



**Upper Tribunal  
(Immigration and Asylum Chamber) Appeal Number: HU/10597/2019 (V)**

**THE IMMIGRATION ACTS**

**Heard at Field House by Teams**

**On 14 July 2021**

**Decision & Reasons  
Promulgated**

**On 3 September 2021**

**Before**

**MR C M G OCKELTON, VICE PRESIDENT**

**Between**

**MOZIR UDDIN**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr S. Winter, instructed by Latta & Co Solicitors.

For the Respondent: Ms A. Everett, Senior Home Office Presenting Officer.

**DECISION AND REASONS**

1. The appellant, a national of Bangladesh, appealed to the First-tier Tribunal against the decision of the respondent on 4 June 2019 refusing him leave to remain on the basis of family life with his partner. Judge Debra Clapham dismissed his appeal. The appellant sought permission to appeal against that decision, but was refused both by the First-tier Tribunal and this Tribunal. He now has permission to appeal granted solely on the basis

of the position taken by the Secretary of State in an Eba judicial review of the Upper Tribunal's refusal of permission.

2. The basis of the appellant's case is that he and his partner have a genuine relationship and that either he meets the requirements of the Immigration Rules or, if he does not meet the Rules, it would nevertheless be so disproportionate to remove him that he has a right to remain despite not meeting the requirements of the Rules.
3. The appellant entered the United Kingdom illegally in 2001. He appears to have made no attempt to regularise his position until 21 January 2010; he then made an application which was, in due course, refused. His presence in the United Kingdom has never been lawful.
4. The appellant and his partner have been together for some time. She is a British citizen aged 69 or thereabouts. She has a number of health-related difficulties. It is now not said that their relationship is other than a genuine one.
5. Judge Clapham had before her the determination of a previous unsuccessful appeal by the appellant, and various other evidence including some medical evidence relating to the appellant's partner. Her conclusion was that the appellant's own medical difficulties were no obstacle to his living in Bangladesh, that he exaggerated his wife's dependence on him, and that, in general, there was no basis for saying either that the appellant met the requirements of the relevant rules, or that it would be disproportionate to expect him to live in Bangladesh, accompanied by his partner if that was what they chose. She wrote as follows:

"40. The respondent in the said reasons for refusal letter whilst conceding that the relationship is genuine and subsisting submits that she has seen no evidence that there are insurmountable obstacles in accordance with Appendix FM and paragraph EX2 of the Immigration Rules. Insurmountable obstacles in terms of the Rules means the very significant difficulties which would be faced by the appellant or his partner in continuing family life together outside the UK in Bangladesh. It is worth pointing out that in line with Agyarko and Jeunesse the test of insurmountable obstacles in the Rules is "stringent" though Sales LJ did acknowledge that the Rules and the case law obviously intend for it to be interpreted sensibly and practically rather than in a purely literal manner. Further, as explained in MM (Lebanon) in article 8 (outside the Rules) cases the key principle concerns striking a fair balance between the competing public and individual interests in the light of a proportionality test to which I have referred to above in the context of Razgar.

41. Turning to the question of insurmountable obstacles, the appellant argues that the appellant and his partner have medical issues which prevent them enjoying family life in Bangladesh. But as I stated above most of that evidence was before the previous Immigration Judge. Even leaving that fact aside though turning to the medical report of the appellant, his GP states that "Mr Uddin's long and short-term prognosis is quite good particularly if

he pays attention to life style issues particularly smoking, diet and weight. He is currently fit to travel from a medical point of view. "Whilst I accept that he is on medication the appellant has produced nothing to show that medication is not available in Bangladesh.

42. Turning to his wife's medical condition, I consider that the appellant has sought to exaggerate her dependence upon him. He stated in his oral evidence that he is to all intents and purposes her carer but he admitted that he is not registered as such. He stated that she has a broken arm, has had three heart attacks and she is unable to shower or even toilet herself. In contrast, her medical report dated 15<sup>th</sup> July, 2019 mentions nothing about heart attacks and states that "Edwina is fit to travel but I think that it is unlikely she would be able to do so independently as she would require support to navigate anything more complicated than local buses." The report does state that she is provided support from her husband and if he were to be deported this would cause her significantly increased anxiety and needs which would have to be met by for example social services, but the fact is that she would not be going to Bangladesh on her own and if she were to remain whilst her husband made the appropriate application as a British citizen she would be eligible for social care as suggested. Even if she were to travel with her husband, I have seen no evidence to show that the medication which she currently takes is not available in Bangladesh and the GP has certainly not held himself out anywhere as an expert on medical provisions in Bangladesh.

