



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/24851/2016

THE IMMIGRATION ACTS

Heard at Field House  
On July 13, 2018

Decision & Reasons Promulgated  
On August 7, 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

MR ABDUL KASHEM AZAD  
(NO ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr Jorro, Legal Representative

For the Respondent: Miss Ahmad, Senior Home Office Presenting Officer

DECISION AND REASONS

1. No anonymity order is made.
2. The appellant is a national of Bangladesh. The appellant entered the United Kingdom as a minor aged 10 in 2008 with his parents on a visa that entitled him to remain here until March 9, 2009.
3. Subsequent applications for leave to remain were refused on November 15, 2010 August 19, 2013 and March 29, 2016.

4. The appellant lodged an application for leave to remain on private life grounds on April 22, 2016 but this was refused by the respondent on October 21, 2016.
5. The appellant lodged grounds of appeal under Section 82(1) of the Nationality, Immigration and Asylum Act 2002 on November 3, 2016. His appeal came before Judge of the First-tier Tribunal Goodman (hereinafter called "the Judge") on February 15, 2018 and in a decision promulgated on February 23, 2018 the Judge dismissed his appeal under the Immigration Rules and on human rights grounds.
6. The appellant appealed this decision on March 7, 2018. He argued the Judge's approach to paragraph 276ADE HC 395 and article 8 ECHR was flawed.
7. Permission to appeal was granted by Judge of the First-tier Tribunal Andrew on March 19, 2018 as he found it arguable the Judge had misstated the test to be applied in paragraphs 23 and 24 of her decision when she stated there were no "insurmountable obstacles" whereas the test to be applied was whether there were any "very significant obstacles". It was also arguable that the Judge had not addressed article 8 correctly.
8. The respondent lodged a Rule 24 response dated May 22, 2018. In that response the respondent accepted the Judge had applied the incorrect test and that the error would have impacted on the balancing exercise under article 8.
9. The representatives invited me to preserve the First-tier Tribunal's findings of fact:
  - (a) The appellant was able to speak Bengali.
  - (b) The appellant had family in Bangladesh.
  - (c) The appellant had contact with family members in Bangladesh and would continue to receive financial support from his UK based brother.
  - (d) The appellant was fit and well.
  - (e) The appellant came here when he was ten years of age.
10. Both representatives agreed that this case could be dealt with in the Upper Tribunal and that it could be dealt with by way of submissions. The last hearing took place in February 2018 and there was no additional evidence that either party wished to submit apart from case law and the Home Office guidance on Family Migration dated February 22, 2018. Mr Jorro also adopted the content of a letter sent by his firm on July 10, 2018.

### **SUBMISSIONS**

11. Miss Ahmad submitted that although the appellant had been here since 2008 she submitted there were no "very significant obstacles" that would have meant the appellant succeeded under paragraph 276ADE HC 395.
12. The appellant had maintained constant contact with his parents and younger siblings who lived in Bangladesh. Whilst he had been abandoned by his parents in 2008 they

had not cut off ties to him. The Judge had concluded that it was likely the appellant spoke and possibly even read Bengali but was more comfortable in English. The Judge also concluded there was financial support available from his elder brother and whilst the appellant would face some obstacles there were no “very significant obstacles” to him returning as would be able to use the skills he had learnt in the United Kingdom.

