Upper Tribunal
(Immigration and Asylum Chamber) Appeal Numbers: PA/02002/2019

THE IMMIGRATION ACTS

Field House	**Decision & Reasons Promulgated**
On 1st October 2019	**On 3rd October 2019**

Before

UPPER TRIBUNAL JUDGE LINDSLEY

Between

SHOFIK ALI
(ANONYMITY ORDER NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr R Wilcox, of Counsel, instructed by Londonium Solicitors
For the Respondent: Mr C Avery, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The appellant is a citizen of Bangladesh born in November 1975. He arrived in the UK in September 2006 as a visitor on his own passport with entry clearance, and overstayed. In 2009 he made an application to remain which was refused without a right of appeal. That decision was reconsidered and maintained in October 2010. In May 2013 the

appellant was discovered working illegally and served with removal notices. In March 2014 he was declared an absconder. On 21st December 2018 the appellant applied for asylum, and that application was refused in the decision of 18th February 2019. His appeal against that decision was dismissed by First-tier Tribunal Judge Rai in a determination promulgated on the 19th June 2019.

2. Permission to appeal was granted by Judge of the First-tier Tribunal Bristow on the 8th August 2019 on the basis that it was arguable that the First-tier judge had erred in law in failing to fully and lawfully consider the Article 8 ECHR claim.

3. The matter came before me to determine whether the First-tier Tribunal had erred in law.

Submissions – Error of Law

4. In the grounds of appeal and oral submissions from Mr Wilcox it is contend firstly that despite setting out that Article 8 ECHR rights were an issue to be determined in the appeal the First-tier Tribunal failed to make a reference to such issues in the legal framework section or in the findings and conclusions sections of the decision. There ought to have been consideration of this appeal with reference to the Immigration Rules at paragraph 276ADE(1)(vi) and also outside of those Rules. Consideration ought to have been given to his 12 years of residence; his family and friends in the UK; his broken ties with Bangladesh and problems he would have reintegrating with respect to work, social life, health care and accommodation; his good English and integration in the UK.

5. Secondly it is argued that the First-tier Tribunal erred in law in the approach to the credibility of the appellant, particularly in paragraph 53 of the decision in the consideration of s.8 of the Asylum and Immigration (Treatment of Claimants etc) Act 2004 and the delay in his claiming asylum, and further (set out as ground three in the written grounds) in failing to put reliance on other evidence (particularly the falsely brought criminal police case) apart from credibility in finding that the appellant was not entitled to international protection.

6. Mr Avery accepted that there was a failure to explicitly deal with Article 8 ECHR in the decision although he expressed doubt that this would actually have made any difference to the outcome. I did not need to call on him to make submissions on the second and third grounds.

7. After hearing the above submissions I informed the parties that I found there was an error of law with respect to Article 8 ECHR and that it would be just to have submissions on remaking on that issue and deal with it substantially. I informed the parties that I found that there was no error of law with respect to the First-tier Tribunal's decision on the asylum appeal. I set out my reasoning for these decision in writing below.

Conclusions – Error of Law

8. The First-tier Tribunal clearly understood that the appeal included a contention that removal of the appellant would be a breach of his Article 8 ECHR rights as well as a protection claim, see paragraph 3(e) and 13 of the decision. It is also clear that the respondent disputed that such a claim could succeed, see paragraphs 4(g) and (h) of the decision. There are no findings relating to Article 8 ECHR apart from indirect ones about his being in the UK for 12 years made in assessing the credibility of his asylum claim and I find that there was therefore no determination of this ground of appeal, and that this was an error in law.

9. The First-tier Tribunal found that a previous human rights claim made in 2009 had been made with false documents in a reasoned decision at paragraphs 19 to 28 of the decision. Consideration is given to the new documents supporting the current and different protection claim at paragraphs 29 to 40 of the decision, again lawful and proper reasons are given (including their being copies, the fact of internal inconsistencies in the documents, and the lack of evidence that they were obtain through a lawyer in Bangladesh) are given for finding that these documents cannot be relied upon when considered in the round. The First-tier Tribunal then quite properly considers other issues including vagueness and inconsistencies in the appellant's own evidence and inconsistency with the evidence of the appellant's brother-in-law, and the delay in making this asylum claim before concluding that the appellant's claim is not genuine at paragraph 54. It is not arguable that the First-tier Tribunal erred in law in the assessment of the appellant's credibility or the determination of the protection claim on the basis of the evidence before it.

Submissions Remaking Article 8 ECHR

10. Mr Wilcox submitted that there would be very significant obstacles to the appellant's integration if he were returned to Bangladesh as he has been away from his country of origin for a long time; he has lost opportunity to pursue his career in Bangladesh as he has been in this country; and would thus find it difficult to reintegrated within a reasonably short period of time. He accepted that the appellant had a mother, wife and children in Bangladesh in his village.

11. Mr Avery submitted that the appellant would have no problems reintegrating as his family lived in Bangladesh, and the witness in the asylum appeal had visited the family. Whilst he clearly had private life ties with the UK given his period of residence there was no reason why he could not re-establish a private life in Bangladesh.

12. At the end of the hearing I informed the parties that I found that the appellant's appeal could not succeed on Article 8 ECHR grounds, but informed them that I would set out my full reasons in writing.

Conclusions Article 8 ECHR

13. I find that that the appellant cannot succeed in his Article 8 ECHR appeal with reference to paragraph 276ADE(1)(vi) of the Immigration Rules. This is because there is no evidence that he would have very significant obstacles to integration if he returned to Bangladesh. The fact that he has lived in the UK for 13 years does not mean he would have problems reintegrating on his return. The evidence from his asylum interview is that he has a mother, wife and children in a village in Sylhet in Bangladesh, and that he was in touch with them. His witness, Mr Iqbal Ahmed, records having visited the appellant's wife in the village in 2016 in his witness statement, and notes that other relatives live there too. The appellant also says he speaks Sylheti and Bangla in his interview notes. The appellant was arrested whilst working in a restaurant in the UK in 2013. There is no reason, on the evidence before me, why he could not return to live with his family and do restaurant or other unskilled work in Bangladesh as he accepts that he knows the relevant languages and is fully entitled to do so as a citizen of that country. His political activities and problems have not been believed for credible reasons set out in the dismissal of the asylum appeal by the First-tier Tribunal so these issues cannot form any basis for finding that the appellant would have problems integrating.

14. If looked at on wider Article 8 ECHR grounds when considering the proportionality of the appellant's removal none of the appellant's ties with the UK can be given more than little weight because they have all been formed whilst he has been unlawfully present, applying s.117B(4) of the Nationality, Immigration and Asylum Act 2002. Although the appellant has indicated that he suffers from anxiety and stress he states that he is not on any medication and there is no evidence of any other treatment plan, and thus this does not therefore form any basis on which he should be allowed to remain in the UK particularly as there is also no evidence that these medical conditions could not be treated in Bangladesh. In all the circumstances of this case I find that given the significant weight that must be given to the public interest in maintaining immigration control that the removal of the appellant is an entirely proportionate interference with his private life ties with the UK.

Decision:

1. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law in relation to the Article 8 ECHR appeal only.

2. I set aside the decision in the Article 8 ECHR appeal only.

3. The dismissal of the protection appeal by the First-tier Tribunal is upheld.

4. I re-make the decision in the Article 8 ECHR appeal by dismissing it.

Signed: Fiona Lindsley Date: 1st October 2019
Upper Tribunal Judge Lindsley