



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/00341/2016

THE IMMIGRATION ACTS

Heard at Field House
On 3 July 2018

Decision and Reason Promulgated
On 12 July 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE DOYLE

Between

MOHAMMED ABDUL KALAM
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Symes (counsel) instructed by Londinium, solicitors
For the Respondent: Mr D Mills, Senior Home Office Presenting Officer

DECISION AND REASONS

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence 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 Walters promulgated on 3 April 2017, which dismissed the Appellant's appeal.

Background

3. The Appellant was born on 15 May 1976 and is a national of Bangladesh. On 7 January 2016 the Secretary of State refused the Appellant's application for leave to remain in the UK.

The Judge's Decision

4. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Walters ("the Judge") dismissed the appeal against the Respondent's decision. Grounds of appeal were lodged and on 11 April 2018 Upper Tribunal Judge Canavan granted permission to appeal stating *inter alia*

The grounds do not mount any challenge to the Judge's findings relating to the continuous lawful residence under the rules and appeared to be confined to article 8 grounds. They make a series of points about evidence, which I read to amount to a challenge to the adequacy of the reasons given by the Judge in relation to his assessment of the appellant's private life under article 8. Whilst none of the points, taken alone, are sufficient to give rise to an arguable error of law, it is at least arguable that the Judge failed to give adequate reasons for his findings. Even if the appellant did not meet the requirements of 10 years continuous lawful residence, it was incumbent on the Judge to consider whether paragraph 276 ADE(1)(vi) applied and/or the conduct and evaluative assessment of the appellants private life in the UK balanced against any relevant public interest considerations. It is at least arguable that the Judge failed to conduct an evaluative assessment of where the balance should be struck in this case given the appellant's length of residence in the UK. Although there is some question mark as to whether any potential error would have made any material difference to the outcome of the appeal, it is at least arguable that the appellant was entitled to a properly reasoned decision.

The Hearing

5(a) Mr Symes moved the grounds of appeal for the appellant. He told me that the Judge had failed to take account of relevant considerations, and had failed to consider the evidence placed before him. Mr Symes took me to the appellant's bundle, where relevant letters of support are produced - many of them from family members, and then took me to [31] of the decision, where the Judge says that the appellant fails to identify his close family members in the UK.

(b) Mr Symes told me that the appellant's bundle before the First-tier contains a letter from the appellant's employer. He told me that the documentary evidence has been ignored by the Judge and that [30] and [31] of the decision are just wrong.

(c) Mr Symes took me to [25] of the decision, where the Judge bemoans the absence of financial information, and told me that the appellant had produced a letter from his employers and had given evidence in his witness statement about his income. He reminded me that those instructing him made an application under rule 15(2) to bring onto consideration wage slips, P60s and a contract of employment vouching the appellant's financial position.

(d) Mr Symes took me to [28] of the decision and told me that, there, the Judge was unnecessarily harsh and dismissive and failed to engage with the documentary evidence produced. Mr Symes told me that the Judge's article 8 assessment was fundamentally flawed and that the Judge had failed to take account of the reason that the appellant cannot meet the requirements of the immigration rules.

(e) Mr Symes urged me to allow the appeal and set the Judge's decision aside.

6 (a) For the respondent Mr Mills told me that the decision does not contain a material error of law. He told me that there was no requirement for the Judge to rehearse every piece of evidence. He accepted that the decision is brief and told me that if that is an error of law it is not material, because the Judge's proportionality assessment has been properly carried out.

(b) Mr Mills told me that at [4] the Judge clearly states that he took account of the documentary evidence produced for the appellant. At [25] the Judge clearly considers section 117B, and insofar as he made an error in the application of section 117B(6), that error favours the appellant.

(c) Mr Mills told me that the Judge carefully weighed all of the evidence before reaching conclusions well within the range of conclusions available to the Judge. He urged me to dismiss the appeal and allow the Judge's decision to stand.

Analysis

7. The Judge's decision is brief. He sets out his findings in an almost staccato style between [7] and [17] of the decision, and those findings dwell on whether or not the appellant establishes 10 years continuous lawful residence in the UK. The Judge continues to a proportionality assessment with the same brevity. At [31] the Judge clearly makes a mistake. It is apparent from the appellant's bundle that a number of his cousins, uncles & other family members were identified to the Judge.

