



**Upper Tribunal
(Immigration and
Appeal Number: IA/36650/2014**

Asylum Chamber)

THE IMMIGRATION ACTS

**Heard at Field House
on 14 October 2015**

**Decision & Reasons
Promulgated On 18
November 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHANA

Between

**MR SAMIR HUSSAIN CHOWDHURY
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Mr A Chowdhury of Counsel

For the respondent: Mr A Holmes, Senior Presenting Officer

DECISION AND REASONS

1. The appellant, who is a national of Bangladesh 4 March 1971 appealed against the decision of the respondent dated 11 August 2014 to remove him from the United Kingdom. The appellant appealed, in country, under the Nationality Immigration and Asylum Act 2002 annual issue was raised in respect of his right to appeal in country.
2. First-tier Tribunal Judge RBL prior dismissed the appellant's appeal "on human rights grounds".
3. Permission to appeal was granted by First-tier Tribunal Judge Landes on 7 August 2015 stating that it was arguable that the Judge made a material error of law for his failure to give adequate reasoning and to make critical findings of fact.

The First-Tier Tribunal Judges findings

4. The Judge made the following findings which I summarise. The appellant's case was found in the grounds of appeal and generic terms, the appellant statement dated 20 April 2015 and four letters of support by relatives or friends stating that the appellant to their knowledge had been in the United Kingdom since 2002 or 2003. It was the appellant's case that he had learned to speak English and became accustomed to the culture and life in the United Kingdom. He claims that he cannot return to Bangladesh where he has very little connections because his parents have died. He has no family left in Bangladesh. He would find it very difficult to just to life in Bangladesh having lived in the United Kingdom for 13 years. He would find it difficult to find a job and maintain himself in that country. The appellant submitted that there had been no challenge raised by the appellant's claim to have entered the United Kingdom on 15 March 2002 and by residing in the United Kingdom for 13 years, the appellant had come close to meeting the previous residence requirements of the immigration rules which set the bar at 14 years. The appellant claims that he has strong connections with the United Kingdom and there was the exceptional circumstance of his length of residence in the country and connection with his brother's family in the United Kingdom. It was accepted by the appellant that there is a lack of documentary evidence as to the appellant's private life in the United Kingdom but this was to be explained by his lack of immigration status in the country.
5. The respondent's case was set out in the refusal letter dated 12 November 2007. Paragraph 13 of the reasons for refusal letter referred to paragraph 395C of the immigration rules and the factors that the paragraph required he considered when arriving at a decision as to whether to remove an offender under section 10 of the immigration and Asylum act 1999. The refusal letter states that the appellant is aged 36 and claims to have lived in the United Kingdom for five years but there is no evidence of this, as an illegal entrant, none of it has been accrued with leave to enter. It is not considered that either the appellant's age or length of residence provide grounds for not removing the appellant from the United Kingdom. It is not considered that either his ties to the United Kingdom or domestic circumstances are sufficiently compelling to justify allowing him to remain here. The appellant has given no indication that he has a family in the United Kingdom or any other particular domestic circumstances which makes his case exceptional. The extent of his claim to have ties with the United Kingdom is that there is a large Bangladeshi community here and that he has been employed in various Indian restaurants since his arrival. However as mentioned above the appellant has never been granted any leave omitting him to take on employment in the United Kingdom. The existence of an established Bangladesh community in the United Kingdom is not a compelling reason for the appellant to be awarded a grant of discretionary leave not least as he has not provided any evidence that he has ties to this community. The appellant has not

met the requirements of the length of residence for private life set out in paragraph 276 ADE of the immigration rules. Under section 117 (B) of the 2000 and to act, little weight should be attached to the appellant's private life in the United Kingdom since he had been in this country illegally. The appellant has worked as an electrician in Bangladesh, speaks the language of that country and has relatives there.

6. The Judge stated at paragraph 12 "the appellant's evidence was ambivalent, if not contradictory, as to whether or not he had received the refusal letter of 12 November 2007 or was at least aware that his human rights application had been refused. While the appellant testified that he had contacted his solicitors in 2011 and 2012 to learn of the outcome of this application-and was informed by them that they would let him know as soon as they heard in response to the application-there was no evidence that the appellant had made any attempt to chase the respondent for a decision. I observed that it was part of the appellant's incoherent and unsatisfactory testimony that he was informed by a friend who had read a letter-the appellant not reading English-from the Home Office that the Home Office had prohibited him from leaving London. Despite that prohibition it was the appellant's testimony that he had moved from London, variously to Gloucester and the Lake District believing that those parts of the country were within London.
7. The appellant entered the United Kingdom, on his own evidence 13 years ago when he was aged 31 and thus he has spent the majority of his life in Bangladesh where he referred to the presence of individuals described by him as relatives of his recently deceased sister. The appellant has worked as a casual electrician in Bangladesh. If the appellant truly believe that had been no decision on his application of 12 June 2007 then I find that he condoned or colluded with the perceived delay indecision.
8. While the appellant claimed to speak English in his adopted statement nonetheless, he just to have a Bengali interpreter at the hearing. There is very limited evidence before me as to the depth and quality of the appellant's private life in the country. The private life conducted when the appellant had no status in the country. Having regard to the statutory considerations set out in section 117 (B) of the 2000 and to act, I have no hesitation in concluding that the removal of the appellant from the United Kingdom would not be a disproportionate interference with his private life. There are no exceptional circumstances in the appellant's case any falls outside the ambit of the immigration rules, governing private life considerations.

