



**Upper Tribunal
(Immigration and Asylum Chamber)**
Appeal Number:

IA/36526/2013

THE IMMIGRATION ACTS

Heard at: Field House

Determination

On: 25th June 2014

Promulgated

On 26 June 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE BRUCE

Between

**Sirajul Islam
(no anonymity order made)**

Appellant

and

Secretary of State for the Home Department

Respondent

For the Appellant: Mr Biggs, Counsel instructed by Universal Solicitors
For the Respondent: Mr Kandola, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellant is a national of Bangladesh date of birth 11th March 1971. He appeals against the decision of the First-tier Tribunal (Judge Hawden-Beal) to dismiss his appeal against the Respondent's decision to make directions for his removal from the United Kingdom pursuant to section 10 of the Immigration and Asylum Act 1999. That decision followed from the Respondent's rejection of the Appellant's application for indefinite leave to remain on grounds of his long residence in the United Kingdom.
2. The Appellant had claimed to have lived in the UK since 1995/6. The

Respondent did not believe that to be the case, since the Appellant could only produce documentary evidence dating back to 2001. On appeal Judge Hawden-Beal agreed. There was not the documentary evidence to cover the entire period claimed, and he could place little to no weight on the Appellant's own evidence since he had entered the UK illegally and worked without permission; by the same logic the evidence of the numerous witnesses was discounted since they had known this to be the case. Judge Hawden-Beal noted that the Appellant had produced a copy of a Bangladeshi passport which had been renewed in the UK in 1995, but since the pages with stamps were missing he could not be satisfied that the Appellant had in fact been here continually since that time. In the alternative Judge Hawden-Beal found that if the Appellant has been here since 1995 then it would be contrary to the public interest to allow him to stay because he has worked illegally and used false documents. On the same basis the Article 8 ground of appeal was rejected, the Tribunal finding there to be no compelling reasons why the Appellant should be given leave to remain.

3. On the 27th February 2014 First-tier Tribunal Judge Bird granted permission to appeal to the Upper Tribunal. On the 1st May 2014 Deputy Upper Tribunal Judge Davey found the decision to contain errors of law such that it should be set aside. Those errors were:
 - i) The First-tier Tribunal had failed to take into account material evidence which was before it. The Appellant had produced a number of letters from "responsible councillors or bodies" who confirmed that the Appellant had been known to them since 1995/6. This evidence was not addressed in the determination.
 - ii) In its finding that allowing the Appellant to stay even if he had accrued 14 years long residence was contrary to the public interest the Tribunal had misconstrued the terms of the (then applicable) paragraph 276B. It was implicit in that paragraph of the Rules that applicants would have been living in the UK illegally.
4. Judge Davey set the decision aside in its entirety. It subsequently proved difficult to have the matter relisted before Judge Davey and a transfer order was therefore obtained.
5. At the hearing before me Mr Biggs indicated that there were eleven witnesses in all, a number of whom would be giving evidence through an interpreter. The time allocated for this appeal in my list was three hours. I did not think it likely that I would be able to hear evidence from eleven witnesses in that time. The determination had been set aside by Judge Davey in its entirety and was to be heard *de novo*. The parties and I agreed that in the circumstances, having regard to the extent of judicial fact finding required, that this was an appropriate matter to be remitted to the First-tier

Tribunal.

Decisions

6. The decision of the First-tier Tribunal contains an error of law and it is set aside.
7. The appeal is to be heard in Birmingham IAC First-tier Tribunal on the 29th July 2014. It has been listed for a whole day with a Sylheti interpreter.

Deputy Upper Tribunal Judge Bruce
25th June 2014