



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: VA/13803/2013

**THE IMMIGRATION ACTS**

Heard at Field House  
On 14<sup>th</sup> November 2014

Determination Promulgated  
On 19<sup>th</sup> November 2014

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE LINDSLEY**

**Between**

**ENTRY CLEARANCE OFFICER - DHAKA**

Appellant

**and**

**MR ZIAUR RAHMAN  
(NO ANONYMITY DIRECTION MADE)**

Respondent

**Representation:**

For the Appellant: Mr I Jarvis, Senior Home Office Presenting Officer

For the Respondent: Mr S Kamal of Immigration Solutions Limited

**DETERMINATION AND REASONS**

*Introduction*

1. Although this is an appeal by the Secretary of State I will refer to the parties as they were before the First-tier Tribunal.
2. The appellant is a citizen of Bangladesh born on 8<sup>th</sup> October 1981. He applied for entry clearance to come to the UK as a family visitor and was refused on 10<sup>th</sup> July 2011. He appealed but in a determination promulgated on 13<sup>th</sup> January 2012 Judge

of the First-tier Tribunal Bailey found he had no jurisdiction to hear the appeal as there was no evidence of the relationship between the appellant and sponsor. The appellant applied again for entry clearance to visit his cousin Mr Mohammed A Uddin and his brother Mr Shafiqur Rahman who are both British citizens. The application was again refused, this time on 12<sup>th</sup> June 2013. The appellant appealed and this appeal was allowed by First-tier Tribunal Judge McDade in a determination promulgated on the 2<sup>nd</sup> September 2014.

3. Permission to appeal was granted by Judge of the First-tier Tribunal Kelly on the 9<sup>th</sup> October 2014 on the basis that it was arguable that the First-tier Tribunal had erred in law as the refusal raised the issue of intention to return under paragraph 41 of the Immigration Rules and the First-tier Tribunal had not dealt with it in the determination.
4. The matter came before me to determine whether the First-tier Tribunal had erred in law.

#### *Submissions – Error of Law*

5. Mr Jarvis relied upon the grounds of appeal. These contended that it was an error of law for the First-tier Tribunal not to deal with the appellant's intention to return when this was raised in the refusal notice.
6. Mr Kamal accepted that the determination did not deal with this issue, although he felt the issue had been aired in the hearing before Judge McDade

#### *Conclusion – Error of Law*

7. I informed the parties that I found that Judge McDade had erred in law by not making any findings on intention to leave the UK at the end of the visit, a requirement at paragraph 41(ii) of the Immigration Rules; and on the issue of whether the appellant was a genuine visitor and thus fulfilled the requirement at paragraph 41(i) the Immigration Rules when these had clearly been put in issue by the refusal notice of 12<sup>th</sup> June 2013.
8. There was no challenge to the findings of Judge McDade in relation to accommodation and maintenance (and thus that the appellant satisfied the requirements at paragraph 41 (vi) and (vii) of the Immigration Rules) so I retained all the findings of Judge McDade at paragraphs 5 and 6 of the determination, but set aside the final decision allowing the appeal.

#### *Evidence & Submissions - Remaking*

9. Mr Shafiqur Rahman (the appellant's brother) confirmed that his letter in support of the appeal was genuine, true and correct. In relation to the issues in remaking he says the following relevant information. He is a British citizen who believes his brother will respect the UK immigration laws and visit him for a short period.

10. Mr Mohammed Amed Uddin (the appellant's cousin) confirmed his statement was genuine, true and correct. In relation to the issues in remaking Mr Uddin says that the appellant owns a poultry and fish farm in Sylhet. He would ensure that the appellant returns prior to the expiry of his leave as a visitor and has no recourse to public funds. In oral evidence Mr Uddin added his cousin was coming to the UK for one month. He would report the appellant to the authorities if he did not return straight away at the end of his visit. He felt it would not look good for him if the appellant did not go back. He would call the UKBA and let them know and give the UKBA any details he knew. Another brother would care for the appellant's business whilst he was away. The appellant had not been to the UK before. He himself had tried to sponsor someone once before but the visa had been refused on the basis that that person would not go back at the end of their visit. He was in Bangladesh recently for 10 days and had seen the appellant, but not his business as he was there for another reason.
11. Mr Jarvis submitted that he relied upon the notice of refusal. He accepted that the sponsor had been found credible by Judge McDade.
12. Mr Kamal submitted that in the appellant's bundle there was a letter from the cousin who would care for the appellant's business whilst he was away; there was a further statutory declaration from Mr Uddin stating that the appellant would comply with immigration control including leaving the country; and in his own statement the appellant said that he would leave the UK and return to Bangladesh at the end of his visit. When all the evidence was considered the appellant clearly was a genuine visitor who intended to return home at the end of his visit.
13. At the end of the hearing I informed the parties that I would allow the appeal on this point for the reasons set out below, thus meaning that the appeal was allowed overall.

#### *Conclusions - Remaking*

14. I must determine whether, on the balance of probabilities the appellant can show he can meet the requirements at paragraph 41(i) and 41(ii) of the Immigration Rules. It has already been decided by Judge McDade that the appellant can meet paragraph 41(vi) and (vii) of the Immigration Rules and no other sub-sections are put in issue by the refusal of entry clearance.
15. I find that the appellant has his own business, Rahman Poultry and Fishery Farm; he owns land in Bangladesh; and has money in the bank there. He has made an arrangement with a cousin to care for the business for the four weeks he wishes to come to visit the UK. He has a wife and extended family in Bangladesh to whom he wishes to return. The appellant and Mr Uddin (his primary sponsor) are fully aware that remaining beyond the terms of his entry clearance would be illegal. Mr Uddin is clearly close to the appellant and saw him on his recent trip to Bangladesh, as well as speaking to him regularly on the telephone, giving good family visit reasons for the trip. Judge McDade has found the appellant would be

adequately accommodated and maintained without working or claiming benefits in the UK and I adopt this findings.

16. On consideration of the evidence of the appellant's sponsor Mr Uddin (which like Judge McDade I find credible); the appellant's own statement of evidence; and given the extensive ties the appellant has with his country of origin giving him incentive to return and the genuine family reasons for the visit to the UK I am satisfied that the appellant is a genuine visitor who will leave the UK to return to Bangladesh at the end of his four week visit.

### Decision

17. The decision of the First-tier Tribunal involved the making of an error on a point of law.
18. The decision but not the findings of the First-tier Tribunal was set aside.
19. The appeal is remade allowing it under paragraph 41 of the Immigration Rules.

Deputy Upper Tribunal Judge Lindsley  
17<sup>th</sup> November 2014

### **TO THE RESPONDENT** **FEE AWARD**

As I have allowed the appeal and because a fee has been paid or is payable, I have considered making a fee award and have decided to make a whole fee award of £140 for the following reason. This was the fee award made by Judge McDade and the respondent did not raise any issue with this or make submissions on it during the remaking proceedings. Evidence and reasons why the appellant would leave the UK at the end of his visit (his family, business, property and understanding of the Immigration Rules) was provided to the entry clearance officer prior to the refusal.

Deputy Upper Tribunal Judge Lindsley  
17<sup>th</sup> November 2014