13. Miss Ahmad submitted that as the appellant mixed with his family in the United Kingdom he would be familiar with local his family’s customs and manners.
14. There were no health issues preventing his return and she submitted it was likely that if he returned to Bangladesh he would be able to develop his ability to speak Bengali and he would be up to live with his parents or somewhere else and be supported by his elder brother in the short term.
15. Miss Ahmad referred to the respondent’s guidance and submitted that his ability to establish a private life in Bangladesh could not be overlooked and she reminded the Tribunal that “mere hardship, mere difficulty, mere hurdles, mere upheaval and mere inconvenience even where multiplied are unlikely to satisfy the test of “very significant hurdles in paragraph 276ADE of the Immigration Rules” and she invited the Tribunal to dismiss his appeal.
16. Mr Jorro invited the Tribunal to allow the appeal. He emphasised that the appellant had arrived in this country on October 11, 2008 when he was ten years of age. There had been an issue over his passport and as a direct result the appellant had been unable to take advantage of the Immigration Rules when he lodged his application on January 25, 2016. At that time he was only 17 years of age and as he had been in the country for over seven years the respondent should have considered his application under paragraph 276ADE(1)(iv) HC 395 which stated the appellant should be granted leave to remain if it would not be reasonable to expect him to leave the UK. He had now been here for almost ten years and he submitted that the appellant was now fully integrated into the United Kingdom. The fact he was now over the age of 18 did not alter the fact that he was settled in this country and there were no weighty factors that justified his removal from the United Kingdom. Whilst it was accepted he had been here with no leave it should be noted that he had been here as a minor and less weight should be attached to the fact he had established his life here when he had no leave. He invited the Tribunal to allow the appeal.

## **FINDINGS**

17. The appellant came to this country with his parents and siblings. It is acknowledged that he came here on a six-month visa and it appears that his parents returned to Bangladesh leaving the appellant and three siblings with the appellant’s aunt and uncle. The appellant’s aunt is a British citizen. The appellant’s three siblings are now aged 32, 28 and 16 and they each have leave to remain by virtue of the fact they are married to British citizens.
18. The appellant’s immigration history confirms that in October 2010 the appellant was served with a removal notice but was never removed. Applications for leave to remain

were turned down in 2013 and in 2016. It is agreed that the most recent application was partly refused because of a discrepancy over his birthdate.

19. Mr Jorro has argued that the appellant should succeed because if his birthdate had been treated correctly then when his application was considered in 2016 the respondent would have been concerned only with whether it was reasonable to remove him.
20. Whilst I have some sympathy with the appellant's predicament, I have to deal with the matter based on the date of this application namely April 2016. By that time the appellant did not come within paragraph 276ADE(1)(iv) HC 395 because he was now over the age of 18.
21. This Tribunal only has the power to deal with the current application and in considering any application under paragraph 276ADE HC 395 I am concerned with subsection (vi) of that paragraph and in order to succeed the appellant had to show "very significant obstacles". If the appellant felt hard done by the earlier decision he should have challenged the earlier decision.
22. The appellant is an adult who continues to be supported by his elder sibling-partly due to the fact that he has no status in this country and is unable to work. The appellant speaks both English and Bengali and whilst his level of English may be higher than his level of Bengali the fact remains he is able to converse with his family in Bangladesh.
23. Although his parents returned to Bangladesh without him and his brothers, he is not estranged from them and his two younger siblings continue to live in Bangladesh. He has today spent his life almost equally in Bangladesh and the United Kingdom although at the date of application he had lived longer in Bangladesh.
24. In Treebhawon and Others (NIAA 2002 Part 5A - compelling circumstances test) [2017] UKUT 13 (IAC) it was held that mere hardship, mere difficulty, mere hurdles, mere upheaval and mere inconvenience, even where multiplied, are unlikely to satisfy the test of "very significant obstacles" in paragraph 276 ADE of the Immigration Rules.
25. In Parveen v SSHD [2018] EWCA Civ 932 Underhill LJ stated the words "very significant" connote an "elevated" threshold, and I have no difficulty with the observation that the test will not be met by "mere inconvenience or upheaval". The task of the Tribunal is simply to assess the obstacles to integration relied on, whether characterised as hardship or difficulty or anything else, and to decide whether they regard them as "very significant."
26. In Miah (Section 117B NIAA 2002-children) [2016] UKUT 00131 (IAC) the Tribunal considered paragraph 276ADE(1)(vi) HC 395 and whilst the applicant in that case arrived in the United Kingdom at a later age and his circumstances were different the Tribunal did not find those circumstances would give rise to very significant obstacles despite the fact that applicant had lived in the United Kingdom for a lengthy period and had become accustomed to the culture, language, traditions and social setting of the United Kingdom. The Tribunal also had regard to the fact that the exercise of

reintegrating would undoubtedly be challenging and difficult. Despite all these problems the Tribunal did not accept there were very significant obstacles.

