Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/13019/2019

THE IMMIGRATION ACTS

Heard at Cardiff Civil Justice Centre	**Decision & Reasons Promulgated**
On 5 March 2020	**On 19 March 2020**

Before

DEPUTY UPPER TRIBUNAL JUDGE J F W PHILLIPS

Between

LEKHAN UDDIN
(NO ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms D Khatun, Taj Solicitors
For the Respondent: Mr C Howells, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision of Judge Richards-Clarke in which she dismissed the appeal of the Appellant, a citizen of Bangladesh, against the decision of the Secretary of State to refuse his application for leave to remain on human rights grounds.

2. The Secretary of State's decision was made on 12 July 2019. The Appellant exercised his right of appeal to the First-tier Tribunal. The appeal came before Judge Richards-Clarke on 13 September 2019 and was

dismissed. The Appellant applied for permission to appeal to the Upper Tribunal. His application was granted by Judge Simpson on 10 January 2020 in the following terms

> Permission to appeal is granted because the Decision arguably disclosed:
>
> (i) Failure overall to make findings and provide an adequacy of reasoning on matters in issue in the appellant's Art 8 human rights appeal, not involving deportation, within the Immigration Rules, 276ADE(1)(i)(iv), and outwith the Rules.
>
> (ii) All grounds otherwise arguable.

By a Rule 24 response dated 29 January 2020 the Respondent opposed the grounds of appeal and argued that the Judge directed herself appropriately.

Background

3. The history of this appeal is detailed above. The Appellant is a citizen of Bangladesh who claims to have been born on 29 January 1971 and to have arrived in the United Kingdom in 1992 with his parents and to have been granted indefinite leave to remain. In 2001 the Appellant's indefinite leave stamp was transferred to his second Bangladeshi passport and in 2005 he claims that he misplaced his passport. In 2012 the Appellant applied for British citizenship and this was eventually refused in 2014 because discrepancies between the details on the passport that the Appellant claimed to have lost and the information given in his citizenship application led the Respondent to the conclusion that the Appellant was guilty of deception. In particular the original passport showed a date of birth of 29 January 1974 with entry to the UK on 1 June 1985 whilst the application for citizenship showed a date of birth of 29 January 1971 with entry to the UK on 5 October 1992.

4. In refusing the application for indefinite leave the Respondent considered the application under paragraph 276ADE(1) of the Immigration Rules but decided that the Appellant had deliberately attempted to mislead a government department and therefore failed to meet the suitability requirements of paragraph S-LTR.1.6 of Appendix FM of the Immigration Rules and that due to the use of deception he also failed to meet the requirements of paragraph S-LTR.2.2(a). The Appellant exercised his right of appeal on human rights grounds.

5. In dismissing the appeal the Judge identified that the issues to be decided were whether the application fell to be refused for the stated reasons, whether the Appellant had lived continuously in the United Kingdom for 20 years or whether there would be very significant obstacles to his return to Bangladesh and whether the decision caused the Respondent to be in

breach of Article 8 ECHR. On all of these issues the Judge found against the Appellant.

Submissions

6. For the Appellant Ms Khatun said that the Judge has erred in the application of the law and referred to her written submissions. Referred by me to paragraph 276A Ms Khatun said she would not be pursuing the 276ADE submission as she accepted that 276A of Appendix FM made it clear that the Appellant had not spent 20 years continuously in the United Kingdom.

7. Ms Khatun said that as a result it was only Article 8 that was relevant. In this respect the Judge accepts that Article 8 is engaged and that it is a question of proportionality and that section 117B of the 2002 Act falls in the Appellant's favour. However, Ms Khatun also accepted that 117B factors are neutral. She said that when dealing with the public interest the Judge makes conflicting statements. At paragraph 18 the Judge finds that the Appellant's presence is not conducive to public good but at paragraph 23 she says the opposite. The Judge erred by mixing Appendix FM suitability requirements with Article 8. This is incorrect application of the law.

8. If Article 8 is engaged as accepted at paragraph 23 it was for the Respondent to show the interference was justified necessary and proportionate. Ms Khatun submitted that the Judge erred in not taking all the factors into consideration. The Appellant provided his reasoning for what was alleged against him. His residence is accepted at paragraph 19. Even with a break of 12 months he spent the majority of life in the UK. This has not been weighed in the balance.

9. Referring to SSHD v Kamara [2016] EWCA Civ 813 Ms Khatun said that integration was not just about going back and starting life afresh. It his ability to function and build new relationships and adapt to a different environment. Paragraph 19 of the decision is worded in similar terms to the refusal letter. This is not a broad evaluation. The Judge has failed to properly consider the Appellant's circumstances as set out in paragraph 13 of his statement.

10. For the Secretary of State Mr Howells referred to the Rule 24 response. He said that it was noteworthy that written and oral submissions did not pursue the point in paragraph 5 of the written grounds that the Judge erred in finding against the Appellant on suitability requirements at paragraph 18. If that is not challenged any error in respect of paragraph 276ADE (1) (iii) and (vi) is not relevant as all suitability requirements are not met. The Judge's findings are fully considered. It is clear that she did not find the Appellant's explanation of fraudulent submission of passport coherent or plausible.

