



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: AA/08428/2013

THE IMMIGRATION ACTS

Heard at Field House

**On 27 November 2013
Prepared 27 November 2013**

**Determination
Promulgated**

On 3 December 2013

Before

UPPER TRIBUNAL JUDGE MCGEACHY

Between

SMHA

and

Appellant

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Martin, of Counsel instructed by Messrs Lawland Solicitors

For the Respondent: Mr P Nath, Senior Home Office Presenting Officer

DECISION AND DIRECTIONS

1. The appellant is a citizen of Bangladesh born on 25 February 1953. He appeals, with permission, against a decision of Judge of the First-tier Tribunal Katherine Gordon who in a determination promulgated on 16 September 2013 dismissed the appellant's appeal against a decision of the Secretary of State to refuse leave to remain.

2. In a letter DATED 2 September 2013 refusing the appellant's application the respondent stated that the appellant had first come to the attention of the Home Office when he had endeavoured to have an ILR stamp in his old passport transferred to a new passport. It was considered to be a fraudulent stamp. The appellant had shortly thereafter been encountered on a police visit to an address in Bookham, Surrey and, having being served with removal directions on 27 July 2013, had applied for leave to remain.
3. It appears that that was followed by a request that the appellant be granted leave to remain under the long residence provisions.
4. The Secretary of State treated the appellant's initial application for leave to remain as an application for asylum and set out detailed reasons for refusing that in the letter of 2 September. The letter also noted the appellant's claim that he had arrived in Britain as a visitor in 1973, had travelled in and out of Britain thereafter until 1989 when he had been granted indefinite leave to remain, the stamp being placed in his passport at Heathrow.
5. The appellant claimed that a further indefinite leave to remain stamp had been put into his passport in 1999 and that thereafter he had travelled to Bangladesh on a number of occasions in 2001, 2002 and 2003. The appellant however did not have the originals of the passports which he had used as he claimed that these had been lost. Instead he produced copies of the passports with copies of the stamps submitted therein.
6. Not only did the Secretary of State refuse the appellant's application for asylum but also found that he did not qualify for leave to remain on the basis of his rights under Article 8 of the ECHR nor, in a separate decision that he was entitled to remain under the long residence provisions.
7. The judge dealt with the appeal under the Fast Track procedure. She first considered the issue of the various stamps in the appellant's passport. The appellant claimed that he had had no problems travelling in and out of Britain in 2001, 2002 and 2003. The judge considered the copy passports which he had submitted. She concluded in paragraph 37 of the determination that the appellant's evidence was not credible and further concluded that the respondent had discharged the burden of proof and had been correct to state that the indefinite leave to remain stamp had been obtained fraudulently. She stated that she considered the appellant had never obtained any form of leave to remain in Britain.
8. In paragraphs 39 onwards she set out her findings of fact. She stated there was evidence of the appellant's presence in Britain in about January 1993 and that she found the appellant had been in Britain since January 1993. However she repeated that she did not consider the copy passports in the appellant's bundle to be reliable.

9. In paragraph 42 she stated that she found that the appellant had been in Britain for twenty years, stating “one requirement of the Immigration Rules at paragraph 276ADE is satisfied”. However she said that she should also consider whether or not the appellant had any ties in Bangladesh. She considered that the appellant still had ties there and indeed still might well have a share in property there. She concluded that she found that the appellant was not entitled to proceed “on the new long residence Rules set out in the Immigration Rules paragraph 276ADE”.
10. She went on to consider the rights of the appellant under Article 8 of the ECHR. She considered that he was exercising a rather weak private life here and that his removal would not be disproportionate.
11. She therefore dismissed the appellant’s appeal.
12. The grounds of appeal stated that the judge had erred in her reading of paragraph 276ADE stating that it was wrong that she should have gone on to make a finding on whether or not the appellant had any ties in Bangladesh.
13. It was also claimed that she had failed to disallow prejudicial evidence as certain documents placed before her by the respondent had not been served before the hearing. It was also asserted that she had erred in her assessment of the burden of proof upon the appellant when she had found that he had been using a fraudulent passport.
14. Further grounds of appeal argued that the appeal should not have remained in the fast track. That assertion is undoubtedly correct but in any event the appeal was taken out of the fast track before the hearing before me.
15. Mr Nath accepted that there were errors of law in the approach of the judge to the application of Rule 276ADE. The judge had clearly mixed up the provisions of sub-paragraph (iii) and sub-paragraph (vi) – that last sub-paragraph relating to an appellant having no ties with the country to which he would have to go if required to leave Britain – when these are alternatives as shown by the “or” after sub-paragraph (iii).
16. However sub-paragraph 276ADE(i) states that the applicant would meet the requirements of the application for leave to remain if he “does not fall for refusal under any of the grounds in Section S-LTR1.2 – S-LTR2.3 and S-LTR3.1 in Appendix FM. The reality is that Section S-LTR 2.2 refers to an applicant normally being refused where (a) false information, representations or documents have been submitted in relation to the application (including false information submitted to any person to obtain a document used in support of the application) or (b) there has been a failure to disclose material facts in relation to the application. The judge again clearly erred in law in not considering that sub-paragraph – it may

be indeed that that sub-paragraph was a reason for her finding that the appeal should not succeed.

17. While Mr Martin argued that the finding of the judge that the appellant had lived in Britain for twenty years was sufficient for me, having found a material error of law in the determination to allow the appeal, I do not consider that there is sufficient logical clarity in the determination for me to find that that would be an appropriate course of action.
18. The reality is that the judge, who had clearly noted the appellant's evidence that he had travelled outside Britain and indeed had not been entitled to use a passport with an indefinite leave to remain stamp, and also found that his evidence was not credible had given no reasons for then concluding that the appellant had been in Britain for twenty years and therefore met a requirement of paragraph 276ADE.
19. For the above reasons, having found that there is a material error of law in this determination and I set aside the determination. I direct that the appeal should proceed to a hearing on all issues. It will be necessary for the Tribunal hearing the appeal - I consider that the appeal should be heard by a Designated Judge of the First-tier Tribunal - should focus on the issue of whether or not the appellant meets the requirements of Rule 276ADE and in so doing consider the provisions of Rule S-LTR2.2 of Appendix FM and therefore make clear findings on whether or not a false document had been submitted in relation to the application which was originally made by the appellant.
20. I further consider that this appeal should now be remitted to the First-tier Tribunal as I consider that the requirements of the Senior President's Practice Statement Paragraph 7.2(a) are met.

Decision

The appeal is allowed to the limited extent that it is remitted to the First-tier tribunal to be heard afresh on all issues.

Directions

The appellant's representatives will serve on the Tribunal and on the respondent an indexed and paginated bundle of all documents including each and every page of the appellant's claimed copies of the appellant's four passports within 14 days from the date of promulgation of this decision.

Signed

Date

Upper Tribunal Judge McGeachy