8. In MK (duty to give reasons) Pakistan [2013] UKUT 00641 (IAC), it was held that (i) It was axiomatic that a determination disclosed clearly the reasons for a tribunal's decision. (ii) If a tribunal found oral evidence to be implausible, incredible or unreliable or a document to be worth no weight whatsoever, it was necessary to say so in the determination and for such findings to be supported by reasons. A bare statement that a witness was not believed or that a document was afforded no weight was unlikely to satisfy the requirement to give reasons.

9. The decision contains an error of law because the Judge's decision is not fully reasoned, but I consider the materiality of the error.

10. Family life within the meaning of article 8 does not exist for the appellant. On the appellant's own evidence, he is single and has no dependents. The relatives who write in support of the appellant are cousins and uncles. There is no evidence of dependency

between the appellant and those relatives. The appellant is an independent adult who has not yet started his own family. Without evidence of a degree of dependency, article 8 family life cannot be established. The friends and relatives who voice their support for the appellant form only an aspect of the appellants private life in the UK.

11. The grounds of appeal tacitly accept that the appellant cannot establish 10 years continuous lawful residence. Because of the appellant's age and the length of time that he's been in the UK he cannot meet the requirements of paragraph 276 ADE(1)(i) to (v)

12. Very significant obstacles to integration are not pled for the appellant. In SSHD v Kamara [2016] EWCA Civ 813 it was held that the concept of integration into a country was a broad one. It was not confined to the mere ability to find a job or sustain life whilst living in the other country. It would usually be sufficient for a court or tribunal to direct itself in the terms Parliament had chosen to use. The idea of "integration" called for a broad evaluative judgment to be made as to whether the individual would be enough of an insider in terms of understanding how life in the society in that other country was carried on and a capacity to participate in it, so as to have a reasonable opportunity to be accepted there, to be able to operate on a day-to-day basis in that society and to build up within a reasonable time a variety of human relationships to give substance to the individual's private and family life.

13. In the case of Sanambar v SSHD [2017] EWCA Civ 1284 the Court of Appeal said that consideration of the issue of obstacles to integration requires consideration of all relevant factors some of which might be described as generic. Factors such as intelligence, employability and general robustness of character could clearly be relevant to that issue. The broad evaluation required could also include the extent to which a parent's ties might assist with integration.

14. The appellant entered the UK in 2004 when he was 26 years old. He is now 40 years old. The appellant spent 65% of his life in Bangladesh. The appellant was brought up and educated in Bangladesh. The appellant has been away from Bangladesh for 14 years. There is no reliable evidence of a very significant obstacle to integration. The appellant cannot meet the requirements of paragraph 276 ADE(1)(vi)

15. That leads to consideration of article 8 private life outside of the rules. The private life that the appellant has is his home, his friends, his extended family and his work. For eight years, between 2000 for 2012, the appellant was present in the UK as a student. In Nasim and others (Article 8) [2014] UKUT 25 (IAC) it was held that the judgments of the Supreme Court in Patel and Others v Secretary of State for the Home Department [2013] UKSC 72 serve to re-focus attention on the nature and purpose of Article 8 of the ECHR and, in particular, to recognise that Article's limited utility in private life cases that are far removed from the protection of an individual's moral and physical integrity. In Nasim and others (Article 8) [2014] UKUT 25 (IAC) it was stated "*it is important to emphasise that the appellant in CDS(Brazil) was faced with a hypothetical removal, which would have prevented her from completing the course of study for which she had been given leave*". It is clear that the tribunal considered that in the light

of Patel and Others v Secretary of State for the Home Department [2013] UKSC 72 its application was probably very limited.

16. Section 117B(5) tells me to attach little weight to the appellant's private life because he has only ever had limited leave to remain in the UK. Section 117B also tells me that immigration control is in the public interest.

17. When those factors are weighed, I have to find that despite the shortcomings in the Judge's decision he arrives at the correct conclusion. The Judge's error of law could only be material if it had the potential to lead to a different conclusion.

18. I therefore find that the decision, although not perfect, does not contain a material error of law.

17. The decision does not contain a material error of law. The Judge's decision stands.

DECISION

18. The appeal is dismissed. The decision of the First-tier Tribunal, promulgated on 3 April 2017, stands.

Signed

Date 9 July 2018

A handwritten signature in black ink, appearing to read "Paul Doyle". The signature is written in a cursive, slightly slanted style.

Deputy Upper Tribunal Judge Doyle