27. Examining the appellant's case, I find it difficult to accept that simply living in this country for eight years, at a time when he was now an adult, would amount to "very significant obstacles."
28. The Tribunal cannot overlook the fact that the appellant has immediate family, with whom he is in contact with, living in Bangladesh and whilst his parents may now be separated I note that he speaks to both parents albeit his contact with his mother is more regular. His mother looks after his younger siblings and again there is no suggestion he does not get on with his younger siblings.
29. The appellant has established a private life in this country but bearing in mind the elevated threshold I am not satisfied there are very significant obstacles to his reintegration into Bangladesh. The situation may have been different if all his family lived in this country but that is not the case.
30. Having satisfied myself that the appellant did not meet the Immigration Rules I have to consider whether there are compelling circumstances to consider this case outside of the Immigration Rules under article 8 ECHR. I am satisfied that this is a case which should be considered under article 8 because of the length of time the appellant has been here.
31. The House of Lords in Razgar [2004] HL 00027 set out the correct approach to take in such cases. I have already accepted that the appellant does have a private life. He will have made friends and by living here for such a lengthy period he has integrated himself into the culture of the United Kingdom regardless of any connection he has to Bangladesh or the Bangladeshi culture. Any removal from the United Kingdom would interfere with that life albeit it would be for the purpose of maintaining immigration control. The issue ultimately is whether removal would be proportionate.
32. In 2014 the Government passed the Immigration Act 2014 and this introduced section 117B into the 2002 Act. These are statutory factors which the respondent and the Tribunal must have regard to.
33. Section 117B(1) of the 2002 Act stresses the maintenance of effective immigration control is in the public interest. The appellant speaks English but the courts have directed that this is a neutral factor at best. He personally is not financially independent and currently relies on third parties for support. He has established his private life in this country whilst he has been here unlawfully and precariously.
34. I have been asked to consider the cases of Rhuppiah v The Secretary of State for the Home Department [2016] EWCA Civ 803 and Miah.
35. The Tribunal in Miah considered section 117B of the 2002 Act and concluded that all the factors in section 117B applied whether or not the appellant was an adult or a child when he arrived. The Tribunal made clear there was "no legitimate exercise of statutory construction which would entitle Judges to devise any such distinction"

between adult migrants and child migrants. The only exception to this is where a child falls within section 117B(6) of the 2002 Act and regardless of when this application was considered that section would not have applied here.

36. It follows that although the appellant came here as a minor I find that he has established his private life whilst here precariously. Additionally, he is not financially independent and his private life has been established wholly whilst here unlawfully. As stated earlier his ability to speak English is a positive factor in his favour but for the purposes of this assessment it is a neutral factor.
37. I considered all the witness statements provided in this case and accept the appellant has been educated in this country and has established skills although I do not accept some of those skills are not transferable. He may have established friendships but as stated earlier such friendships were established whilst here both unlawfully and precariously.
38. I have to consider whether his removal would be proportionate given the length of time he has been here and the ties he has established and having considered all the evidence together with the submissions made and the relevant case law I conclude that removal would not be disproportionate.
39. Whilst he has family in the United Kingdom they are all adult siblings and I cannot overlook the fact he does have family (parents and siblings) in Bangladesh with whom he continues to have contact.
40. The fact his elder brother has been prepared to support him whilst he had been living here unlawfully suggests he would also be able to continue to provide such support at least in the short term if the appellant were returned to Bangladesh.
41. I therefore find that removal would not breach the appellant's rights under article 8 ECHR.

### DECISION

42. There was an error in law for the reasons set out above and I set aside the decision.
43. I have remade the decision and I dismiss the appeal on human rights grounds.

Signed

Date 16/07/2018



Deputy Upper Tribunal Judge Alis