



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

Appeal Number: IA/26272/2013

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 4 May 2016  
Prepared 4 May 2016**

**Decision & Reasons  
Promulgated  
On 29<sup>th</sup> July 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE DAVEY**

**Between**

**JAHANGIR ALAM CHOWDHURY  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Ms B Hamid of Clapham Law Chambers  
For the Respondent: Ms A Brocklesby-Weller, Senior Presenting Officer

**DECISION AND REASONS**

1. The Appellant, a national of Bangladesh, date of birth 4 May 1976, appealed against the Respondent's decision to make removal directions on 10 June 2013 following the service of form IS151A on 10 June 2013 and

the refusal to grant indefinite leave to remain on the basis of long residence in the United Kingdom.

2. The appeal against the Secretary of State's decision came before First-tier Tribunal Judge Andonian who, on 14 March 2014, promulgated the decision which allowed the appeal on Article 8 ECHR grounds. The claim having been dismissed under the Immigration Rules then in force.
3. As a result of a finding of an error of law by Upper Tribunal Judge King on 25 July 2014 the matter was returned to the First-tier Tribunal to consider the Article 8 ECHR claim. Upper Tribunal Judge King found that the Appellant had not met at relevant dates either requirements of the old Immigration Rules or those which had been amended. Nevertheless Upper Tribunal Judge King returned the matter to the First-tier Tribunal to be remade again on Article 8 ECHR grounds. The matter was then remade by First-tier Tribunal Judge Cockrill (the judge) who promulgated his decision on 12 March 2015.
4. In a decision promulgated on 30 October 2015 for reasons given in a decision of that date I found that there had been a failure to provide sufficient or adequate reasons as to why the Appellant's removal was disproportionate.
5. At the resumed hearing on 4 May 2016 the parties addressed me on the issues and for the avoidance of doubt because Ms Hamid's submissions were not entirely clear I set out my conclusions in relation to the Immigration Rules. First, the Secretary of State's decision with reference to paragraph 276B of the Immigration Rules as at the date of decision was correct: The Appellant had not the required period of long residence he having served a sentence of imprisonment which reduced the period of time he had been in the United Kingdom. More importantly it is clear that the Appellant could not establish that he was lawfully in the United Kingdom. He was convicted on 25 October 2007 at a Crown Court by jury

of possession of false or improperly obtained identity documents on 31 July 2007 for which he was sentenced to six months' imprisonment. At the material date, the conviction was not spent for the purposes of calculating his time spent in the UK. Further the Secretary of State had a proper basis for refusal with reference to paragraph 276D with reference to paragraph 276B (i), (b), (iii), (iv) of the Immigration Rules HC 395 as amended (the Rules).

6. It was also clear that the Appellant could not succeed with reference to paragraph 276ADE of the Rules because he had not been in the United Kingdom for the required period. Further on the information provided by the solicitors' representatives and the Appellant in making the application in July 2012 the Appellant had no "partner" albeit on 8 August 2012 it appears he went through a religious ceremony of marriage in an arranged marriage which led to his "wife" cohabiting with him from about that date. Whilst they were not married for the purpose of UK law the position was that she did not fall to be considered even at that date of decision as a spouse or partner for the purposes of Appendix FM. At that date they had not cohabited together in a relationship akin to marriage for at least two years prior to the date of application.
7. In those circumstances therefore there was no basis to remain under the partner route in Appendix FM nor under paragraph 276ADE nor in relation to the application made.
8. At the hearing before me time was spent with reference to the Appellant's ability to rely on the issue of Article 8 on the fact that the Appellant was not able to meet the partnership requirements under the Rules. I heard those submissions simply in the context of considering whether (a) they amounted to exceptional circumstances in considering the matter outside of the matter of the Rules; and, (b) in connection with whether or not their circumstances as a married couple militated in favour of him remaining on

the basis that the Respondent's decision was disproportionate in terms of a breach of Article 8.

