Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/07030/2018

THE IMMIGRATION ACTS

Heard at North Shields	**Determination Promulgated**
On 1 March 2019	**On 6 March 2019**
Prepared on 1 March 2019	

Before

DEPUTY UPPER TRIBUNAL JUDGE JM HOLMES

Between

A. H.
(ANONYMITY DIRECTION MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms Cleghorn, Counsel, Londinium Solicitors
For the Respondent: Mr Diwnycz, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant, a citizen of Bangladesh, claims to have most recently entered the United Kingdom, legally, in November 2005, with entry clearance granted to him on 26 October 2005, following the issue to him of a work

permit. An application to extend his leave to remain outside the Immigration Rules was refused on 14 December 2006. He did not appeal, and, thus became an overstayer in November 2006.

2. Although this was not detected at the time, the Appellant used a different identity to apply for indefinite leave to remain on 5 April 2016. The application was rejected, because it was inconsistent with the immigration status he was then representing himself to hold, without other consideration of its merits. He then made an application for naturalisation as a British citizen on 9 January 2017. It was this which led to the detection as a forgery of the Bangladeshi passport he was relying upon, so that the application was refused on 24 April 2017, and the forged passport retained.
3. Somewhat surprisingly, no other action was taken by the Respondent in relation to the Appellant at that stage, so that he was neither prosecuted, nor made subject to immigration detention.
4. The Appellant was next encountered by chance whilst working illegally, in the course of an immigration enforcement visit to restaurant premises on 17 November 2017. Having been detained, he then made a protection claim based upon the risk of harm he said that he faced as a result of his political activities in Bangladesh prior to November 2005. That protection claim was refused on 21 May 2018, and the Appellant's appeal against that decision was then heard and dismissed by First Tier Tribunal Judge Fisher in a decision promulgated on 16 August 2018.
5. The Appellant's application for permission to appeal was granted by First-tier Tribunal Judge Keane on 3 October 2018.
6. No Rule 24 Notice has been lodged in response to the grant of permission to appeal. Neither party has applied pursuant to Rule 15(2A) for permission to rely upon further evidence. Thus the matter came before me.

<u>The challenge</u>

7. Ms Cleghorn, who was not the author of the grounds, accepted that although they purported to offer a number of challenges to the Judge's decision, there were in reality only two viable grounds. The second ground stood, or fell, with the first, and the third added nothing to either of those that had gone before.
8. Thus two complaints were advanced. First, that the Judge had given inadequate reasons for the wholescale rejection of the Appellant's evidence. Second, that the Judge's consideration of the Article 8 appeal was cursory at best,

and flawed for failure to recognise the "family life" the Appellant had established in the UK.

9. There is in my judgement no merit in either of these complaints. The first is in reality no more than a disagreement with the Judge's assessment of the weight that could be given to the evidence relied upon by the Appellant, dressed up as a complaint that he gave inadequate reasons for his decision. The second, as Ms Cleghorn accepted, is based upon a misconceived claim that the Appellant had established a "family life" in the UK, when that was not in fact his evidence.
10. The Appellant came before the Judge as a man of proven dishonesty, perfectly prepared to advance false identities to the Respondent, and to dishonestly claim an immigration status that he did not enjoy. That was the context in which the Judge was required to consider the evidence that the Appellant advanced before him in support of a protection claim.
11. The Judge was also perfectly entitled to find that the Appellant could and should have made that protection claim over twelve years earlier, if it were genuine, and arguably any other conclusion would have been perverse [20].
12. The Judge did not, as suggested, take those points, either alone, or together, as fatal to the Appellant's appeal. He considered the Appellant's evidence about the problems he had experienced in Bangladesh, and found that evidence to be incredible in its own right. The Appellant's own party had been in power in Bangladesh at the date the Appellant claimed to have faced problems from supporters of another party, and yet his explanation for not making any complaint to the authorities was that the authorities were from that same opposition party. He was cross-examined about the apparent inconsistency in this explanation, and the Judge recorded his conclusion that the Appellant was unable to give a satisfactory explanation for it. It is not enough for Ms Cleghorn, on instructions, to advance now an explanation for that inconsistency, that could and should have been offered to the Judge by the Appellant himself.
13. Nor did the Judge ignore the corroborative evidence that was relied upon by the Appellant, as given by Mr C. The Judge observed that he found Mr C's evidence to be of no assistance, as it was so vague that he was unable to attach any material weight to it. He set out the gist of what Mr C had to say [11-2], and it is plain that Mr C accepted before the Judge that he had no direct knowledge of what the Appellant had, or had not, done in Bangladesh prior to entering the UK. Indeed Mr C had never met the Appellant