43. The appellant's representative made much of the fact that the appellant's wife has a sister who is reliant upon her and that the appellant's wife despite her own medical conditions offers assistance to her when she can. It is difficult to imagine what help can be given the appellant's evidence. If it is emotional support then that can continue from abroad. I heard nothing from the sister in relation to her dependence upon either the appellant or his wife or both and there is nothing to show that their relationship is other than the normal sibling relationship.

44. The appellant's representative also made much of the fact that the appellant has never left the United Kingdom. But that can hardly be a point in his favour given that he came to the United Kingdom illegally and that the appellant's health and that of his wife's have deteriorated over the period. But it has always been open to the appellant to return and make the necessary application.

...

47. In terms of the appellant's private life, it was argued on this behalf that there are significant obstacles to his reintegration to Bangladesh. It was argued that he has been out of the country for many years and it will be difficult for him to obtain employment, accommodation etc there. But he speaks the language. He lived there for a significant proportion of his life. He has made no attempt to research the employment situation there and whilst he says that he has had no contact with his seven children he has given no real reason why he cannot re-establish contact with them now. He mentioned in his evidence that he had problems in Bangladesh and a warrant but has produced no evidence of either. Any private life which he has in the United Kingdom can continue by such modern means of communication open to him."

6. The present challenge to the judge's decision is on the basis that the judge's analysis was insufficient.
7. There is a lengthy skeleton argument, not prepared by Mr Winter, which sets out clearly the points upon which it is said that the appellant is in truth entitled to succeed. They are as follows.
8. First, it is said that the appellant meets the requirement of Appendix FM of the Statement of Changes in Immigration Rules, HC 395 (as amended), because the only requirement in doubt is EX.1-EX.2:

"This paragraph applies if

...

(b) the applicant has a genuine and subsisting relationship with a partner who is in the UK and is a British citizen ... and there are insurmountable obstacles to family life with that partner continuing outside the UK.

EX.2. For the purposes of EX.1. (b) "insurmountable obstacles" means the very significant difficulties which would be faced by the applicant or their partner in continuing their family life together outside the UK and which could not be overcome or would entail very serious hardship for the applicant or their partner."

It is argued that the appellant can satisfy that requirement.

9. Secondly, the skeleton argument asserts that the appellant meets the requirements of paragraph 276 ADE, because there would be "very significant obstacles to [his] integration into" Bangladesh.
10. Thirdly, the appellant asserts that it would be disproportionate to remove him, because, to cite from the skeleton argument:

"In summary of the factors to be weighed in the appellant's favour: he has been in the UK for over 18 years now; he lives with his wife of over 5 years; his home is here; he can speak English to a degree; he has established many close friendships in the UK; he has shown respect for the laws of the UK, avoiding any convictions or trouble with the authorities; he has little meaningful ties to Bangladesh remaining."

11. As Mr Winter readily acknowledged at the hearing, however, the difficulty is that there is very little relevant evidence underpinning the assertions made in the skeleton argument. There is no medical evidence beyond that which was available to the First-tier Tribunal. The appellant's partner has a mild learning disability and epilepsy. The latter is controlled by drugs; the former is not said to have caused any difficulties since her discharge from an institution in 1977. She is said to suffer from anxiety and panic attacks, also controlled by drugs. She has other conditions, controlled by drugs. The doctor writes as follows:

"[Her] wellbeing does rely on her receiving support in the community. Her husband Mozir Uddin does provide her with such support and if he were to

be deported this would cause her significant increased anxiety and needs which will need to be met by other means, for example social services.

[She] is currently fit to travel but I think it is unlikely she would be able to do independently as she would require support to navigate anything more complicated than local buses.”

12. The appellant’s own medical conditions are also treated by drugs. He has type 2 diabetes, but, according to his doctor, “there is no evidence of diabetic complications”, although he increases the risk of complications by smoking. There is no evidence of diabetic renal disease. The letter in his case concludes as follows:

“Mr Uddin’s long and short term prognosis is quite good particularly if he pays attention to life style issues particularly smoking, diet and weight. He is currently fit to travel from a medical point of view.”