9. The following matters were submitted by Ms Hamid to support a claim that Article 8 was engaged. In no particular order they were as follows: First, the length of time the Appellant had been in the United Kingdom since entering the UK in 1998 when he was 22 years of age. Secondly, the length of time that he had been living from the outset with his sister, her husband and their children that there was a very close family relationship with impact of his removal on his nieces and nephews as well as other relatives in the United Kingdom. Thirdly, he had not worked nor complied with immigration requirements, albeit it is clear that his criminal conviction, attempt to open a bank account were part and parcel of a forlorn attempt to commence work. Fourthly, such was the passage of time that he had now lost social, cultural family ties with Bangladesh which meant insurmountable obstacles to such a return. Fifth, the Appellant now having married a British national, of Bangladeshi origins through her parents, wished to remain in the United Kingdom and did not wish to go and live in Bangladesh.
10. Although it was not articulated as such I infer from Ms Hamid's remarks that she relied upon the fact that the Appellant cannot succeed under the Rules on any basis to remain in the UK. I have considered those reasons in the context of the written and oral evidence which was tested by some cross-examination.
11. It is noticeable that there was no reference in about July of 2012 to his marriage to Rashida Khanom until some correspondence which appears to be in early 2014. The matter was referred to in the decision of First-tier Tribunal Judge Andonian in 2014.
12. The witness statements came from Abdul Latif, a nephew of the Appellant, Thakwa Abdul, nephew of the Appellant, Farlin Abdul a niece of the

Appellant, Rashida Khanom the Appellant's wife, Abdul Mohith a brother-in-law of the Appellant, Nazim Akter Chowdhury, a sister of the Appellant, the Appellant himself, Sadiq Abdullah nephew of the Appellant. It appears that both the Appellant and his wife live together at the same address being a two bedroomed flat at [*London address*]. I heard oral evidence from the Appellant, the Appellant's sister Nazim Chowdhury, Rashida Khanom, Mr Mohith, Farlin Abdul, Facqua Abdul, Abdul Latif, all of whom live at [*London address*]. I generally found the Appellant's sister and family reliable witnesses of fact. I found the Rashida Kanom generally reliable but I did not find her reason for not returning to Bangladesh was her preference to remain in the UK rather any real assessment of a life she could have had there. I take into account that she is a young mother, who has been brought up in a protective family situation, with little experience of travel away from her family, who has not worked in the UK or had any life in which she has been a decision maker. I find it unsurprising that she has wanted to consider change and following her husband to Bangladesh. The Appellant's evidence is generally reliable but I find he too is unwilling to consider return as a matter of choice rather than for any good reason. I have seen no evidence which suggested he is unfit or unable to work or that his language skills and UK experience would not stand him in good stead.

13. Without doing injustice to the extensive family evidence I summarise it as follows. First, each family member wishes the Appellant as an uncle or a brother to remain. Each of the witnesses in which I include the Appellant and his wife wish him to remain in the United Kingdom. The witnesses other than the Appellant and his wife regard him as an integral part of their family and they would be greatly upset were he to be removed. It appears that the Appellant has over the years been helping within his sister's home at their flat and has cared for the children, taken them to school, run errands, done cooking, tidying and generally making himself useful. He thus has had a long-standing relationship with those nieces and nephews. The Appellant, as does his wife, wish to remain in the UK.

Although he is not particularly forthcoming about the matter it is plain that he has had a real part to play as the children of his sister that is Abdul Latif, Sadiq Abdullah, Farlin Abdullah and Facqua have grown up. The child Thakwa was not born until after the Appellant's arrival. She is now 13 years of age. The Appellant says that his mother and father are no longer alive. He has no family left in Bangladesh. He plays a continuing role in accompanying one of his nieces to college during term times and he wishes as a man in his later 30s to remain with his sister, her husband and their family.

14. The family lives at [*London address*] would be upset at his departure and he too would be upset by being separated from them. Rashid Khanom indicated that she has only made one short visit to Bangladesh and did not enjoy either the experience or the way of life there or the role in which she would be cast as a woman in Bangladesh. The evidence does not suggest nor was it argued that the Appellant's or his wife's relatives would not help him to get started on a return to Bangladesh.
15. Ms Brocklesby-Weller was reliant upon the Reasons for Refusal Letter of June 2013 and by reference to the facts argued that the Appellant could speak the language of Bangladesh, understood its cultural context, the heritage and insofar as he has a British national wife that is not in any sense a legitimate reason why he should not return to Bangladesh; bearing in mind the Appellant's wife is from a family of Bangladeshi origin now settled in the UK.
16. Ms Brocklesby-Weller said that the Appellant's wife has the reasonable possibilities of employment in Bangladesh, they are both in good health, the skills they have acquired through time in the United Kingdom are transferrable. Accordingly it was said by Ms Brocklesby-Weller that removal is compliant with Article 8 ECHR and certainly is not disproportionate. She also submitted with reference to the case of Nagre [2013] EWHC 720 and Agyarko [2015] EWCA Civ 440 that the Appellant's

wife can speak Urdu. The child would not complicate their return and there was no real attachment to the United Kingdom other than as a fact her family members are here. Also relied upon is the admitted fact that the Appellant's wife knew of his precarious immigration status at all times although there was hope that something might resolve itself. Ms Brocklesby-Weller relies upon the Appellant's conviction in 2007 demonstrating the public interest does lie in removing him. There is no general evidence to show what the Appellant has done outside of the sister's household. It was said that there is no evidence as to why he is not able to relocate to make a life for himself and his wife in Bangladesh. It was said that there are no significant obstacles to his removal nor was there any basis to look at Article 8 ECHR outside of the Immigration Rules.

