



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: HU/11060/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 14 December 2018**

**Decision & Reasons
Promulgated
On 15 January 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE PEART

Between

**MR SHAHAJAN AHMED
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Ahmed, Solicitor

For the Respondent: Ms Kiss, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Bangladesh. He was born on 10 January 1991.
2. The appellant appealed against the respondent's decision dated 14 September 2017 to reject his human rights claim on the basis of his relationship with his British partner [SN] and her children.
3. Judge Loke (the judge) dismissed the appellant's appeal in a decision promulgated on 5 July 2018. The judge found that the appellant did not meet the requirements of the Immigration Rules. The appellant's role in

the children's life did not amount to a "parental relationship". The judge found S.117B(6) was not engaged and that the respondent's decision was proportionate.

4. The grounds claim the judge erred in failing to make any findings with regard to paragraph 276ADE. See [3] of the grounds. Further, that the judge failed to take into account S.55 with regard to the children and failure to take into account various case law, **Razgar, Beoku-Betts, VW (Uganda), ZH (Tanzania), Huang, Kugathas, R (on the application of RK)** and **R (Gurung)**.
5. Judge M Robertson granted permission to appeal on 3 October 2018. She said, inter alia, as follows:

"2. There is some arguable merit in the grounds at paragraph 3 of the grounds because whilst there is some confusion in the submissions between the assessment of the appellant's life (which must be without reference to his relationship with Ms [N], the appellant did, in his grounds of application, rely on para 276ADE(1)(iv), and the judge has not dealt with these submissions with a view to factoring his ability to meet or not meet those provisions in the proportionality assessment and permission is granted on this ground. The appellant must not raise his hopes too high, however, because it may be that on the evidence before the judge it was not reasonably arguable that he would be entitled to succeed under para 276ADE(1)(iv).

*3. There is little arguable merit, however, in the other grounds which amount to no more than a disagreement with the findings of the judge which were open to him on the evidence before him on all issues raised because: as to paras 1-2 of the grounds, the judge has accepted that Article 8 is engaged on the basis of the appellant's relationship with the Ms [N] (see [11]). As to para 4 of the grounds, the judge has considered and made findings on the best interests of Ms [N]'s children at [11]. As to para 5 of the grounds, the judge gave adequate reasons as to why he found that the appellant had not established that the appellant had a 'parental relationship' with Ms [N]'s children at [16-25]. As to paras 6-7 of the grounds, the judge considered the provisions of S.117B(1)-(5) at [13], and his approach is consistent with guidance from higher courts. This is not a case in which the only factor in the public interest side of the balance is the requirement to make an out of country application. As para 9 of the grounds, the appellant did not satisfy partner requirements of the Appendix FM and the provisions of paragraph EX.1 were therefore not available to him (**Sabir (Appendix FM - EX1 not free standing) [2014] UKUT 00063**). Paras 10-11 of the grounds have no relevance to the decision of the judge".*

6. The grounds were renewed. The permission to appeal had erroneously said that permission was refused. Upper Tribunal Judge Canavan put right that error, however, she went on to say that as regards the judge's finding that there was no arguable merit to the second ground relating to the appellant's family life in the UK, she said as follows, inter alia:

- "3. Although the error on the order could be corrected by the First-tier Tribunal the appellant has lodged a renewed application for permission to appeal to the Upper Tribunal. It is open to me to rectify the error by granting permission at this stage. The grounds of appeal are general in nature and tend towards making submissions on the facts rather than identifying errors of law. I also think it is unlikely that the appellant could succeed in showing that there are 'very significant obstacles' to his integration in Bangladesh for the purpose of paragraph 276ADE(1)(vi), but it is at least arguable that the First-tier failed to make findings in relation to the appellant's private life.*
- 4. However, I depart from Judge Robertson's view in relation to the second ground. Although the grounds are general and unparticularised, it is at least arguable that the public interest factors contained in S.117B of the Nationality, Immigration and Asylum Act 2002 are not the only factors that must be considered in an Article 8 assessment outside the Rules. The provision makes clear that those factors only go to the public interest considerations.*
- 5. Having accepted that the appellant was in a genuine and subsisting relationship with a British citizen and that it was in the children's best interest to remain in the UK with their mother, it was still incumbent on the judge to consider whether there were 'insurmountable obstacles' to the couple continuing their family life outside the UK. If there were 'insurmountable obstacles' the judge would have to go on to consider whether it would nevertheless be reasonable to expect the appellant to return to Bangladesh to make an application for entry clearance. It is arguable that the judge failed to make findings in relation to matters that were material to a proper assessment of the appellant's right to family life".*

Submissions on Error of Law

7. Mr Ahmed relied upon the grounds. He handed up a skeleton argument/outline submission although he told me that there was nothing contained in it that had not been referred to in the grounds. I have taken the skeleton into account along with Mr Ahmed's oral submissions.
8. There was no Rule 24 response.

