IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case Nos: UI-2022-005163
UI-2022-005164
First-tier Tribunal Nos: HU/51869/2021
HU/51870/2021
IA/07214/2021
IA/06198/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 2 October 2023

Before

UPPER TRIBUNAL JUDGE RIMINGTON

Between

Shayela Jamal (First Appellant)
Ali Mahmood (Second Appellant)
(NO ANONYMITY ORDER MADE)

Appellants

and

The Secretary of State for the Home Department

Respondent

Representation:
For the Appellants: Mr N Paramjorthy instructed by PN Legal Services
For the Respondent: Mr N Wain, Home Office Presenting Officer

Heard at Field House on 10 August 2023

DECISION AND REASONS

1. The appellants appeal against the decision of First-tier Tribunal Judge Hussain who, on 10th August 2022, dismissed their appeal against the Secretary of State's refusal dated 10th May 2021 of their human rights claims (based on private life).

2. The appellants submitted in their grounds for permission to appeal that the judge had materially erred in law by finding that the first appellant most likely had contact with her family in Bangladesh while studying here in the UK and therefore could turn to them for support to integrate upon return to Bangladesh. The judge's finding was based on speculation without one iota of evidence to

substantiate the finding. The judge opined at the start of the hearing that it was strange that Ms Jamal had no contact with her family in Bangladesh now considering the passage of time that she has been in the UK and Counsel for the appellant specifically posited questions to the appellant on this basis in line with the **Surendran** guidelines. Ms Jamal explained the one occasion she had travelled to Bangladesh and said nothing more other than she and her husband had permission to work here in the UK and had been working accordingly. The judge did not engage with the evidence that both the appellants had permission to work in the UK and had been supporting themselves. The judge found that Ms Jamal must have received funds from somewhere so she could financially support herself and that it was likely it came from family in Bangladesh, which is a clear material error of law.

3. At [41] the judge again made a finding which derives from a personal opinion, namely that the cultures of India and Bangladesh were "not that apart" (sic) and therefore the appellants could adjust to life in either country together. The judge reached this conclusion as a matter of personal opinion and in the absence of any reference to any background material. The appellants were Indian and Bangladeshi nationals but had spent much time in Libya and their ties to their respective countries were limited. The judge had not engaged with the evidence.

4. The Secretary of State submitted a Rule 24 response opposing the appellants' appeal and submitted that the judge was entitled to find there were clearly cultural links between Bangladesh and India, which was not based on unsupported speculative opinion, but on the fact that the countries have a shared history. The judge recorded the reasons for claiming insurmountable obstacles to return to either Bangladesh or India, such that each of the appellants had not lived in the other's country and that they would have no familial support. That they claimed they would not get entry clearance was not supported by any evidence. None of the factors claimed by the appellants remotely amounted to unduly harsh circumstances or insurmountable obstacles. Further, the appellants did not at any point state why they required familial support to return to either India or Bangladesh given that the appellants had been entirely self-sufficient during their time in the UK and there was no evidence presented as to why they could not be entirely self-sufficient and had adapted to a country where they had no familial connection and were entirely self-sufficient.

5. At the hearing before me Mr Paramjorthy submitted that the conclusion that the first appellant had been reliant on her parents for the cost of her studies, was purely speculative and a weak point to take. Both appellants were born and met in Libya and the first appellant had only visited Bangladesh once for private health treatment. The judge again made a further error at [41] when observing the countries shared the same country background without evidence. Cumulatively there was an error of law.

6. Mr Wain submitted that the judge had noted the first appellant's evidence at [23] and [24] and the comments at [40] that really comment on credibility. It was open to the judge to find that on the basis that the first appellant was on a Tier 4 visa and it was right to say that the money must have come from somewhere and there was no explanation in her witness statement. There was no reference to the appellant being financially independent, the chronology as found, was consistent with the judge's findings, which was not challenged.

7. The question was whether there were insurmountable obstacles to the appellants living in either Bangladesh or India. Bearing in mind it was asserted

that they were financially self-sufficient, that is relevant to the finding that there were no significant obstacles to reintegration abroad. Even if the judge did at [41] make reference to the difference in cultures, the judge nevertheless recognised that there was a difference in culture between Bangladesh and India at [41] and it was clear that the time spent in Libya was considered as part of the judge's reasoning and bearing in mind he had made reference to that at [11].

Analysis

8. Neither appellant could succeed in relation to paragraph 276ADE(1) in terms of the years they had lived in the UK. In relation to very significant obstacles, the judge specifically took into account both the appellants' witness statements and their evidence which he summarised at [26]-[31]. He noted the appellants had both been born and brought up in Libya. The statements recorded the objections of the appellants' relocation to either India or Bangladesh.

