which could have amounted to a viable claim that the appellant should be permitted to remain in the United Kingdom outside the Immigration Rules on the basis of there being circumstances which, in some way, might merit an exception being made in his case because of their compassionate or compelling nature.

8. This was a situation which occurs in many such cases. There is no expectation that an individual who comes to the United Kingdom as a student should be permitted to remain when his student status has expired. This normally happens by his having qualified in the manner sought and, if an individual also has a wife and a child born in the United Kingdom, the normal consequences will be that the family will return as a family unit without adverse consequences.

9. That was in essence the decision made in the decision of First-tier Tribunal Judge Young who heard the case on 26 February 2019. He recited the evidence of the first appellant beginning in paragraph 10 of the determination and noted that the appellant had not been able to complete his MSc degree at BPP University due to sustaining an injury in a

motorbike accident on 31 August 2015. However, the university had promised him with a temporary Confirmation of Acceptance for Studies but, although promised, it did not actually materialise.

10. The appellant claimed that his circumstances had changed in Bangladesh regarding the prospects of future employment; in addition, the appellant had married without the consent of his, or his wife's family, the members of which had not accepted the relationship. That was something that the judge had well in mind when he came to consider the overall circumstances.

11. Notwithstanding this, the judge noted in paragraph 16 that the appellant had successfully completed undergraduate and postgraduate degrees in the United Kingdom in accounting. Needless to say, that degree was directed towards accountancy rules as they applied in the United Kingdom. It was not a specific Bangladesh qualification. That is unsurprising since that is what the appellant signed up for. Had he wanted to continue his studies in Bangladesh using Bangladeshi regulations, then that was a matter for him. He was still studying for the ACCA examinations and was on the final level of that course but that was an independent course of study. He confirmed that it could be taken in Bangladesh.

12. The circumstances as submitted by the appellant in his appeal to the Immigration Judge were really no different from the circumstances as had been considered by the Secretary of State some months before. The judge noted that the appellant had managed successfully in the United Kingdom and the family had done so without the support of immediate family members.

13. The grounds of appeal suggest that there were two major difficulties in the determination of the judge. The first was the point made in paragraph 4.1 of the grounds that the judge had readily assumed that both would be employable in Bangladesh. It was said that that was speculative, unfounded and unsafe. I reject that submission.

14. The judge was entitled to take into account the fact that the appellant was an educated man. He was in good health. He had embarked upon a complex system of study in accountancy and it is simply unarguable to say that, as a result of this, he is unemployable in Bangladesh, even though it may be assumed (absent any direct evidence) that there has to be some adjustment made because of the different regulatory framework that exists in Bangladesh.

15. The judge dealt with that in his determination in paragraph 16. He properly recorded the submission made that it was it would not be possible for him to get a job in the public sector in Bangladesh but he noted that the appellant was somebody who had continued to study and the course that he was currently engaged upon was one that could be taken in Bangladesh. The judge was required to do no more. The suggestion that, somehow either he or his wife were unemployable is fanciful.

16. The second point made is that the judge failed to take into account the importance of family support in Bangladesh, whereas in the United Kingdom such support is not seen as so important. Once again, I reject that submission emphatically. It may be that it would be better for these appellants to have the wholehearted support of their parents. Who would not wish that? It may be that they would like the financial support of their parents. Who would not? It may be that they would like the domestic and private support that is provided in terms of babysitting or family care. All of these things may readily be seen as being an advantage. But it is not possible to submit that they are so essential that, in their absence, the appellant cannot be returned to Bangladesh. Indeed, the obvious point made by the judge is a good one: namely, that they are working without such family support in the United Kingdom and are managing successfully; that situation would simply be replicated in Bangladesh were they to return there.

17. The two principal grounds of appeal are in my judgment unarguable and simply misconceived. It is also said as an additional factor that the judge therefore failed to conduct the correct balance as far as proportionality was concerned. The problem with this submission is that there are no circumstances in the appellant's case (or the case of the appellant, his wife and his son) which merit an exception. The appellant's circumstances do not meet the requirements for further leave to remain or indefinite leave to remain in the United Kingdom. Whilst searching for circumstances which might merit a departure from that, there is nothing that can be identified as weighing in his favour.

18. Proportionality, by its very nature, requires identifying factors in favour of an appellant which outweigh the factors in favour of compliance with immigration control. For the reasons that the judge found in his determination, there were no factors which outweighed the weight to be attached to immigration control. As a result, the judge was inevitably led to conclude that there could be no viable Article 8 claim. Neither the appellant's private life, nor his family life, were such as should be protected from removal.

19. For these reasons I am satisfied that the judge made a lawful decision and the appeal should be refused.

20. In doing so I comment upon the grant of permission that was made by the First-tier Tribunal Judge. He said that it was arguable that the appellants were entitled to a full analysis to be conducted considering all the elements relevant to proportionality. In my judgment that is not an accurate reflection of the First-tier Tribunal Judge's determination. There were no circumstances which the judge did not allude to in his determination which might have made a difference in the proportionality balance.

21. The judge continues in his grant of permission to say that it is arguable that the judge has attached insufficient weight to features relevant to proportionality. Whatever those features might have been, they are

neither identified in the grounds of appeal nor in the grant of permission made by the judge. In those circumstances, I see nothing in the grant of permission that amounts to an arguable error of law.

DECISION

(i) I dismiss the appeal of the appellants in the Upper Tribunal.
(ii) The decision of the First-tier Tribunal shall stand.

ANDREW JORDAN
DEPUTY JUDGE OF THE UPPER TRIBUNAL
Date: 11 July 2019