IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-002430

First-tier Tribunal No:
HU/55787/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 23rd of November 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE SYMES

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

MD ABU TABEL
(ANONYMITY ORDER NOT MADE)

Respondent

Representation:
For the Appellant: Mr Avery
For the Respondent: Mr Shah

Heard at Field House on 14 September 2023

DECISION AND REASONS

1. This is the appeal of the Secretary of State against the First-tier Tribunal's decision to allow the appeal of Md Abu Taleb, a citizen of Bangladesh born 24 December 1979, brought on the grounds of having established twenty years of unlawful residence in the UK.

2. Mr Taleb has a significant immigration history. Judge Amin dismissed an appeal brought on private and family life grounds on 16 September 2016 based on his relationship with a Ms Begum with whom he had had a son who he occasionally visited; at which Mr Taleb represented himself having been unable to continue retaining his solicitors due to

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lack of funds. He had family in Bangladesh by way of a brother and his mother. Judge Amin concluded that he lacked regular access to the child beyond intermittent visits and noted that his claim to have resided in the UK since 2000 was unsupported by evidence. His UK ties were limited and the refusal of his application was not disproportionate.

3. Mr Taleb subsequently claimed asylum and the application having been refused, brought an appeal which was dismissed by Judge Housego on 15 May 2017, who concluded that Mr Taleb's account of facing persecution due to his membership of the BNP was fabricated, placing weight on the absence of supporting witnesses who could attest to his asserted attendance at demonstrations over the previous sixteen years.

4. At times in the course of the previous appeal proceedings the Secretary of State has contended that Mr Taleb has a criminal history, which he has consistently denied. The Secretary of State no longer maintains that allegation having failed to establish any connection between Mr Taleb and the asserted convictions.

5. Before Judge Morgan against whose decision the present appeal arises Mr Taleb maintained he had entered the UK via Ireland in 2000. The central issue on the appeal was agreed as being whether the Appellant had built up twenty years of continuous residence in the UK, a matter that if affirmatively established would be effectively decisive of his appeal. Judge Morgan concluded that the Appellant's evidence was broadly credible and consistent, both internally and when measured against the available documents, and stood up well to lengthy and robust cross examination. His evidence was corroborated by that of his brother and aunt with whom he had lived since arriving in the UK. Judge Morgan accepted their evidence that the Appellant had arrived here in 2000 and had not subsequently left the country.

6. The Secretary of State appealed on the grounds that the First-tier Tribunal had erred in law by failing to treat the material now provided on the appeal with appropriate circumspection given it could have been produced at an earlier appeal hearing. The Judge was wrong to state that the Secretary of State was not relying on the principles articulated in *Devaseelan* [2002] UKAIT 000702. The bare finding that Mr Taleb's evidence was credible because of its consistency failed to do justice to the Home Office case.

7. Permission to appeal was granted on 4 July 2023 by the First-tier Tribunal on the basis that the Secretary of State's case based on previous findings adverse to Mr Taleb had not been given adequate consideration.

8. I do not consider the Secretary of State's appeal has any real merit. I do not believe her case was materially misunderstood. Whatever might have been said by the Presenting Officer below, Judge Morgan was clearly cognisant of the *Devaseelan* principles stating

> "I consider the two previous appeal decisions, see above, of little assistance because they were determining different issues. However I accept Mr Momen's submission that the adverse credibility findings are relevant and potentially damage the appellant's credibility. In my judgement they do require a greater scrutiny of the appellant's evidence however it does not inevitably follow from this that the appellant has not been in the United Kingdom for 20 years as he maintains. Mr Momen, who represented the respondent, quite correctly my judgement, explicitly accepted that it was not relying on the *Devaseelan* principles in regards to the previous decisions."

9. From this passage it is very clear that Judge Morgan was aware that the adverse credibility findings made on the Appellant's previous testimony were potentially relevant to the present appeal; indeed, beyond this, that it was necessary to give greater scrutiny to his evidence than might otherwise have been the case (as *Devaseelan* puts it, affording circumspection to relevant evidence not previously produced but ostensibly previously available). One rather suspects that any concession vis-á-vis *Devaseelan* would have been limited to the relevance of the conclusions on the asylum and human rights claims which underlaid the two previous appeals (ie as to the Appellant's family life ties in the UK and his entitlement to refugee status), rather than being based upon any disavowal of the relevance of any findings that veered upon the salient issue in the present appeal.

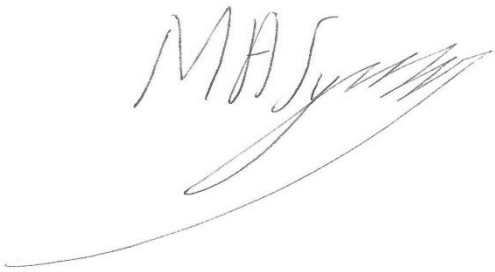
10. The Judge below was also fully aware of the scope of the evidence before him and the extent to which further evidence was now before him than previously adduced. Tellingly the Secretary of State has not identified any particular implausibility or discrepancy in the evidence that was before the First-tier Tribunal. In particular Judge Morgan was aware of the supporting evidence now available that went significantly beyond that available to the previous Tribunals. Before Judge Amin in September 2016 Mr Taleb had limited incentive to focus his case on having entered the UK in 2000, as he was at that time well short of the twenty-year benchmark; besides, he was unrepresented, which casts doubt on whether he would have appreciated what evidential expectations would arise in adversarial proceedings (indeed he turned up at that hearing with a set of new documents not appropriately filed and served). Judge Housego's finding that there was inadequate evidence of sixteen years of BNP activities was focussed on the evidence available to corroborate his asylum claim, a claim not focussed on proving two decades of residence. Mr Taleb's immediate family did not give evidence in the previous appeals but gave evidence before Judge Morgan consistent with Mr Taleb's own evidence, which "stood up well to lengthy and robust cross examination."

11. I accordingly conclude that there is no material error of law in the approach of the First-tier Tribunal.

Decision:

(1) The First-tier Tribunal made no material error on points of law.

(2) The appeal is dismissed.



Deputy Upper Tribunal Judge Symes
Immigration and Asylum Chamber

15 November 2023