



**Upper Tribunal  
(Immigration and Asylum Chamber)  
IA/30368/2014**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 14<sup>th</sup> March 2016**

**Decision & Reasons  
Promulgated  
On 26<sup>th</sup> April 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE RIMINGTON**

**Between**

**MR SADEK MIAH  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**And**

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

Respondent

**Representation:**

For the Appellant: Mr Mold instructed by Schneider Goldstein Solicitors  
For the Respondent: Mr S Whitwell, Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant is a citizen of Bangladesh born on 26<sup>th</sup> August 1983 and on 18<sup>th</sup> July 2014 a decision was made by the Secretary of State to remove him from the United Kingdom under Section 10 of the Immigration and Asylum Act 1999. He appealed that decision and First-tier Tribunal Judge Rothwell dismissed his appeal under paragraph 276ADE and on human rights grounds.

2. The challenge, with permission, to the decision of Judge Rothwell was made on the basis that the appellant had established a close relationship with his brother's children in the United Kingdom and his relationship with them went beyond normal ties and constituted a family life. He played a primary role in the upbringing of his brother's children. At paragraph 27 of the determination, it was asserted, that the judge stated the appellant did not have a family life with his nephews and nieces as the children had their parents here in the UK but had failed to take into consideration that the appellant's relationship with his nephews and nieces went beyond normal ties. The children were according to the application for permission to appeal "dependent on their uncle for their day-to-day activities and had grown up considering their uncle to be a core member of their family". It was asserted that the judge had not asked the correct question and should have asked whether or how the children's lives would be affected if the appellant were to leave the United Kingdom. The judge did not consider the emotional loss to the British citizen children if they were separated from their uncle. She also failed to consider that they had never lived without the appellant and therefore they would suffer immensely.
3. Mr Mold at the hearing before me submitted **Pawandeep Singh v Entry Clearance Officer New Delhi [2004] EWCA Civ 1075**. At paragraph 21 this decision cites **Marckx v Belgium [1979] 2 EHRR 330** whereby the European Court recognised that family life "includes at least the ties between near relatives, for instance, those between grandparents and grandchildren, since such relatives play a considerable part and family life".
4. **Pawandeep** at paragraph 58 acknowledges that there are relationships within the wider family for example the relationship between grandparent and grandchild, nephew and uncle and between cousins. Thereby it was acknowledged that that family life within the meaning of Article 8 included ties at least between near relatives and that family life was not confined to relationships based on marriage or blood.
5. Mr Whitwell submitted that the grounds amounted to a mere disagreement and it was accepted that the appellant could not meet the Immigration Rules. The judge did assess the family life referring to **Kugathas v SSHD [2003] EWCA Civ 31** and did make the appropriate findings at paragraphs 26 and 27.
6. I am not persuaded that the judge made an error in her approach to family life and protection afforded by Article 8. The appellant had no claim under Appendix FM (he could not switch to being an adult dependent relative from a working holiday visa) and under the Paragraph 276ADE, which sets out the Secretary of State's position in relation to private life, the judge found that the appellant had not been here for twenty years and that there were no very significant obstacles to him reintegrating to a life in Bangladesh. She stated that his parents were in Bangladesh and he had lived there until he was 24 and was able to run his own business there. As Mr Motin one of the witnesses had been speaking to both his

brothers and did not mention any threat to the appellant, the judge did not accept that there was any threat to his life from his brother.

7. The judge found at paragraph 23 of her decision that on the evidence before her he had mainly lived amongst the Bengali community in the United Kingdom and he spoke Sylheti before her. The judge correctly cited **SS Congo v SSHD** [2015] EWCA Civ 317 but nonetheless, generously in my view, went on to consider the factors outside the Immigration Rules applying the **Razgar** test but dismissed the application both in respect of the Immigration Rules and under Article 8.
8. She specifically considered the matter of family life at paragraph 26, and stated that she accepted that the appellant and his nieces and nephews were close but that the appellant was 'now aged 32 years old and had spent all his life until he was aged 24 living in Bangladesh', his parents were in Bangladesh and the children's parents were here. She found the case was more in line with **Kugathas** but did not accept that there was protected family life. That was a finding, on the evidence which she considered, that was open to her. What was required a factual finding as to whether the applicant enjoyed a family life and the judge approached the appeal in that way making a careful consideration of the relevant facts. It may be the case that various relatives can be included in the scope of assessing whether there is a protected Article 8 case but the judge found not so in this appeal. At paragraph 27 she specifically considered his relationship with his nieces and nephews and did not consider that that constituted family life as they had their own parents in the United Kingdom. She found the appellant was an uncle but clearly because the appellant had lived himself in Bangladesh for many years independently and the children had their own parents present in the UK, the judge did not accept that in these particular circumstances and on the facts that the appellant had a family life.
9. Even if that were incorrect, which I do not accept, it is clear that the judge proceeded to accept that they had a close relationship and that the appellant provided a large portion of care for the children as the parents worked [34]. The judge made an assessment of proportionality and factored in the various issues in her assessment. Article 8 is not an absolute right and she was obliged to take into account that the appellant cannot succeed under the Immigration Rules further to **SS (Congo)** which she did. The best interests of the children is a *factor* within the proportionality assessment not as to whether there is indeed a family life and she acknowledged that the best interests of the children were to remain living with their parents who were she still found the key people in their lives. The judge found at [34]

*"There is no evidence before me that these children would suffer by the absence of the appellant. Their mother said they would be unsettled if the appellant leaves. I accept they would miss him as they would miss a grandparent or other close family relative and that their parents will have to explain the situation to them and make other child care arrangements, but given the appellant's precarious*

*position I do not find that it would be disproportionate to return him to Bangladesh”.*

10. At paragraph 35 the judge makes a finding overall in relation to the appellant that he is a man of independence at 32 years, and he ran his own car business, is a welder and he has own skills. He has developed skills as a chef and that he could open a further business in Bangladesh where his parents are located. The judge acknowledged the disturbance that would be caused. She took into account Section 117 of the Nationality Immigration and Asylum Act 2002. In essence she weighed the appellant’s family and private life and found the decision was not disproportionate.
11. I do not accept that this decision reflects any material error of law and the decision shall stand.

No anonymity direction is made.

Signed

Date 21<sup>st</sup> April 2016

Deputy Upper Tribunal Judge Rimington