



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

Appeal Number: IA/09136/2013

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 21 January 2014**

**Approved Ex Tempore Judgment**

**Determination  
Promulgated**

**On 03 February 2014**

**Before**

**The President, Mr Justice McCloskey  
Upper Tribunal Judge O'Connor**

**Between**

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

Appellant

**and**

**RIMA BEGUM**

Respondent

**Representation:**

Appellant: Mr P Nath, Home Office Presenting Officer  
Respondent: Mr J Trussler (of Counsel), instructed directly

**DETERMINATION AND REASONS**

1. The Respondent, Mrs Rima Begum, who is now aged 56 years, is a citizen of Bangladesh. She entered the United Kingdom as a visitor with permission on 4 August 2012. Her permission was scheduled to expire on 16 January 2013.
2. Between entry and expiry of leave, there were two significant intervening events. The first is that on 16 December 2012 the Respondent was married under Islamic law. The validity of this marriage is not contested. The second is that she made an in-time application for permission to

remain as the spouse of a person present and settled in the United Kingdom. That application was made on 2 January 2013. The application was in due course refused by the Secretary of State. The decision is dated 2 March 2013 and an appeal to the First-tier Tribunal ensued. The appeal proceeded exclusively on the ground of Article 8 of the Human Rights Convention. The First-tier judge allowed the appeal in a determination promulgated on 16 August 2013.

3. Juxtaposing the application for permission to appeal with the grant of permission to appeal, the thrust of the issue before this appellate Tribunal is whether the First-tier judge erred in law in the Article 8 assessment which was undertaken. The material passages in the determination are contained in paragraphs 20, 21 and 22. We consider that the judge failed to formulate the correct tests and in consequence, also failed to apply them. There was, in particular, a failure to recognise the potency of the public interest underpinning the legitimate aim in play, namely the maintenance of firm immigration control.
4. A further and related error of law was committed by the judge by failing to make a clear finding on a critical issue, namely the question of future probability - that is to say, whether, as a matter of probability, the Respondent's husband would, or would not, accompany her to Bangladesh. The accompanying and non-accompanying scenarios are significantly different and could not have given rise in our judgment to the same Article 8 interference and proportionality assessments. We consider that before determining these issues, it was incumbent upon the judge to make a clear predictive finding about this important future event. There was a failure to do so which, *per se*, constitutes an error of law of unmistakable materiality. There is also an inconsistency in the judge's approach inasmuch that he hints (without clearly finding) that the husband would not accompany the Respondent to Pakistan: this is irreconcilable with the unequivocal finding of a loving, strong and subsisting husband and wife relationship, duly fortified by the happy event of the expected birth of a child.
5. For these reasons, we conclude that the determination of the First-tier Tribunal is contaminated by material errors of law and cannot be upheld in consequence. Our order is that the determination be set aside.
6. We turn to consider the question of remaking. Having regard particularly to the fluctuations which have occurred in the circumstances of the family unit in question, we consider that all of the issues bearing on Article 8 of the Human Rights Convention and Section 55 of the 2009 Act should properly be re-examined afresh by a differently constituted First-tier Tribunal. Accordingly, we order remittal.

Decision

7. Thus we allow the appeal to the extent of setting aside the determination of the First-tier Tribunal and we order a new hearing by a differently constituted First-tier Tribunal. We are grateful to the parties' representatives for their clear and cogent submissions.

*Bernard McCloskey.*

THE HON. MR JUSTICE MCCLOSKEY  
PRESIDENT OF THE

UPPER TRIBUNAL

IMMIGRATION AND ASYLUM CHAMBER

Date: 31 January 2014