9. The judge made relevant findings as follows:

> '38.The sum total of their evidence seems to me that both the appellants were born in Libya to immigrant parents who were working there. The first appellant is of Bangladeshi origin and the second appellant of Indian origin. They met whilst studying at college in Libya, but subsequently, the first appellant came to the United Kingdom to study in 2011 and the second appellant came to this country in 2014. They rekindled their relationship in this country, resulting marriage in 2015 from when they have been living together. The first appellant claimed that she has only ever travelled to Bangladesh once in 2019 for two weeks for medical treatment whilst the second appellant maintains that he has only ever travelled in India in 2013 to see his sick mother.
> 39. The first appellant claims that her parents are not happy with her marriage to the second appellant because he is of a different culture and nationality. The second appellant does not make any such claim, but says that he has no family or property in India because his parents used to live in rented accommodation who have now migrated to Saudi Arabia to live with their other son.
> 40. I have considered the first appellant's claim that she cannot look for support from her family to integrate in Bangladesh. However, I reject her claim that her family are estranged from her. I say this because she has not explained how, without the support of her family, she managed to live and study here until 2020 by when she had obtained a Bachelor's degree and a Master's degree. The cost of her studies and living in this country would have been very high. Those funds must have come from somewhere. If the appellant is indeed estranged from her family, then that would have begun in 2015 when she married the second appellant, yet she continued to study until 2020. I find it highly unlikely that of all the countries in the world, she would have travelled to Bangladesh to receive private treatment and not be with her family.

10. The judge noted at the outset of the decision that the first appellant entered the UK on 1st October 2014 on a student visa which was extended on the same basis until it expired on 31st July 2020. She subsequently made the application which was refused and which generated this appeal. At [3] the judge also recorded that the second appellant entered as a student in 2011. His leave was extended until 20th September 2016, whereupon he applied for leave to remain on the basis of

his family and private life, which was refused on 21st August 2018 with an out of country right of appeal. On 12th November 2018 he then applied for leave as a dependent partner, which was granted to expire on 8th March 2020. There was no indication that the first appellant was dependent on the second appellant, rather the other way round and the first appellant was here as a student. On that basis it was entirely open to the judge to conclude that it was "not explained how without the support of her family, she managed to live and study here until 2020 by when she had obtained a Bachelor's degree and a Master's degree" bearing in mind the evident costs of study fees, maintenance and the dependence of her husband. As the judge stated, those funds must have come from somewhere and he noted, despite the immigration chronology she continued to study until 2020. The judge also commented that she had travelled to Bangladesh to receive private treatment.

11. However, even if the judge was incorrect, to make that conclusion, at [41], he acknowledged as follows: "Even if I accept the facts asserted by the appellant, there is nothing in the evidence to indicate that the appellants cannot reside in either of their home countries". That was correct. As the judge pointed out, no evidence was produced to show that either appellant was unable to live in the other partner's country. The judge commented at [41]

> "Over the years that I have sat as a Tribunal Judge, I have not come across an instance where it asserted that a Bangladesh national married to an Indian, vice versa, cannot go and live in each other's countries. However, I appreciate that because they are from different cultures, there would be a period of adjustment. That in my view would not be unduly harsh because the difference between the cultures in the two countries are not apart and secondly the appellants married one another knowing that they came from different cultures and they would not have any right to live in this country of their choice".

12. However, embedded within that statement was that the judge realised that there "would be a period of adjustment" and further at [42] the judge qualified his statement by stating "I accept that there would [be] initial hurdles for them to overcome." The judge also found that

> *"By his own evidence, he (the second appellant) is very highly skilled in the IT sector. There is no reason why he could not use his skills obtained in his country to find employment there. Likewise, the second appellant has qualifications which she should be able to use to find herself employment whether in India or Bangladesh."*

13. That was the overriding finding by the judge and even if there was some speculation in relation to the funding of the education in the United Kingdom, and initial ability to adapt to the cultures of the various countries, as he identified there was no evidence to undermine the ultimate finding which was, on the evidence, that the appellants could live independently in their own countries and support themselves and each other, with or without family support, with their own earnings. It was that lack of evidence which was relevant in that regard.

14. Mr Paramjorthy submitted before me that the judge had failed to take into account that they had lived in Libya for some time but that was not raised in the grounds of appeal, secondly, the judge had indeed identified and considered that the appellants relied on their connections with Libya at [38] and thirdly, the

appellants had clearly adapted as to a new country that is the UK with the support of each other.

15. Moreover, there was simply no evidence save for bare assertions, and **Kaur v SSHD [2018] EWCA** [57] in relation to insurmountable obstacles confirms that bare assertions are just that. More than mere practical difficulty is required when asserting insurmountable obstacles for the appellants to relocate either to India or Bangladesh and on that basis, it was entirely open to the judge to conclude, as he did. Despite Mr Paramjorthy's very professional submissions and his valiant efforts, I am not persuaded there was any error of law in this decision. I find there is no error of law and the First-tier Tribunal decision will stand.

Helen Rimington

Judge of the Upper Tribunal
Immigration and Asylum Chamber

26th September 2023