Upper Tribunal

(Immigration and Asylum Chamber) Appeal Number: IA/34287/2015

THE IMMIGRATION ACT

Heard at Field House	**Decision & Reasons Promulgated**
On 12th July 2017	**On 31st July 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE MCCLURE

Between

Mr Kholilur Rahman

Appellant

and

The Secretary of State for the Home Department

(NO ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr Ahmed Lincoln's Chambers Solicitors

For the Respondent : Mr Tarlow Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, Mr Kholilur Rahman date of birth 28th February 1974 is a citizen of Bangladesh. Having considered all the circumstances, I do not consider it necessary to make an anonymity direction.

2. This is an appeal by the appellant against the decision of First-tier Tribunal Judge Housego promulgated on 2nd March 2016 whereby the judge dismissed the appellant's appeal against the decision of the Secretary of State for the Home Department. The Secretary of State had refused the appellant indefinite leave to remain in the United Kingdom on the basis of 20 years continuous residence in the UK and thereby refused the appellant's application under Article 8 of the ECHR, family and private life.

3. By a decision of 12th May 2016 Designated First-tier Tribunal Judge Peart granted permission to appeal to the Upper Tribunal. Thus the case

appeared before me to decide whether there was an error of law in the original decision.

Basic outline of the facts

4. The appellant claims that he entered the UK aged 5 on the 25th May 1979.

5. On the 24th July 2012 the appellant made application for naturalisation as a British Citizen. That application was refused on the 18th February 2013. The reasons given for refusing the application were because passports submitted with the application were alleged to have been mutilated in respect of one passport and a second passport was alleged to contain false stamps. The appellant requested that the decision be reconsidered. The refusal was reconsidered but the decision was maintained by letter dated 25th September 2013. There was no appeal against that decision.

6. On the 11th February 2014 the appellant was served with an IS.151A, a notice to a person liable to removal.

7. On the 13th May 2014 the appellant made an application for leave to remain on the basis of 20 years residence under paragraph 276ADE (iii). That application was rejected on the 4th November 2015. The appellant lodged an appeal against that decision on the 23rd November 2015.

8. After hearing all of the evidence the judge dismissed the appeal. The judge found that the appellant's account of having been in the United Kingdom since 1979 was not truthful. The judge found that the appellant at best had been in the United Kingdom since 2011 and as such that the appellant could not succeed in the application. In coming to those conclusions the judge made a number of adverse credibility findings.

9. The appellant seeks now to appeal against that decision challenging not only to the conclusion of facts but to the approach of the judge in respect of the law.

10. The first matter raised in the grounds of appeal is the matter of the appellant's previous application for nationality and whether or not there were the passport produced was "false".

11. The appellant had applied on 24 July 2012 for naturalisation. In making the application the appellant submitted an old Bangladeshi passport, which had been mutilated, and a new passport which he had obtained from the Bangladeshi High Commission in the United Kingdom. That new passport allegedly had stamps, indicating that the holder had been in and out of the United Kingdom.

12. As identified by the judge in paragraph 2 the issue was whether the appellant having signed to say that he had not used deception in a previous application had used passports, on which there was false information or stamps that had been materially altered.

13. With regard to that issue concentration was on the fact that the appellant had allegedly produced an old passport which was mutilated and a new passport upon which there were altered or counterfeit stamps but the respondent had failed to produce the passports. The respondent had not

explained how the stamps in the new passport were altered or how it could be ascertained that they were not genuine or that they were altered.

14. It had been accepted that the appellant had submitted a new passport and that there were stamps in the passport. Mr Hussain the witness called on behalf of the appellant had admitted that he had seen the passport according to the notes of evidence made by the judge.

Q- Mr Hussain was asked -Is it accepted that the stamps are not genuine?

A-Mr Hussain - Not a conversation we have had.

Q -Do you know what the stamps are ?

A-Like airport.

Q- So if he (the appellant) has not left they are not genuine?

A- Flipped through it and he not capable of doing it and lost it and maybe someone done something.

Q- Some stranger must have done it.

A-Yes other workers.

