Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/06290/2016

THE IMMIGRATION ACTS

Heard at : Field House	**Decision and Reasons Promulgated**
On : 6 November 2017	**On: 10 November 2017**

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

SC
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr M Blundell, instructed by Makka Solicitors Ltd
For the Respondent: Ms K Pal, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Bangladesh, born on [ ] 1975. She has been given permission to appeal against the decision of First-tier Tribunal Judge Black dismissing her appeal against the respondent's decision of 23 September 2015 to refuse her human rights claim.

2. The appellant entered the United Kingdom on 29 August 2005 with entry clearance as a visitor, valid until February 2006, and thereafter became an overstayer. On 23 September 2015 she made an application for leave to

remain on private life grounds, on the basis of her dependency upon her sister and her exceptional circumstances.

3. It was stated in the appellant's application that she came to the UK in August 2005 with her mother who was subsequently granted indefinite leave to remain in September 2009, her father had died in Bangladesh in 1998, her eldest brother lived in the US, three other brothers and a sister lived in Bangladesh and four brothers and two sisters lived in the UK. It was submitted that there were significant obstacles to the appellant's integration in Bangladesh as she had learning disabilities and had been entirely dependent upon her mother since her father's death. The appellant's mother was now elderly and could no longer cope with her needs and the appellant was looked after by her sister with whom she and her mother resided. Six of the appellant's siblings were settled in the UK with their families. Three brothers remained in Bangladesh but one was intending to join his son in the US and another had bowel cancer. With regard to the third brother, his wife had subjected his mother to harassment in Bangladesh forcing her to leave the country and he could not look after the appellant. The appellant could not live with her sister as she was married and living with her husband's family and it was not culturally acceptable for her to live there.

4. The respondent refused the application, rejecting the claim that there were very significant obstacles to integration in Bangladesh for the purposes of paragraph 276ADE(1) of the immigration rules and concluding that there were no exceptional or compelling circumstances justifying a grant of leave outside the rules as there was no evidence that the appellant would not be assisted or accommodated by her three brothers and one sister remaining in Bangladesh.

5. The appellant's appeal was heard by First-tier Tribunal Judge Black on 22 May 2017 and was dismissed in a decision promulgated on 1 June 2017. The judge noted that the appellant had attended the hearing but did not give evidence. She heard from the appellant's sister. The judge accepted that the appellant was not capable of living independently, that she required full-time supervision and that she was a vulnerable person. She noted that the appellant had had no leave to remain in the UK since the expiry of her visa in 2006, but accepted that that was not through any fault of hers as she was not capable of initiating a process to regularise her stay. However the judge found that the appellant could adjust to life in Bangladesh with appropriate support. She accepted that there was a bond of dependence between the appellant and her sister, but she found that the appellant could be accommodated and cared for by her three brothers or sister in Bangladesh and she rejected the claim that it was socially unacceptable for her to be able to do so. The judge found that the appellant's sister in the UK could also provide financial support and she considered that there had been an exaggeration in the evidence of the appellant's siblings to enhance the chance of success on appeal. The judge considered that the appellant had a limited private life in the UK and that her lifestyle could be continued in Bangladesh. She did not accept that there were very significant obstacles to the appellant's integration into Bangladesh and

she did not accept that there were exceptional or compelling circumstances justifying a grant of leave outside the rules. She dismissed the appeal.

6. Permission to appeal was sought on the grounds that the judge's findings at [17] were incomplete, that the judge had erroneously approached the case like a dependent relative under Appendix FM, that the judge had wrongly rejected the cultural limitations on the appellant's siblings providing her with care and a home, that the judge had belittled the impact of the appellant's separation from her mother and that the judge's conclusions on paragraph 276ADE and Article 8 outside the rules were therefore flawed.