Conclusion on Error of Law

9. The judge carried out an analysis under S.55 at [11] of her decision. She recorded that the appellant has been living with Ms [N] and her two children since 9 February 2016. The judge took into account the best interests of the children as a primary, albeit not a paramount factor. She recorded that both children were born in the United Kingdom and had lived their entire lives here. Both children are in the middle of primary school education. [MF] is receiving professional assistance with his autism diagnosis. The judge said there was no question that the children's best endeavours are to remain in the United Kingdom with their mother.
10. The issue was whether the appellant's relationship with the children amounted to a "parental relationship" which the judge considered at [13] and [15]-[23]. The judge found that whilst the appellant undertook some supportive duties, including school runs, S.117B(6) was not engaged because the appellant did not have, or there was insufficient evidence to support the claim that he had a "parental relationship" with the children.
11. It is worth mentioning that whereas at [11] the judge said [MF] is receiving professional assistance with his autism diagnosis, there is in fact no such diagnosis in that regard. The comments on the Autism Diagnostic Observation Schedule (ADOS-2) at p177-178 of the appellant's bundle summarises:
- "Overall, on the ADOS-2, [F] scored **below the diagnostic threshold and the findings were negative of a diagnosis of Autism Spectrum Disorder**" (my emphasis).*
12. As regards speech and language concerns, the report dated 8 August 2017 at p182-184 of the appellant's bundle discharges him from the programme with recommendations to continue at school and at home. There is an invitation to report future concerns regarding his language skills but there was no suggestion that any have been made. The judge referred to the discharge at [20] of her decision.
13. The judge did not err in finding the appellant had failed to show a parental relationship. There was nothing to suggest the appellant's circumstances were comparable to **R (on the application of RK) (S.117B(6); "parental relationship") [2016] UKUT 00031.**
14. It is correct that the judge did not refer in terms to paragraph 276ADE. Mr Ahmed conceded that save for 276ADE(vi) the judge had dealt with all issues elsewhere. I will refer to 276ADE(vi) subsequently. As to the rest, it had been agreed between the parties that the appellant did not meet the requirements of the Rules which she considered along with S.117B(1)-(5) at [12]-[15]. In clarifying Mr Ahmed's submissions regarding errors of law, he confirmed that the only error with regard to the judge's failing to refer in terms to 276ADE was with regard to 276ADE(vi). He said there would be very significant obstacles to the appellant's integration in Bangladesh. That was not because of the time he has spent in the United Kingdom because he has only been here for eight years as of the date of the hearing before me. Mr Ahmed said rather, it was because the appellant

was at risk on return which had been highlighted to the judge at [15] of the appellant's statement dated 12 June 2018 and which she had not taken into account. [15] of the appellant's statement reads as follows:

"15. I should perhaps explain why I withdrew my asylum claim. I was active in politics when I was in Bangladesh. I claimed asylum on 05 October 2012, but withdrew on 7 February 2013 fearing that I might be removed to Bangladesh where I would not be safe. I was at that time wrongly advised by an unscrupulous advisor. He said that if I went ahead with interview and asylum claim, I would be detained and later sent back to Bangladesh".

15. I do accept that the statement was before the judge. I do not accept she was under any obligation to take account of [15]. The evidence before the judge was that when his student leave expired (which I understand was in 2011) the appellant made an application for asylum and then absconded such that the claim was abandoned. The appellant said in cross-examination that he did not know what happened to the claim. In any event, there was no evidence before the judge or before me in terms of credible corroboration of the advice from the claimed unscrupulous advisor or any complaint made to that advisor's professional body. On the basic level that the judge failed to engage with 276ADE(vi) in terms of [15] of the appellant's statement, I accept that she erred but I do not find the error to be material. On the contrary, the judge was aware of the test of reintegration into Bangladeshi society which she referred to at [2](b). She took into account all the evidence before her and based her findings and conclusions on that evidence.
16. The judge failed to consider whether there were "insurmountable obstacles" to the couple continuing their family life outside the UK because there was no evidence before her in that regard. The whole thrust of the appeal was as regards the disproportionality of requiring the appellant to leave the UK to make an out of country application and the consequent difficulties he would have. See [17] of the appellant's statement and [14] of the statement of Ms [N] at pages 13 and 18 respectively of the appellant's bundle.
17. The judge carried out a careful and comprehensive analysis of all the evidence put before her on behalf of the appellant. Whilst she did not say so in terms, it is clear that in making her findings she had in mind **Agyarko [2017] UKSC 11** (see in particular [66]-[68]) and **Rhuppiah [2018] UKSC 58** (see in particular [44]). The judge gave clear and cogent reasons for her findings and decision which were clearly open to her on the evidence before her.

Notice of Decision

18. The judge did not err materially. Her decision shall stand.

No anonymity direction is made.

Signed

Date

7 January 2019

Deputy Upper Tribunal Judge Peart