



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/15719/2016

THE IMMIGRATION ACTS

Heard at Field House
On 27 June 2018

Decision & Reasons Promulgated
On 11 July 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE MONSON

Between

MD MUMIN AHMED
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr D Coleman, Counsel instructed by Liberty Legal Solicitors
For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals from the decision of the First-tier Tribunal dismissing his appeal from the decision of the respondent to refuse to grant him leave to remain on the basis of family and private life established in the UK since he entered the country as a teenage visitor on 6 May 2009. The First-tier Tribunal did not make an anonymity direction, and I do not consider that the appellant requires anonymity for these proceedings in the Upper Tribunal.

The Reasons for the Grant of Permission to Appeal

2. On 24 April 2018 Judge Hollingworth granted the appellant permission to appeal to the Upper Tribunal for the following reasons: *"It is arguable that the Judge has set out an insufficient analysis of the available evidence in relation to the appellant having lived with his brother and his brother's children since the appellant arrived in the United Kingdom. It is arguable that the Judge has attached insufficient weight to the strength of that family life given the ages of the two boys and the period of time which has elapsed. It is arguable that the Judge had to set out a more extensive analysis in relation to whether there would have been a breach of the Article 8 right to a family life on the part of the two boys and the appellant's brother given the factors advanced. It is arguable that the Judge should have reached a conclusion based upon such analysis at the date of the hearing without regard to any impending change in those circumstances if such change was in fact impending."*

Relevant Background

3. The appellant is a national of Bangladesh, whose date of birth is 15 May 1996. He entered the United Kingdom on 6 May 2009 as a visitor, on a visa which was valid from 4 March 2009 until 4 September 2009. On 11 December 2009 he applied for leave to remain in the UK as a dependent child joining a person with leave to remain. This person was his older brother. The application was refused with no right of appeal on 17 February 2010.
4. On 27 August 2015 the appellant was served with an RED.0001 notice, notifying him of his liability to removal from the United Kingdom. On 25 September 2015 the appellant submitted an application for leave to remain in the UK on human rights grounds.
5. In a covering letter, Liberty Legal Solicitors said that their instructions were that the appellant had entered the UK with his parents as a minor child at the age of 14 years. His parents had left him in the UK with extended family members. There would be very significant obstacles to his reintegration into the country of his birth, as he had no familial, social or cultural ties now to Bangladesh. Most of the reasons given by the solicitors as to why he should be given leave to remain were given under the heading of 'private life'. However, they also briefly advanced an argument on family life grounds. They asserted that he was surrounded by his close and extended family members in the UK, and that he had a legitimate expectation as a person living in the UK, to enjoy his social life in the presence of his family members.

The Hearing Before, and the Decision of, the First-tier Tribunal

6. The appellant's appeal against the refusal decision of 6 June 2016 came before Judge Peter-John S. White sitting at Hatton Cross on 29 November 2017. The appellant was represented by Mr Coleman of Counsel, and the respondent was represented by a Home Office Presenting Officer. The Judge received oral evidence from the appellant and his older brother. The central thrust of the appellant's case was that their parents had brought him here as a visitor, 9 days before his 13th birthday, and that about one

month after their arrival in the UK, his parents had simply disappeared one day, and they had never been seen again either in the UK or in Bangladesh.

7. At paragraph 11 of his witness statement which he adopted as part of his evidence in chief, the appellant said: *"In the absence of any ties in Bangladesh, I now consider the UK to be my home. I have everything here. I have a loving brother who provides every support that I need. I have seen the birth of my nephews and I am a central part of their lives. I have developed personal relationships with many people through my education and continue to maintain my social life actively."*
8. In his witness statement, which he also adopted as part of his evidence in chief, the appellant's older brother, Mustofa Ahmed, said at paragraph 7 that he was glad that Mumin was here in the UK with him. He had come to the country at the age of 14 years, and he was now a fully grown man: *"My wife and my children are fond of him and he is an essential part of our happy household."* At paragraph 9, he said that he needed Mumin to stay in the UK as he had no other place to go. As his older brother, he had been providing emotional and financial support to Mumin and would continue to do so.
9. In his subsequent decision, the Judge noted that the appellant continued to live with his older brother and sister-in-law. They had two sons, now aged 11 and 12. The appellant in his witness statement said that he saw their births, but he accepted at the start of his evidence that this was incorrect. They had both been born before his arrival.
10. The Judge went on to give detailed reasons for rejecting the central thrust of the appellant's case. At paragraph 12, he summarised his findings of fact on the issue of the parents' alleged disappearance: *"In the light of these considerations, I was satisfied the appellant does have significant extended family in Bangladesh, with whom he and his brother remain in contact. I am not satisfied his parents have disappeared, or that there has been no contact with them since 2009. I am further satisfied that they brought the appellant here in order to leave him with his older brother and arrange for him to be educated here, in which endeavour they were successful, and that Mustofa Ahmed was at some stage made aware of this."*
11. With regard to a private life claim under Rule 276ADE, the Judge found that the appellant was a fit, young adult, who had been educated in the UK but raised in Bangladesh, speaking Bengali, and with family support (quite apart from his parents) in his home country. Accordingly, there were not significant obstacles to his reintegration, and he noted that Mr Coleman did not submit that there were.
12. At paragraph [14], the Judge said that it remained necessary to consider whether there were compelling circumstances, not sufficiently recognised under the Rules, which might make the appellant's removal disproportionate. He reminded himself that this case involved an appellant who had been brought here just before his 13th birthday, who had been in this country for 8 years, including his teenage years, and said that he was in no doubt that further consideration was required.