7. Permission was granted on 24 August 2017.

Appeal Hearing

8. At the hearing both parties made submissions before me.

9. Mr Blundell submitted that the judge had in effect put a gloss on paragraph 276ADE(1)(vi) by approaching the matter on the basis of the test for adult dependent relatives, rather than by reference to the appropriate considerations in Secretary of State for the Home Department v Kamara [2016] EWCA Civ 813. He submitted that the appellant met the test in Kamara in regard to very significant obstacles to integration. Mr Blundell said that the judge erred further by failing to consider the background material referring to the approach of the Bangladesh authorities to those with mental health problems and the widespread stigma against such people. He submitted that, in finding that the appellant would receive adequate care from her family in Bangladesh the judge overlooked five relevant considerations namely: that it was clear from the witness statements that there was no close relationship between the appellant and her siblings given in particular the age gap; that the support system suggested by the judge from the appellant's siblings had previously been tried and tested but had been unsuccessful; that the social stigma attached to people with mental health problems in Bangladesh would cause problems for the appellant; that the background material suggested that it would be difficult to find a paid carer or any mental health assistance in Bangladesh due to the stigma; and the effect on the appellant's mother and sister of having the appellant taken from them. Mr Blundell submitted further that the judge had erred by weighing against the appellant the fact that her immigration status was precarious and unlawful, whereas the cases of MA (Pakistan) & Ors, R (on the application of) v Upper Tribunal (Immigration and Asylum Chamber) & Anor [2016] EWCA Civ 705 and Zoumbas v Secretary of State for the Home Department [2013] UKSC 74, albeit dealing with children, made it clear that it was not correct to weigh an unlawful immigration status against a person with no understanding of such concepts. Mr Blundell asked me to find that the judge had therefore erred in law in her assessment within and outside the immigration rules.

10. Ms Pal asked me to find that the judge had considered all relevant matters and had taken account of all the evidence and had concluded that the

appellant's family had exaggerated the lack of care available to her in Bangladesh. The judge had balanced all relevant factors against the public interest and had been entitled to conclude as she did.

Consideration and findings

11. It is important, in particular in a case such as this which invokes considerable sympathy, not to lose sight of the fact that the task before me is to consider whether the judge of the First-tier Tribunal made errors of law requiring her decision to be set aside and re-made, bearing in mind the evidence before her and the submissions made before her. It appeared to me that Mr Blundell's submissions were, to a large extent, an attempt to re-argue the appellant's case with emphasis on matters not specifically put to the judge.

12. I note that Mr Blundell did not specifically pursue the point raised at [3] of the grounds in regard to [17] of the judge's decision which was clearly incomplete. It seems to me that it was quite clear what the judge was saying, namely that the appellant's brothers could accommodate and care for the appellant in Bangladesh, and I cannot see how the unfortunate omission of the remainder of the last sentence was material.

13. Mr Blundell's first submission was that the judge erred in her approach to the test for "very significant obstacles to integration", that her approach was more akin to that of adult dependent relatives and that she failed to consider the test as set out in Kamara. It is relevant to note, however, that the appellant's skeleton argument at [4], which was produced to the judge, specifically relied upon a case relating to an adult dependent relative, namely Dasgupta (error of law - proportionality - correct approach) [2016] UKUT 28 and that there was no reference to, or reliance upon, the case of Kamara before the judge as far as I am aware. That is an argument which was only raised before me. The judge clearly had full and careful regard to the interpretation of "very significant obstacles to integration" on the evidence presented to her, namely the respondent's guidance, and applied that to the appellant's circumstances at [22] and [23]. In any event I do not consider that the appellant's circumstances can be compared to those in Kamara where reliance was placed in particular upon Mr Kamara's lack of family, social and cultural ties to Sierra Leone, matters not at all applicable to the appellant before me. Furthermore Mr Blundell's reliance on the references in Kamara at [14] to a person's capacity to participate in society and ability to operate on a day-to-day basis fails to take account of the fact that the same considerations would equally apply to the appellant in the UK as a result of her learning difficulties. Accordingly I do not find merit in the submissions made in that regard and I find no error of law in the judge's approach to the test for establishing "very significant obstacles".