until they were both living in the UK, and he claimed to have never had any knowledge of the Appellant's lack of immigration status in the UK. The Judge had the benefit of seeing, and hearing from, Mr C. He was well placed to assess the weight that could be given to Mr C's evidence, and it was open to him to make the assessment that he did, for the reasons that he gave.

14. In any event it is clear, when the decision is read as a whole, that the Judge did not reject Mr C's evidence simply because he was vague. The reality was that however vague he was, he had no direct first hand evidence to offer; at best he was simply repeating what he had been told by the Appellant himself, or others who had not given evidence. The Judge was obliged to consider Mr C's corroborative evidence in the light of the observations of Ouseley J in CJ (on the application of R) v Cardiff County Council [2011] EWHC 23, concerning the importance of the approach in Tanveer Ahmed v SSHD [2002] Imm AR 318. Corroborative evidence, whether documentary, or provided by a supporting witness, needs to be weighed in the light of all the evidence in the case. Provenance is as important in the case of documents, as will be first hand knowledge in the case of a witness. In neither case does corroborative evidence carry with it a presumption of authenticity, which specific evidence must disprove, failing which its content must be accepted. What is required is its appraisal in the light of all of the evidence, especially that given by the claimant. In my judgement, there was no error in the Judge's approach to the evidence of Mr C.
15. Accordingly, the Judge's rejection of the Appellant's evidence as untrue, on the applicable low standard of proof, was well open to him, and it was adequately reasoned.
16. Turning then to the Article 8 appeal. Notwithstanding the assertions that were made in the grounds of the appeal about a relationship, (repeated in the grounds of the application for permission to appeal) the Appellant confirmed to the Judge that he was a single man who was not in a relationship. He did not claim to have any children in the UK. Thus the claim advanced on his behalf that he had established a "family life" in the UK had no evidential basis. Indeed, Ms Cleghorn accepted before me that this was the case.
17. The nature of the Appellant's "private life" as established by the evidence before the Judge, was that he was keen cricketer, who had the benefit of a number of letters of support. He had lived in the UK for over twelve years. On the other hand there was an enhanced public interest in his removal, as a result of his dishonesty, and his illegal

working. He gained no benefit from the terms of s117 of the 2002 Act, since the "private life" he relied upon had been created whilst he was present in the UK unlawfully. On the evidence before the Judge it was plainly proportionate to remove him from the UK, as the Judge concluded. Indeed Ms Cleghorn accepted as much before me, and on reflection also accepted that she could identify no error in the Judge's approach to the Article 8 appeal.

Conclusion

18. Accordingly, notwithstanding the terms in which permission to appeal was granted, the grounds fail to disclose any material error of law in the approach taken by the Judge to the appeal that requires his decision to be set aside and remade.

DECISION

The Determination of the First Tier Tribunal which was promulgated on 164 August 2018 contained no material error of law in the decision to dismiss the Appellant's appeal which requires that decision to be set aside and remade, and it is accordingly confirmed.

Direction regarding anonymity – Rule 14 Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until the Tribunal directs otherwise the Appellant is granted anonymity throughout these proceedings. No report of these proceedings shall directly or indirectly identify him. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to proceedings being brought for contempt of court.

Signed

Deputy Upper Tribunal Judge JM Holmes
Dated 1 March 2019