13. At paragraph [15], the Judge held that the appellant had lived with and been supported by his brother, and had seen his younger nephews grow up, and so he was satisfied that family life was established with which the decision would interfere.
14. At paragraph [16], the Judge observed that in the assessment of proportionality, the best interests of any children affected must be a primary consideration. But it was not in fact submitted to him that the best interests of the appellant's nephews were a material factor. They would clearly remain here with their parents, and while they no doubt had a close bond with their uncle and might be sorry to see him depart, that would happen in due course when he became independent. So their interests would not be affected by the outcome of the appeal.
15. The Judge went on to address the provisions of section 117B of the 2002 Act. He concluded at paragraph [20] that weighing all of these matters together, he was satisfied that the interference occasioned by the decision was proportionate, and therefore that the appeal under Article 8 outside the Immigration Rules also failed.

The Hearing in the Upper Tribunal

16. At the hearing before me to determine whether an error of law was made out, Mr Coleman developed the arguments advanced in the grounds of appeal to the Upper Tribunal. He submitted that the Judge had correctly directed himself in the first sentence of paragraph [16]. However, the final sentence of paragraph [16] was perverse. It was not open to the Judge to find that the nephews' interests would not be affected by the outcome of the appeal. He ought to have accepted that they would be adversely affected by his removal. He should have found that they would be devastated by it. Another flaw in the final sentence of paragraph [16] was that the Judge had wrongly assumed, without any evidential basis, that the appellant was going to be leaving the family home.
17. The Judge's discussion of the provisions of section 117B in paragraph [17] was also flawed. There was no evidence that the appellant had ever been in receipt of primary NHS care. The Judge was also wrong to find that the fact that he spoke English and that the family were self-sufficient was not a positive reason to grant him leave. A further flaw was that the Judge had lost sight of the fact that the appellant had been blameless, since he was a child when he became an overstayer.

Discussion

18. In South Bucks District Council v Porter (2) [2004] UKHL 33 Lord Brown said at [26]:

The reasons for a decision must be intelligible and they must be adequate. They must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the 'principal important controversial issues', disclosing how any issue of law or fact was resolved. Reasons can be briefly stated, the degree of particularity required depending entirely on the nature of the issues falling for decision. *The reasoning must not give rise to a substantial doubt as to whether the decision maker erred in law, for example, by misunderstanding some relevant policy or some other important matter or by failing to reach a rational decision on relevant grounds. But such adverse inference will not readily be drawn* (My emphasis). The reasons need only refer to the main issues in the dispute, not to every material consideration.