15. As recorded by the judge Mr Hussain was not taking issue with the fact that the stamps were in the passport indicating that the appellant had travelled out of the country and were therefore false, if the appellant present account was to be believed, but asserting that the appellant was not capable of making the alteration. The only conclusion from the answers by Mr Hussain are that someone has gone to the trouble of stealing a passport; getting someone to put stamps in the passport; only to return the passport to the appellant so that he can submit the passport with his nationality application. It is not surprising that the judge found the explanation incredible. The judge was entitled to conclude that the suggestion that someone else had got stamps in the passport and then returned the passport to the appellant without the appellant’s knowledge was not credible.

16. The appellant’s case was that he had never left the UK since his entry in 1979. Either the stamps on the passport were false in that they were not genuine stamps or the passport was false when produced because it was indicating that the appellant had used the passport to travel out of the UK. In either sense the appellant had used a passport which purported to support a factual state of affairs that could not be true on the appellant’s evidence.

17. The passport was the appellant’s passport. The appellant had not given evidence. Mr Hussain had. He said that as far as he was concerned the appellant was not capable of altering the passports and therefore not capable of a deception of the type referred to. Many people may not be capable of falsifying stamps in passport but be able to get others to do it for them at a price. In that regard the judge recorded at paragraph 37 the evidence of Mr Hussain “*It was impossible for the appellant to engage in deception as he did not have the ability*”.

18. Whilst Mr Hussain made a number of claims about the abilities of the appellant, the gentleman is not medically qualified. As noted by the judge Mr Hussain on his evidence had seen the passport. It had been submitted and Mr Hussain had been given the opportunity of examining the same. The judge has noted that the stamps had been altered [see paragraph 81- as contended for by the evidence from the Home Office] Mr Hussain’s explanation was that they must have been altered by others.

19. However the judge on the basis of the evidence was not satisfied that the respondent had proved that the stamps were false but the matter does not end there. The appellant on his version of events could not have used the passport but there were the stamps in the passport. The document in one form or another is false. When submitted to the UK authorities as part of the naturalisation application, a document was being submitted which on its face was not factually correct. The judge was entitled in assessing the credibility of the appellant to take that into account. That was the conclusion of fact that the judge was entitled to make on the basis of the evidence presented.

20. The judge within the decision has highlighted a number of inconsistencies. The judge noted that the witnesses were suggesting that the appellant had such learning difficulties that he could not be trusted to do anything at all. However drawing together the evidence the judge had noted significant discrepancies between the evidence given in support of the naturalisation application and the present application.

21. In the present application it was being asserted that the appellant could not be relied upon to do anything by himself. However in the naturalisation application the appellant was described as having work experience in catering and letters from alleged employer referred to the appellant as being a 2nd chef.

22. Similarly there were other references to the appellant working as a builder as referred to in paragraph 75.9. The judge noted that at the time that submissions were being made with regard to the application for naturalisation it was important to have as good a work experience as possible. The documents submitted at that stage gave an impression that the appellant had significant experience in working in at least 2 different areas. The judge noted that for the purposes of the present appeal the impression seeking to be given was that the appellant was barely able to cope with life and was dependent upon others.

23. Similarly the judge examined other documentation that establish that the appellant had a tenancy in his name; had utility bills in his name; and other documents to indicate that he had accommodation; was paying bills; and was leading an independent life.

24. The judge noted that the appellant had been paying money into his bank account in Mansfield. The judge has given valid reasons for rejecting the explanation given that another person had been helping the appellant to pay the money in. The judge concluded the evidence in respect of that claim was not true. It was noted that otherwise there was evidence that the appellant had been working at a restaurant in Wimbledon.

25. Further with regard to the issue the documents from the Mint Restaurant indicating that the appellant had been working there between 2006 and February 2014. The letter indicated that the appellant was one of the best workers. The appellant had only ceased to work there because immigration had instructed him to do so. There had been HMRC statements indicating that the appellant had to pay tax surcharge/penalty for late filing of a self-assessment tax return.

