



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: IA/01365/2016

THE IMMIGRATION ACTS

Heard at Field House

On 30 April 2018

**Decision &
Promulgated
On 4 May 2018**

Reasons

Before

DEPUTY UPPER TRIBUNAL JUDGE HILL QC

Between

**MOHAMMAD JAHANGIR HOSSAIN MIAH
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr T Aitken, Counsel instructed by Novells Legal Practice
For the Respondent: Mr L Tarlow, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal from the decision of First-tier Tribunal Judge Rahman promulgated on 1 September 2017. The appellant is a national of Bangladesh born on 10 February 1972. He entered the United Kingdom on 10 February 2004 with a visitor visa valid until 11 July 2004, after which time he became an over-stayer. He applied for leave to remain on human rights grounds on 7 January 2009.
2. The Secretary of State's decision to refuse the appellant's application was communicated on 1 March 2016. His appeal from that refusal was

dismissed by the First-tier Tribunal Judge under the Immigration Rules (276ADE), and under Article 8 ECHR outside the rules.

3. The decision in the First-tier Tribunal covers the procedural history, the appellant's immigration history, a brief summary of the Secretary of State's reasons for refusal and the witness evidence of the appellant and his cousin. There is then a summary of the submissions made by the party's representatives. The findings begin at paragraph 62.
4. Permission to appeal was granted by First-tier Tribunal Judge Birrell on 21 March 2018, on the basis that there was arguably no engagement in the First-tier Tribunal with an apparent delay of seven years between the application to the Secretary of State and her decision. It was recorded that the other grounds have less merit and are largely an attempt to re-litigate the case. However, all grounds may be argued.
5. On 10 April 2018 a short Rule 24 statement was served indicating that in the Secretary of State's submission the First-tier Tribunal Judge directed himself appropriately and that there was an adequate consideration of all matters including the issue of delay.
6. Mr Aitken, who appears before me today, as he did for the appellant in the First-tier Tribunal, has advanced with skill and economy the written grounds which he settled. He addressed the various grounds in numerical number and I propose to do likewise.
7. Although not abandoning the issue of the judge's assessment of credibility in Ground 1, he has not pursued it with any great vigour. I consider that to have been an appropriate stance because issues of credibility are for first instance judges to decide having heard live evidence. Looking at this case in the round, it is difficult to fault the judge for the way in which he approached the evidence and the assessment he made of credibility.
8. Ground 2 alleges a failure to give adequate reasons for the finding that family life does not exist. The grounds rehearse the material that was before the judge, which it is said was not dealt with adequately.
9. This is, by any account, a full and detailed decision. The relevant passage is paragraph 89 which reads as follows:

"I find the elements of dependency involve no more than the normal emotional ties between the appellant and his cousin, his cousin's wife, and their children. I am therefore not satisfied of the existence of a 'family life' within the meaning of article 8 of the ECHR."
10. I accept, as Mr Aitken submits, that this is a relatively brief disposal of the issue, but mere brevity does not amount to an error of law. It is

clear from the context that the judge took all evidential matters into consideration and came to a conclusion that was open to him on the facts as he found them. What is alleged in the grounds amounts to no more than a disagreement with the judge's findings.

11. The third Ground is derivative on the second. It concerns the judge's finding that the appellant's removal from the United Kingdom would not have consequences of sufficient gravity so as to engage Article 8. The judge's comments are to be found at paragraph 90 and they read as follows:

"If I am wrong as to the existence of family life, I would find that removal would cause an interference. However, I find that removal would not have consequences of such gravity so as to engage the operation of article 8. The appellant's claimed family life is with his adult cousin whom he met for the second time in the UK in 2004 having previously met him only once when aged about 7, and with his cousin's wife and three children now aged 17, 19, and 22, since 2004."

The judge deals with this matter in the alternative, notwithstanding his primary finding that Article 8 was not engaged at all. The point is purely academic. In any event, I can see nothing wrong in the judge's assessment.

12. Ground 4 concerns proportionality. This was the principal ground on which permission to appeal was granted. It is a matter of record, recited by the judge in paragraph 5 of his decision, that there was a delay of more than seven years between the lodging of the application for leave to remain on 7 January 2009 and its determination on 1 March 2016. The judge says the following at paragraph 94:

"I note the delay in dealing with the appellant's application. However, any delay is simply one factor to be taken into account and I do not find it of significance in this appeal due to the nature and quality of the claimed family life. In all the circumstances, I would find that the decision to require the appellant to leave is proportionate."

13. In a further passage, this time under the sub-heading of "Private life", the judge says:

"... through the weight of years the appellant has established private life and the delay on the part of the respondent is a factor that needs to be taken into account when considering whether removal was necessary for the maintenance of immigration control and when considering proportionality. However, delay is simply one factor to be taken into account, which I have. Nevertheless, when considering all the matters before me, I find that the decision to remove is proportionate."

14. It is clear from those two passages that the issue of delay was in the forefront of the judge's mind throughout. The fact that the judge dealt with his conclusions in a brief manner does not amount to an

error of law. The judicial function is to balance and weigh all relevant factors. The judge evidently did this and came to conclusions which are clear, intelligible and supported by the evidence. I do not consider there to be any substance in this ground of appeal.

15. Finally, I come to Ground 5 which alleges a failure to consider family relationships as an aspect of private life. I have already cited in a different context certain parts of the decision where private life is expressly addressed. Mr Aitken criticises the judge for not factoring into the private life assessment the relationship he built up with his cousin and nephews, particularly during the seven years while his application was under consideration. I do not consider this to be a legitimate criticism of the judge. It is clear in the context of the decision as a whole that the judge had in his consideration all possible aspects of private life. His conclusion in that regard cannot be faulted. Repeating his earlier findings would have been mere surplusage within a sufficiently detailed decision.
16. The matters raised in the grounds, whether individually or cumulatively, do not serve to undermine the decision of the First-tier Tribunal. I can find no error of law, and in the circumstances I dismiss this appeal.

Notice of decision

- (1) Appeal dismissed;
- (2) No anonymity direction is made.

Signed *Mark Hill*

Date

1 May 2018

Deputy Upper Tribunal Judge Hill QC