19. Ground 1 is that the Judge applied the wrong standard of proof. At paragraph [4], the Judge directed himself that the appeal should be decided on the balance of probabilities. However, Mr Coleman pleads in Ground 1 that this is setting the bar too high, and that the Judge should have applied the standard of reasonable likelihood. Mr Coleman did not pursue this ground of appeal in oral argument, and I am not in any event persuaded that he is correct. The standard of proof for which he contends is appropriate to a claim for international protection. Since the appellant has not advanced a claim for international protection, the appropriate standard of proof is the balance of probabilities.
20. Ground 2 is that in paragraph [16] the Judge failed to recognise the impact on the family life of the two British boys consequential upon the removal of their uncle. The Judge failed to consider **Beoku-Betts**, which had been cited to him in the course of the hearing.
21. I consider that the Judge's discussion of family life and the best interests of the two nephews in paragraph [16] was sufficient in the particular circumstances of this appeal, which include the following: (a) the appellant and his older brother had not been found credible on the core claim of parental abandonment and disappearance; (b) there was no evidence from the two nephews as to the strength of their relationship with their uncle; (c) there was only a passing reference to the nephews in the appellant's witness statement; (d) the evidence about the extent of the emotional bond between the appellant and his nephews was extremely thin, amounting to no more than a bare assertion that the appellant was very close to them, which the Judge accepted was the case.
22. Mr Coleman did not submit to the First-tier Tribunal Judge that the appellant's removal would be contrary to the nephews' best interests. Nonetheless, the Judge recognised that he ought to address this issue, as the nephews were under the age of 18, and they had been living under the same roof as their uncle since he joined the household in 2009.
23. It was not suggested - still less established - that the appellant was acting as a carer for the nephews, or that he had a relationship to his nephews which was akin to a genuine and subsisting parental relationship. So it was open to the Judge to find that the nephews' wellbeing and welfare would not in any way be imperilled by the appellant's removal, and hence that their interests would not be adversely affected by the outcome of the appeal. Given the paucity of the evidence on the precise status of the relationship between the appellant and his nephews, and the adverse credibility finding on the core claim, the Judge was not bound to find that the nephews would be devastated by their uncle's removal. It was open to the Judge to find that they would merely be disappointed.
24. It was implicit in the findings which the Judge had made elsewhere that the appellant's continued residency in his brother's household and his continuing financial dependency on his brother arose from the fact that he did not have legal status in this country, and so he was unable to work or otherwise lead an independent life. It was thus open to the Judge not to treat the appellant as applying for leave to remain in

order to continue living in his brother's household indefinitely, but in order to be able to lead an independent life. So, I do not consider that the Judge erred in observing that the appellant was soon going to become independent, whatever the outcome of the appeal. If he lost his appeal, he would be returning to lead an independent life in Bangladesh; and if he won his appeal, he would be able to pursue an independent life in the UK.

25. For the above reasons, Ground 2 is not made out.
26. Ground 3 is that in paragraph [18] the Judge gave insufficient weight to the fact that the appellant arrived in the UK as a minor, and was wholly blameless in the decision to come to the UK. Mr Coleman adds that he was brought here by his parents and abandoned here by his parents, and this is a factor which is highly relevant to the consideration of section 117B.
27. The error of law challenge in Ground 3 ignores the fact that the Judge has rejected the core claim of parental abandonment and disappearance. It is also not true that the Judge did not take into account that the appellant was blameless for being an overstayer while he was a minor. The Judge stated in paragraph [17] that the appellant was not to be blamed for the actions of his parents in bringing him and leaving him here. The Judge reiterated this in paragraph [18], where he observed that for much of the time the appellant was still a child and so was to be regarded as innocent in relation to his situation.
28. The Judge has not erred in law in holding that the appellant's ability to speak English, and the fact that his immediate family in the UK are self-sufficient, do not constitute a positive reason to grant him leave. The Judge's findings in this regard are entirely in line with authorities such as AM (Malawi) [2015] UKUT 260 (IAC).
29. In paragraph [17] the Judge said: "*He has benefited by being educated, and no doubt by the receipt of primary NHS care, all at public expense. He cannot satisfy any Immigration Rule, and it is in the public interest that he now be removed.*" I accept that there was no specific evidence before the Judge of the appellant having received primary NHS care. But the Judge made it clear that there was no such specific evidence by the use of the phrase "*no doubt*". Given the appellant's length of residence, and also the fact that his brother had enrolled him in school, it was open to the Judge to infer that the appellant had also been registered with a GP, and that from time to time he had been seen by his GP. But even if the Judge was wrong about this, it did not detract from the over-arching point that the appellant's illegal presence in the UK had been a burden on the tax payer.
30. For the above reasons, Ground 3 is not made out.

Conclusion

31. The Judge has given adequate reasons for finding that the appellant's removal will not constitute a disproportionate interference with his rights and interests, or those of his brother, sister-in-law and nephews.

Notice of Decision

The decision of the First-tier Tribunal did not contain an error of law, and accordingly the decision stands. This appeal to the Upper Tribunal is dismissed.

I make no anonymity direction.

Signed

Date 2 July 2018

Judge Monson

Deputy Upper Tribunal Judge