



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/30038/2015

THE IMMIGRATION ACTS

Heard at Field House  
On 6<sup>th</sup> July 2017

Decision & Reasons Promulgated  
On 13<sup>th</sup> July 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE ROBERTS

Between

MD MESBAH UDDIN  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

TEH SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Reza, Waterstone Solicitors  
For the Respondent: Mr Avery, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Bangladesh born 13<sup>th</sup> January 1983. He has appealed with permission against the decision of Judge of the First-tier Tribunal Devittie promulgated on 25<sup>th</sup> October 2016, dismissing his appeal against the decision of the Respondent dated 18<sup>th</sup> August 2015, refusing him leave to remain in the United Kingdom on account of his Article 8 ECHR private/family life rights.
2. The background to this appeal is that the Appellant arrived in the UK in October 2009 with leave to enter as a student, valid to 2011. He made various further applications relating to his leave, but for the purposes of this decision it is relevant to note that an application was made on 19<sup>th</sup> September 2014 for a Tier 2 - General

Migrant visa. This application was on the basis that he had been offered employment as a business development manager with an enterprise called Hill House Nursing Home on an annual salary of £22,500.

3. The Appellant withdrew the above mentioned Tier 2 application in November 2014 and sought to vary it in favour of an application submitted on 29<sup>th</sup> April 2015 for leave to remain on the basis of his family and private life. The reason for withdrawing the Tier 2 application was on account of the Appellant being unable to make contact with Hill House Nursing Home. It later transpired that the certificate of sponsorship offering the post, which had been submitted through a third party called Amita Solutions, was false. This led the Appellant to seek a variation application and it is this application, submitted on 29<sup>th</sup> April 2015 and refused on 18<sup>th</sup> August 2016 which forms the backdrop to the present appeal.
4. When the Respondent refused the variation application, the Appellant appealed that refusal to the First-tier Tribunal saying:
  - He was unaware of the falsity of the employment sponsorship document
  - To refuse his application would be contrary to his Article 8 rights because:
    - (i) he had been in the UK since 2009;
    - (ii) he had obtained a Masters degree;
    - (iii) all he was seeking was some further time in order to obtain a further sponsorship
5. When his appeal came before FtTJ Devittie, he accepted that the Appellant had not practised deception in submitting the false sponsorship document although he did note “unsatisfactory features” of the Appellant’s evidence on this point.
6. So far as the claim that the Respondent’s refusal would contravene the Appellant’s private/family life, the judge noted that the Appellant could not meet the requirements of the Immigration Rules in particular paragraph 276ADE. Indeed a concession was made by the Appellant’s representative on this point. The judge noted this concession and expressly said that any claim which the Appellant had was one based outside the Rules. It is this which he considered in [10].
7. The judge concluded his decision in saying;

“... that there are no strong features of his private life that would lead me to conclude, that the imperatives of effective immigration control that I have identified, must yield to the seriousness of the consequences of interference with this appellant’s private life. There are no serious consequences to his returning to Bangladesh, I would accordingly dismiss the article 8 appeal.”[10]
8. The Appellant submitted grounds seeking permission. There appear to be two strands to the grounds:

- The judge dealt too narrowly with the evidence advanced on behalf of the Appellant in the proportionality exercise and failed to attach sufficient cumulative weight to the factors advanced in paragraph 4 above; and
  - the judge should have set out a fuller analysis of the application of the criteria in Section 117(B) to the Rules.
9. Permission having been granted the matter came before me as an error of law hearing in the Upper Tribunal.

### **Error of Law Hearing**

10. I heard submissions from Mr Reza for the Appellant and Mr Avery for the Respondent. Mr Reza's submissions relied on the grounds seeking permission together with the grant of permission. He amplified those grounds by emphasising that the Appellant is a man who has now been in the UK for nine years. He has studied hard and obtained a Master of Business Administration Degree in November 2012 from Coventry University. Mr Reza further submitted that what the Appellant is seeking is some further time to find suitable employment/sponsorship. Indeed, he said, he should be given time to do so.
11. Further there was no analysis of Section 117B to the Rules and had the judge looked at this properly, the Appellant may have qualified for leave.
12. Mr Avery filed a Rule 24 response. He submitted, in line with the response, that the judge had properly looked at the evidence finding that the Respondent's decision caused no disproportionate interference to the Appellant's private life. So far as Section 117B point is concerned it is immaterial in this case. He said that on no construction of Section 117B would the Appellant be able to succeed, given that he has been in the UK on a precarious basis only ever since he first entered the UK. Therefore no substantial weight could be attributed to his educational qualifications or financial independence.

### **Consideration**

13. The task before me at this stage is to consider whether the decision of the FtT Judge contains material error sufficient to vitiate the decision and set it aside. I am satisfied that the decision of FtT Devittie is sustainable and I now give my reasons for this.
14. The main criticism against the judge is that he somehow failed to look at the evidence advanced on behalf of the Appellant holistically and therefore misdirected himself. I disagree with this assessment.
15. Firstly it is clear from a reading of the decision, that the judge accepted that the Appellant had established a private life and that removal would cause interference with that. The judge refers to the relevant evidence in [10] and there is nothing in the decision to show that the judge has simply sidelined that evidence. He sets out fully and acknowledges in [10] that the Appellant has attained academic qualifications,

but balances this by saying that there is no suggestion he could not put these to use in Bangladesh. Therefore the judge has clearly kept that matter in mind.

16. He goes on to say that the Appellant is seeking a period of leave to find yet another Sponsor but balances against this the fact that there was no evidence to show any progress in finding a Sponsor. So far as the suggestion that the Appellant's removal would leave him destitute in Bangladesh is concerned, the judge deals with that point by saying that no evidence was put forward to show that there were any great obstacles to the Appellant returning to Bangladesh. Indeed it is hard to see how a man with the Appellant's educational qualifications would be in danger of becoming destitute on return to his own country.
17. Dealing with the claim that there is a lack of analysis of Section 117B, I find force in Mr Avery's point. I bear in mind that the Appellant's immigration status has been precarious throughout and the fact that it has been conceded on his behalf that he cannot meet the requirements of the Immigration Rules, leads me to the conclusion that a fuller analysis of Section 117B would be fruitless.
18. Accordingly for the foregoing reason I find that the decision of FtT Judge Devittie is sustainable. That decision therefore stands. The appeal before me is dismissed.

### **Notice of Decision**

There are no material errors in the decision of FtTJ Devittie promulgated on 9<sup>th</sup> November 2016. The decision stands.

No anonymity direction is made.

No fee award is made.

Signed

C E Roberts

Date

12 July 2017

Deputy Upper Tribunal Judge Roberts