Appellant's grounds of appeal

9. The appellants' grounds of appeal which are written by hand state the following, which I summarise. The decision of the judge is flawed in

that he has failed to make critical findings of fact which were necessary to reach a proper and sound judgement on the strength of the appellant's private life in the United Kingdom. This was that he has been living in the United Kingdom since 2002, a fact which has been unchallenged by the Home Office. The judge was invited to make a finding in this respect by the appellant's representative but chose not to do so. It is imperative for the judge to have made clear findings of fact as to the length of the appellant's residence in the United Kingdom before pronouncing on the issue of private life and proportionality.

10. The decision of the judge is insufficiently reasoned and fails to explain how the judge applied article 8 principles as stated in paragraph 3 to the facts of the case. The judge erred in making adverse inferences against the appellant at paragraph 15 for choosing to give evidence through an interpreter. The appellant is able to speak English however he felt that his command of the language may not be up to the standards of the court and thus choose to give evidence through an interpreter. This was not taken into account.
11. **MM and others [2014] EWCA Civ 985** and **MF Nigeria [2013] EWCA Civ 1192** and stated at paragraph 16 of his determination that recent clarifications given by the Court of Appeal including the High Court show that it can properly be said that the Immigration Rules constitute a complete code which deals with a person's Convention rights and it will take something exceptional or very compelling to outweigh the terms of the Immigration Rules. He posed the question that if the Immigration Rules do constitute such a complete code than the principles set out in **Razgar** and **Huang** must never be considered. Exceptionality is not a test which must be applied in individual circumstances.

Submissions of the Parties at the Hearing

12. Mr Chowdhury on behalf of the appellant made the following submissions which I summarise. The Judge give insufficient reasons and failed to make findings of fact. The appellant has been in this country since 2002 and has long residence. He has a connection with his brother's family and therefore family life. Although paragraph 7 alludes to this but fails to make findings of fact. At paragraph 3 the judge is not clear how he has determined these issues.
13. Mr Holmes on behalf of the respondent submitted the following. There is no error of law which is material in the determination. The appellant's brother and his wife did not attend the hearing. The judge said that there was limited evidence of private life which is appropriate because there was limited evidence. The appellant could not meet the immigration rules and there was no adequate evidence of any compelling circumstances. The judge was entitled to find that the appellant by using an interpreter at the hearing did not speak English.

There is no other judge which would make a different decision in this case.

Findings on Error of Law

14. I have considered the determination with all due care to see if there is a material error of law in the determination. I cannot find any. There is no criticism on the Judge's finding that the appellant did not meet the requirements of the Immigration Rules. Therefore, it will only be in exceptional circumstances that the appellant will succeed pursuant to Article 8 when he cannot meet the requirements of the Immigration Rules. The Judge set out both the appellant's and the respondent's case in some detail in his determination. He was fully apprised of all the facts and there is no accusation that he has misunderstood the evidence.
15. The Judge stated in his determination that there are no exceptional circumstances in the appellant's case which he was entitled to find. The Judge at paragraph 13 stated that the appellant on his own evidence entered the United Kingdom 13 years ago when he was aged 31. The Judge said that that means that the appellant has spent the majority of his private life in Bangladesh and he referred to the presence of individuals described by the appellant as relatives of was very recently deceased sister. This demonstrated to the Judge that the appellant has relatives in Bangladesh. The Judge found that the appellant worked as a casual electrician in Bangladesh found that the appellant will be able to replicate his private life in Bangladesh by working in that country. There is no perversity in these findings.
16. The grounds of appeal did not state what circumstances of the appellant that the Judge did not take into account and thereby fell into material error. The Judge stated at paragraph 16 that the appellant's evidence as to his private life in this country was limited as to its depth and quality. There is still no evidence of what the appellant's private life consists of other than his work in this country and his brother and his children. The appellant's brother did not attend the hearing to give evidence in support of the appellant.
17. The Judge is only required make a decision based on the evidence provided by the appellant as the burden of proof is upon the appellant on a balance of probabilities. The Judge made a decision on the evidence before him.
18. The Judge clearly stated at paragraph 16 that there are no exceptional circumstances in the appellant's case and he falls outside the ambit of the Immigration Rules governing private life considerations. On the evidence before the judge this was a sustainable finding.

19. The Judge was entitled to find that the appellant having given his oral evidence through an interpreter, does not speak English. He obviously did not accept the appellant's evidence that although he knows English he is more comfortable speaking in his own language. Nevertheless, he provided no credible evidence to the Judge that he speaks English to the required standard. There is no error of law in the Judge's findings that the appellant does not speak English.
20. The Judge took into account s117B of the 2002 Act and correctly stated that little weight should be attached to the appellant's private life in the United Kingdom as he had been in this country illegally. The Judge specifically stated that the "appellant had not sought to rely upon any family life in the United Kingdom, for example his relationship with his brother's children".
21. The point made by the respondent was that the brother and his wife did not attend the hearing to give evidence. As such, there was no evidence before the Judge as to the appellant's private life with his brother all his brother's children. Even if there was evidence that the appellant has some private life with his brother's children, this does not trump the respondent's interest in the orderly immigration control.
22. The appellant claims that he has come very close to meeting the 14 year rule of the previous Immigration Rules. The appellant's application was before 28 July 2014 when section 19 of the Immigration Act 2014 brought into force and therefore the old rules apply to him. Therefore the Judge was entitled to find that the appellant has not met the requirements of the Immigration Rules and that cannot be an error of law.
23. Article 8 is not meant to take into account the near miss principle. The appellant meets the requirements of the Immigration Rules or he does not. The fact that he nearly met the old Immigration Rules does not in any way assist the appellant in respect of his Article 8 claim. The Judge was mindful that the appellant has been in this country for nearly 13 years and took that into account in his proportionality exercise.
24. I find that there is no material error of law in the determination and I uphold it.

Decision

Appeal dismissed

Signed

Mrs S Chana

Deputy Upper Tribunal Judge
November 2015

15th day of