13. There are witness statements from the appellant and his partner. They have, in my judgment, the difficulties identified by Judge Clapham. It is clear that the appellant is not his partner’s registered carer. There is no assessment of what, if any, specific care she actually needs, and whether (apart from the supply of drugs) that goes beyond what is provided by a loving husband. The appellant asserts, without citing any authority, that medication is not available in Bangladesh. But it is part of his case that he knows nothing about life in Bangladesh now, and it is clear that, as has been pointed out, there is no evidence of the unavailability in Bangladesh of the relatively routine medication currently prescribed to the appellant and his partner.
14. The relationship between the appellant and his partner has presumably always been on the basis that if it were to continue, it might have to do so in Bangladesh. It may well be understood that the appellant’s partner would not choose to go to Bangladesh if she did not have to. But there is nothing in the evidence that suggests that there would be any particular difficulties in their continuing their married life in Bangladesh (where the appellant is a national and his partner is not) more than in the United Kingdom (where his partner is a national, but the appellant is not). The appellant’s bare assertions that he has no links with Bangladesh have to be set beside the fact that he has an ex-wife and seven children there. He speaks the language (although English is also understood in major cities) and would be entitled to work there. His partner would be living, very much as she does now, as a relatively solitary married woman. There is no reason to suppose that any travel needs would be more than the local buses which her doctor clearly implies that she would be able to manage. There is, as I have indicated, no evidence of any specific medical, pharmaceutical, psychiatric or care needs that could not be met either by obtaining the relevant medication in Bangladesh or by the appellant continuing to provide the care that he does.

15. For these reasons, the evidence does not establish that there are “insurmountable obstacles” to family life continuing outside the United Kingdom, as defined in EX.2.
16. So far as concerns paragraph 276 ADE, the skeleton argument asserts various matters relating to Bangladeshi society and to the appellant’s own contact and availability of contacts there. None of it is supported by evidence. The appellant has been out of Bangladesh for a considerable period of time, during which time he has obtained greater experience of western society and has begun to learn English. He lived in Bangladesh for a considerable part of his life. Even if he chose to have no contact with his family, it is difficult to imagine any noticeable obstacles which he would meet in re-establishing himself as part of Bangladeshi society. There is no evidence to suggest that he meets the requirements of paragraph 276 ADE.
17. The remaining question then is whether the evidence demonstrates that it would be disproportionate to remove the appellant from the United Kingdom because his particular circumstances outweigh the public interest as expressed in the Immigration Rules and the law, in particular sections 117A-117B of the 2002 Act. He does not claim to be financially self-supporting. His relationship with his partner has been entirely during the time that he has been in the United Kingdom unlawfully. The evidence does not suggest that there is any inhibition to this couple’s living in Bangladesh other than their unwillingness to go there. As Mr Winter accepted, the professionally drafted skeleton argument supporting this appeal does not really make any case that the appellant’s removal (as a person who does not meet the requirements of the Rules) would be disproportionate. Other than the summary passage which I have set out above, it is, as I have indicated, curiously unspecific: it argues, for example, as follows:

“In the present case it is submitted that refusal of the appellant’s claim would have a severely adverse effect on the private and family life enjoyed by the appellant and his partner in the UK. It is submitted that it is not in the best interest for the appellant to leave the UK. It is submitted that a desire for immigration control is a less powerful reason in the best interest of the appellant or the relevant children in this particular instance.”

18. It seems to me that the case put on appeal depends in essence on speculation that would go well beyond the evidence, particularly medical evidence, that has actually been adduced. In my judgment Judge Clapham’s approach to the evidence was perfectly lawful. If she did not work in detail through the various schemata proposed on the appellant’s behalf, it is because the evidence before her did not justify that approach. The truth of the matter was that the evidence was wholly insufficient to support any of the appellant’s arguments against the respondent’s decision. For that reason the conclusion on the appeal was virtually inevitable.

19. For these reasons I conclude that there is no basis at all for saying that Judge Clapham's decision contained any error of law. I affirm it, and dismiss the appellant's appeal.

C.M.G. Ockelton

C. M. G. OCKELTON  
VICE PRESIDENT OF THE UPPER TRIBUNAL  
IMMIGRATION AND ASYLUM CHAMBER  
Date: 23 August 2021