26. In the present case the evidence from the witnesses called on behalf of the appellant was to the effect that he was hardly able to work. The documentation otherwise gave a wholly different picture. The judge was entitled to conclude that the evidence was changing to suit the nature of the application. The judge was entitled to conclude that when the naturalisation application had been made it was necessary to show that the appellant was competent and capable of working and documentation had been submitted to that effect. For the purposes of the present application it was thought appropriate to seek to suggest that the appellant was not capable of functioning in everyday life and was dependent on others. The judge was entitled to conclude that he was not being told the truth with regard to the circumstances of the appellant.

27. The judge has pointed out direct contradictions between the evidence of Mr Ahmed Hussain and the evidence otherwise, see for example paragraph 75.6, where the evidence of Mr Hussain was directly contradicted by that of his daughter. Mr Hussain had suggested that the appellant had lived with him since he had entered the United Kingdom. However again that was contradicted by the tenancy documents the utility bills and the like.

28. The judge had gone on to consider the medical evidence submitted and the evidence from the Community Learning Disability Service (CLDS). He noted the distinction between a mild learning disability and significant learning disability rendering the appellant a vulnerable adult. He noted that no medical records had been submitted. There were contradictions as to the evidence given to the CLDS. In the report there is reference to the appellant attending school and a reference to secondary school. As pointed out by the judge at one stage Mr Hussain was saying that the appellant had attended secondary school but then sought to correct the same to say primary school. It having been Mr Hussain's evidence that the appellant had stopped going to school at about the age of 10.

29. Central to a consideration of this case was the claim that the appellant was dependent upon his aunt, so dependent that their relationship was one of emotional and financial dependency as engaging Article 8 family life. In assessing that it is suggested that the judge had failed to take proper account of the case of Kugathas v SSHD [2003]EWCA Civ 31. The judge specifically considered the case in paragraph 15. The judge had pointed out again that the appellant had clearly had his own tenancy for a period of time; that he had been working including working away from the aunt. The judge was satisfied that the appellant had being working supporting himself and living apart from the aunt for a period of time. The judge was entitled to conclude again that the assertion that the appellant had a close family life with his aunt was not made out. The judge was entitled to conclude that the appellant did not have anything more than the normal ties to a relative, and not a close relative but an aunt.

30. It is alleged that the judge has mis-recorded the evidence of Mr Dennis O'Brien. Again the importance of that evidence was not that the appellant was working with Mr O'Brien as a builder but that the appellant was acting independently and working on his own behalf. In that respect whether it was not that he was working with Mr O'Brien that was the important fact but that the appellant was acting independently and working.

31. Finally it is suggested that the judge in recording that the appellant used simple language in "Urdu" had made a significant factual error. As pointed out the appellant being from Bangladesh he would not be using Urdu. Again the point being made was that the appellant had limited ability in the English language in accordance with section 117 of the 2002 Immigration Act as amended. It was a factor that the judge was entitled to take into account especially as the appellant had not given evidence. Whilst it is correct to say that the judge has made an error factual basis what was significant was not the language itself the fact that the appellant had limited ability in English.

32. The points being made by the judge are valid points to make with regard to the contradictions and discrepancies in the evidence presented in support of the nationality application and in the present application. The judge has clearly pointed out issues which the evidence presented on behalf of the appellant did not answer. In the light of that the judge was entitled to conclude that he was not being told the truth and the evidence submitted in support of the nationality application had been false in that it purported to represent a state of affairs which was not truthful.

33. In that event the judge was entitled to conclude that he could not believe the account given by the appellant and accordingly that the appellant had failed to discharge the burden that was on him to show that he had been in the United Kingdom for the period claimed. Further to that the judge was entitled to conclude that the appellant on the evidence before him had only been in the United Kingdom since 2011. Thereafter the judge was also entitled to conclude that he was not satisfied that support and assistance would not be available to the appellant where he to be returned to Bangladesh. Taking all that into account the judge was entitled to conclude that the decision to refuse the appellant's Article 8 was proportionately justified.

34. In the circumstances I do not find that there is any material error of law in the decision by the first-tier Tribunal. I uphold the decision to dismiss this appeal.

Notice of Decision

35. I dismiss the appeal to the Upper Tribunal and uphold the decision of the First-tier Tribunal.

36. I do not make an anonymity direction

Signed Date 28 July 2017

Deputy Upper Tribunal Judge McClure