17. Ms Hamid submitted with reference to the time the Appellant had been in the United Kingdom, his involvement with his sister and her family the presence of a child born to Rashida Khanom in 2016, who may well be a British national should be taken into account: were compelling circumstances. Plainly their child is very young only a few months old. There is no reason given why she could not accompany her mother, if Ms Khanom removed to Bangladesh to be with her husband. Ms Hamid's submissions were in effect to maintenance of the status quo in the sense of the Appellant being within the United Kingdom and living with family members. In my judgment neither the matters M Hamid raised nor from the evidence more widely, shows these circumstances are compelling or very compelling or exceptional. I find them commonplace and such delay, as there has been by the Respondent and appeal system, have been to the Appellant's benefit.
18. Looking at all the evidence and submissions in the round I did not find there were exceptional or compelling circumstances that justified considering Article 8 ECHR outside the Rules.

19. If I were wrong and it is appropriate to look at this matter outside of the Rules, I would accept that the Appellant has a private and family life in the United Kingdom and that his removal would be an interference in his private life with other family members. His family life with his wife and child, assuming she chose not to accompany him back to Bangladesh. I do not find there is family life between the Appellant and his nieces, his sister, his nephews and his in-laws so much as they are incidental to his private life as he is to theirs. I do not find there is any dependency by them upon him, over and above normal family ties.
20. For the avoidance of doubt I have considered the extent to which there are insurmountable obstacles to inhibit the possibility of relocation, because submissions were made about it, but it seems to me in the light of the case of *Agyarko* [2015] EWCA Civ 440 and *Singh and Khalid* [2015] EWCA Civ 74 that any inability of the Appellant to meet the requirements of the Immigration Rules is a factor which should be given some weight in the assessment of proportionality.
21. I accept that there will be an impact of upset upon his nephews and nieces and probably his sister and other relatives, and on his or Rashida's Khanom family in the sense of him not being around and being of the assistance he has self-evidently been. Nevertheless I find the Respondent's decision was lawful and properly met purposes identified by Article 8(2) ECHR. I find the public interest is a significant matter and the fact that the Appellant may not be able to succeed in making an out of country application could not be determinative. I fully take into account the wishes of his family in the United Kingdom and the measure of upset which will be caused to them through his removal. Upset of course arises from the Appellant's determination to remain and a course of behaviour through until making the application to remain in 2012 and thereafter. I find the precariousness of his position has always been self-evident albeit he and others may have hoped of one day overcoming the illegality of his presence in the United Kingdom and to support or foster his will to remain.



Nevertheless I do not find that the personal interests of the Appellant are of the kind and circumstances to show the Respondent's decision is disproportionate. Similarly, if Rashida remains in the UK with their child that will be the Appellant's and her decision. The Appellant's wife has always known that he no right to remain nor did the Respondent hold out any hope the Appellant would be able to do so.

22. If it was appropriate to consider Article 8 ECHR outside the Rules I applied s.117A and s.117B(2)-(3) NIAA 2002. Rashida Khanom is a qualifying partner. Their child was not on the information given to me, a qualifying child. The Appellant is a foreign criminal. The information about the Appellant's finances do not suggest he is financially independent but I make no findings about it. Given the Appellant's unlawful and precarious presence s.117B(4) and (5) are relevant and I give little weight to them. No case was argued with reference to the evidence that it would be unreasonable or unduly harsh or very significant difficulties for the Appellant his wife and child or remove to Bangladesh and continue their family life together. In the circumstances, the oral and written evidence, my assessment of it, the submissions made, set out above, I did not find the respondent's decision to made removal directions was disproportionate in terms of family/private life rights.
23. There was no appeal under the Immigration Rules pursued before the Original Tribunal.

### **DECISION**

24. The Original Tribunal's decision on Article 8 ECHR grounds is set aside. The decision is re-made.  
The Appeal on Article 8 ECHR grounds is dismissed.

### **ANONYMITY**

24. Although there are young persons involved it does not seem to me that it is necessary an anonymity order and none was requested. No anonymity direction is made.

**FEE ORDER**

25. The appeal has failed and therefore no order of costs is appropriate.

Signed

Date 27 July 2016

Deputy Upper Tribunal Judge Davey

P.S. I regret the delay in signing the case off but unfortunately the file was mis-located.