



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

Appeal Number: AA/08428/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 12th September 2014**

**Determination
Promulgated
On 16th October 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE MCCLURE

Between

**MR SHAH MD HUSSAIN AHMED
(NO ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Martin Counsel instructed by Lawland Solicitors
For the Respondent: Mr Parkinson, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, Mr Shah MD Hussain Ahmed, date of birth 25th December 1953, is a citizen of Bangladesh. Having considered the facts there is no need for an anonymity direction.

2. This is an appeal by the appellant against the determination of First-tier Tribunal Judge Del Fabbro promulgated on 9th May 2014, whereby the judge dismissed the appellant's appeal against the decision of the respondent dated the 3 September 2013 to remove the appellant from the United Kingdom under section 10 of the 1999 Act.
3. By decision made on 29 May 2014 permission to appeal to the Upper Tribunal was granted. The case appears before me to determine in the first instance whether or not there was a material error of law in the original determination.
4. The grounds of appeal seek to argue: --
 - a) The judge erred by failing to make findings on central parts of the case, specifically whether the appellant had been in the UK from 1993 onwards.
 - b) The judge erred in his approach to the issue of false documents. Having acknowledged that the respondent had to prove that the stamps on the passport were not genuine, as there was no report analysing the stamps and no positive evidence otherwise to prove falsity, the burden of proof had not been discharged.
 - c) The judge failed to make findings as to whether or not the appellant had been in the United Kingdom since 1993.
 - d) The appellant had produced evidence to confirm he had been in the United Kingdom for 30 years.
 - e) The judge has failed to specify which provision under S-LTR .2.2 to 2.4 had not been met.
 - f) The judge has failed to give adequate reasons for the conclusions reached under paragraph 41, wherein he found that the appellant still had ties to Bangladesh.
5. The appellant's full immigration history is analysed in detail in the letter of refusal of 2 September 2013. The appellant claimed to have entered the United Kingdom in 1973. At that stage he claims to have entered as a visitor with a visa valid for six months. He suggested that at that time he could re-enter without a further visa and without any further checks. The appellant claims that that system continued until 1985.
6. The appellant claims to have continued entering and leaving until 27 June 1989, when his passport was stamped with Indefinite Leave to Remain. The appellant claims to have continued to travel to the United Kingdom from Bangladesh on a number of occasions.
7. The appellant claims that in September 1999 after obtaining a new passport he attended at the Immigration Offices in Croydon and the indefinite leave status was endorsed into the new passport. There was no

evidence to confirm such appointment other than a photocopy of the appellant's passport.

8. To substantiate parts of his case the appellant has produced photocopies of what he claims to be his original passports. He claims otherwise that his original passports, all four of them, have been stolen. The photocopies of the passport are in the main the evidence relied upon to show that the appellant has been given indefinite leave and has been in the UK continuously since 1993.
9. On the appellant's account he has admitted travelling between Bangladesh and the United Kingdom on a number of occasions up to 2003. He claims that in 2003 there was a breakdown of his relationship with his family and he has not been back to Bangladesh.
10. It is the respondent's case that the appellant has never been granted indefinite leave and that given the evidence otherwise the judge was entitled to conclude that he was not satisfied that the appellant had been in the UK continuously since 1993.
11. As part of the grounds of appeal it is asserted that in paragraph 37 of the determination the judge has rejected the stamps in the appellant's passport. It is asserted that no evidence was submitted on the part of the respondent to show that the stamps in the appellant's "passports" were not genuine.
12. That seems to ignore what was being produced before the judge were photocopies and not the originals. It also seems to ignore that the appellant's account clearly shows that at least one of the stamps on the photocopies produced was not genuine.
13. As identified by the judge in paragraph 37 of the determination the appellant's account was not consistent with a stamp in one of the photocopies. The stamp on the photocopies was to the effect that the appellant had been given indefinite leave in Manchester in 1976. The appellant had stated that he was first granted indefinite leave in 1989. He had not been granted indefinite leave in 1976. That stamp cannot be genuine and the photocopy is either a photocopy of a false document or the photocopy itself has been altered in some way.
14. Whilst the judge had noted in paragraph 35 that the burden was on the respondent to prove the falsity of a document, on the appellant's own evidence that stamp and document were not genuine. No explanation had been given as to how the photocopy could have a stamp on it. As only photocopies had been produced, the original could not be checked on this or any other passport. It did not need the respondent to produce evidence to show that document was not genuine. On the appellant's own account it was not genuine. The judge was entitled to make a finding based on the evidence presented.

15. In the light of that the requirements for refusing this matter on Suitability grounds under S-LTR.2.2 were made out as found by the judge in paragraph 38 of the determination. Whilst the judge has referred to paragraphs S-LTR.2.2-2.4, it is clear that the provisions of paragraph 2.2 are engaged on the facts. By reason thereof the judge was entitled to dismiss the appeal under the immigration rules specifically appendix FM.
16. It has otherwise been asserted that it was required of the judge to make findings of fact as to other parts of the appellant's account. In assessing the credibility of the appellant the judge took into account that there was clearly a false document that had been produced. The judge was therefore not satisfied that he could rely upon the appellant's account otherwise.
17. There were clearly periods of time when the appellant was not in the United Kingdom. The judge found that he was not satisfied that the appellant had been continuously in the United Kingdom as required by the rules. Again that was a finding of fact that the judge was entitled to make on the basis of the evidence. That finding was sufficient to deal with the appellant's claim.
18. The judge has gone on to consider Article 8 private and family life outside the rules. The judge has carefully assessed all the circumstances and has given valid reasons for coming to the conclusion that he did.
19. In the circumstances there is no material error of law in the determination. I uphold the decision to dismiss this matter on all grounds.

Signed

Date

Deputy Upper Tribunal Judge McClure