



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/17280/2015

THE IMMIGRATION ACTS

Heard at Field House
On 25th January 2018

Decision & Reasons Promulgated
On 5th March 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE D E TAYLOR

Between

MD SHAHIDUR RAHMAN
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Z Khan of Universal Solicitors
For the Respondent: Ms K Pal

DECISION AND REASONS

1. This is the appellant's appeal against the decision of Judge Pullig made following a hearing at Hatton Cross on 27th July 2016.

Background

2. The appellant is a citizen of Bangladesh born on 20th August 1982. He entered the UK on 2nd September 2009 as a Tier 4 (General) Student with leave to expire on 1st January 2012. He was then granted further leave to remain on 25th July 2012 to expire on 28th August 2014. On the same day he made an application as a family member of an EU national which was refused on 8th November 2014. On 4th December he applied for a Tier 4 (General) Student extension without a CAS.

3. On 17th February 2015 he made an application on the basis of his private and family life, which was refused on 22nd April 2015 and it is this decision which was the subject of the appeal before the Immigration Judge.
4. The appellant attempted to have the appeal adjourned prior to the hearing on the grounds that he was unwell. The adjournment application was refused and the case was dealt with on the basis of submissions by the representative and the Presenting Officer.
5. The judge concluded that the appellant could not meet the requirements of the Immigration Rules. He then wrote

“Turning to the question of whether or not I should consider this appeal outside the Immigration Rules, as is said on a freestanding basis, I am guided by the Court of Appeal decision in SSHD v SS Congo and Others [2015] EWCA Civ 387 where it notes that the Immigration Rules, as far as this case is concerned at least, do not constitute a complete code but in order to consider Article 8 outside those Rules I need to have compelling circumstances in order for me to do so. I find that none have been put in evidence and thus I do not need to proceed further.”
6. He dismissed the appeal.

The Grounds of Application

7. The appellant’s former representatives sought permission to appeal on the grounds that the judge had failed to consider the appellant’s length of stay and his family life with his paternal cousin, a Spanish national, and had not given any reasons as to why his removal was in the public interest.
8. Permission to appeal was granted by Judge Murray on 29th November 2017. Judge Murray stated that the First-tier Tribunal’s conclusion that he should not consider Article 8 outside the Immigration Rules was arguably an error of law in the light of the Supreme Court’s judgment in MM Lebanon [2017] UKSC 10 in which the Supreme Court allowed the appeal of the appellant SS from SS Congo, concluding that the issue is always whether the authorities have struck a fair balance between the individual and public interests.

Submissions

9. Ms Pal accepted that the judge ought to have considered Article 8 but argued that the appeal was bound to fail since the judge could not have found family life in this case and any private life which he enjoyed had always been precarious. The failure to consider Article 8 outside the Rules was therefore immaterial.
10. Mr Khan submitted that the judge had a duty to consider all of the evidence in the round. The appellant had been in the UK for five years as a student and all of the subsequent applications had been made in a timely manner. The outcome should not be prejudged.

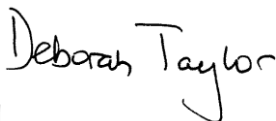
Findings and Conclusions

11. The judge did not materially err in law.
12. First, there was no evidence upon which he could rationally have concluded that the appellant enjoyed family life with his cousin. Although the appellant himself was said to be too unwell to attend their hearing, there was no reason at all why his cousin could not have attended in order to explain to the judge why there were more than the normal emotional ties between adults in this case so as to constitute family life.
13. So far as private life is concerned, the only evidence before the judge was that the appellant had been a student, but that he now had no basis upon which to stay in the UK. The judge was unarguably correct to find that there were no significant obstacles to the appellant's reintegration in Bangladesh. The private life which he enjoys with his friends has been established at a time when the appellant was in the UK on a temporary basis. It has always been precarious. He has made a series of unsuccessful applications and has no basis of stay in the UK within the Immigration Rules. There is no possible basis upon which this application could ever have succeeded.

Notice of Decision

14. The original judge did not err in law. His decision stands. The appellant's appeal is dismissed.

No anonymity direction is made.



Signed

Date 24 February 2018

Deputy Upper Tribunal Judge Taylor