14. Mr Blundell's subsequent submission was that the judge failed to consider the background evidence relating to mental health issues in Bangladesh when considering the appellant's capacity to participate in life in that country. However, again, it is relevant to note that that was not a matter particularly

pursued before the judge and was only expanded before me with specific references to the background materials. Whilst the grounds of appeal before the judge, at [18], referred to social stigma, neither the skeleton argument nor the submissions made before the judge emphasised that matter or specifically directed her to the background material. Clearly it was not open to the judge to simply ignore the background evidence before her, but neither was she required to make detailed findings on matters not raised before her. The judge clearly had regard to the background material before her, referring to it at [6] and confirming at [10] that she had taken it into account. She therefore plainly had that evidence in mind when making her findings. However her focus was on the care available to the appellant within her own family, as that was the case put to her. There had been no suggestion that the appellant experienced problems within her own family as a result of her mental health and the judge plainly had regard to the fact that the appellant would not have access to the same facilities in Bangladesh as she had in the UK, as she mentioned at [20]. Accordingly I find no merit in the submissions in that regard and no error of law on the part of the judge.

15. Mr Blundell then submitted that the judge had overlooked five relevant considerations when concluding that the appellant could be supported by her family in Bangladesh together with paid care. I have set those out above. However I do not consider that to be the case. The judge had full regard to all the evidence and addressed the statements from the appellant's siblings. She was perfectly aware that the appellant was not as close to her other siblings as she was to her sister in the UK and that she had grown up with her mother and relied latterly upon her sister and she specifically mentioned that at [23]. She considered the circumstances of all three brothers in Bangladesh and her sister and was aware of the feelings of her sister's husband, as mentioned at [18]. She found that there had been an exaggeration of the evidence in regard to the position of the appellants' siblings and did not accept that there would be no support for her within her own family, which was clearly a finding open to her. As already stated, the judge plainly had the background material in mind when making her assessment and was aware of the limitations of mental health care in Bangladesh, but she was entitled to conclude that that did not preclude the possibility of a paid carer to supervise the appellant whilst she was accommodated by her family members, bearing in mind her findings at [14] that the appellant was capable of undertaking activities but required supervision. In regard to Mr Blundell's submission that the judge had failed to consider the effect of the appellant's departure on her mother and sister, that was not a matter raised before the judge or supported by evidence and the judge could only have speculated in that regard. The judge plainly concluded that the transition would not be an easy one, and had full regard to the evidence of the social worker, but she provided detailed and cogent reasons for concluding that that was not sufficient to amount to exceptional or compelling circumstances justifying a grant of leave outside the immigration rules, when taking account of the various other factors addressed at [27] to [29].

16. A final point made by Mr Blundell was that the judge had erred by weighing against the appellant the fact that her immigration status was

precarious or unlawful, when she had no concept of the matter. He submitted that the appellant's position was akin to that of a child who was not to be held responsible for their immigration status. However it is relevant to note that the Court of Appeal in MA considered that to be the case when initially considering the best interests of the child, but not when going on to consider the wider proportionality balance and the question of reasonableness. The judge, in any event, specifically accepted that the appellant was not to be held responsible for her status and thus accorded no weight on the basis of adverse intentions. She was, nevertheless, entitled to consider in the balance the fact that the appellant had no lawful basis of stay in the UK, her relatives having taken no steps to seek to regularise her position. That was clearly a matter of relevance to the public interest.

17. For all of these reasons I do not find merit in the grounds and submissions challenging the judge's decision. It may be that another judge would have reached a different decision, but equally others may have reached the same decision and it was open to Judge Black to reach the decision that she did on the evidence before her. Her decision was made upon a full and detailed assessment of all the evidence, taking all relevant matters into account and properly applying the law and the immigration rules. She did not make any error of law and she was fully and properly entitled to reach the decision that she did.

18. For all of these reasons I find no errors of law in the judge's decision and I uphold the decision.

DECISION

19. The making of the decision of the First-tier Tribunal did not involve an error on a point of law. I do not set aside the decision. The decision to dismiss the appeal stands.

Anonymity

The First-tier Tribunal made an order for anonymity. I continue the order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed

Upper Tribunal Judge Kebede Dated: 6 November 2017