11. The written grounds relied on Parveen v SSHD [2018] EWCA Civ 932 and paragraph 9 of the grounds asserts that the Judge failed to appreciate the obstacles to integration relied upon. The written submissions before Judge and the statement put the main obstacle to integration as the Appellant's medical condition. This is dealt with at the penultimate sentence of paragraph 19 of the decision. The Appellant does not bring forward evidence on health treatment in Bangladesh or difficulties in travel. In response to paragraph 8 of grounds it is clear that that the Judge was aware of the Appellant's claim that he arrived at age 21.

12. Today the focus is on Article 8. This is considered briefly but in an adequate and sustainable manner. The Judge refers to section 117B which Rhuppiah says are neutral factors. There was no reason why the failure to meet Immigration Rules should not be taken into account. The issue was private life not family life and no witnesses were called o the Appellant's behalf.

13. I reserved my decision.

Decision

14. As Mr Howells noted the grounds of appeal and the written submissions do not fully align. I will deal with the issues and assertions contained in both.

15. The first is straightforward and was accepted by Ms Khatun as being erroneous. The submissions suggest that the '20-year rule is not clear' on what period of time breaks continuity. Paragraph 276A in fact makes this abundantly clear.

    276A. For the purposes of paragraphs 276B to 276D and 276ADE (1).
    (a) "continuous residence" means residence in the United Kingdom for an unbroken period, and for these purposes a period shall not be considered to have been broken where an applicant is absent from the United Kingdom for a period of 6 months or less at any one time, …

    It is accepted that the Appellant was in Bangladesh from 29 March 2002 to 18 March 2003. This is a period of more than six months and the Judge did not err in finding that this broke his continuity of residence.

16. Turning to paragraph 276ADE (vi) upon which the application was based it is a prerequisite that the Appellant meets the suitability requirements of the Immigration Rules. In this respect the issue related to the circumstances under which his application for citizenship had been refused. On the basis that the Appellant attempted to mislead a government department using deception the Respondent considered that the Appellant did not meet the suitability requirements under paragraph S.LTR.1.6 and S.LTR.2.2(a). The Judge finds, at paragraph 18, that on the

evidence before her she is not satisfied that the Appellant has been able to satisfactorily explain the discrepancies that have led the Respondent to believe that he has fraudulently obtained a passport. She did not find his evidence in this respect coherent or plausible.

17. The grounds and written submissions do not take issue with the Judge's findings in this respect. In oral submissions Ms Khatun suggested that the Judge had not given full consideration to the Appellant's explanation and had merely followed the terms of the refusal letter. In my judgment there is no basis for this assertion. It is clear from paragraphs 17 and 19 of the decision that the Judge took the Appellant's explanation into account. It is in my judgement hardly surprising that the Judge did not accept that there was an innocent explanation for a situation where the Appellant's stated date of birth differed by three years and his entry to the UK by seven years. Indeed the only 'explanation' is contained at paragraphs 7 to 10 of the Appellant's witness statement which, in summary, say the discrepancy is down to a Home Office error and the Home Office has mistaken the Appellant for someone else.

18. Ms Khatun's submission was that it was only really the Article 8 assessment that was relevant to the appeal and that in this respect the Judge confused the suitability test under the Immigration Rules with the Article 8 proportionality assessment. In my judgement there was no such discrepancy. The Judge found at paragraph 18 that his presence in the United Kingdom was not conducive to the public good. The finding at paragraph 23 that he meets the public interest requirements of s117B (because he speaks English and is not reliant on public funds) is a wholly different test. The two tests are neither conflicting nor mutually exclusive. It is entirely possible, and indeed it is the case here, for a person who speaks English and is self-sufficient not to be of good character.

19. In reaching her conclusion in respect of Article 8 the Judge deals with matters briefly but in my judgment, there is no material error of law in her decision. The Appellant has no family life in the United Kingdom. It had been found that his presence in the UK was not conducive to the public good. Whereas he submitted in his appeal statement that he had friends in the UK none were called to give oral evidence. The Appellant witness statement is vague not saying when and where his late parents died, giving no details of his living circumstances in the United Kingdom, giving no explanation of where he lived or who he visited in the year he spent in Bangladesh and merely saying (at paragraph 12) "I have established my private life here with my friends". So far as his integration in Bangladesh is concerned there was a similar lack of fundamental detail in the Appellant's statement only stating that he has no family or other contacts in Bangladesh with no details given about his late parents circumstances or his contact with Bangladesh over the years. It would be impossible given the lack of any real detail for any Tribunal to reach the conclusion that the interference in the Appellant's private life caused by his removal would be disproportionate. There is nothing in the statement of evidence

to show that there is any significantly qualitative aspect to the Appellant's private life in the United Kingdom.

20. My conclusion from all of the above is that there is no error of law in the decision of the First-tier Tribunal that was material to the decision to dismiss this appeal.

Summary of decision

21. Appeal dismissed. The decision of the First-tier Tribunal stands.

Signed  Date: 10 March 2020

J F W Phillips
Deputy Judge of the Upper Tribunal