



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

Appeal Number: IA/41760/2013

THE IMMIGRATION ACTS

Heard at Field House

On 22 July 2014

**Determination
Promulgated**

On 29 August 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE HANBURY

Between

MR MAHFUZAL ALAM

and

Appellant

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Ali of The Law Advisers

For the Respondent: Mr Avery, Home Office Presenting Officer

DETERMINATION AND REASONS

Introduction

1. I have carefully considered this matter and may I say at the outset that these are not easy cases to deal with. There are a large number of them coming before the Tribunal at the moment and obviously each case turns on its own facts but the important points to make, in summary form, are that the appellant (by which description I will refer to Mr Alam throughout this determination, who is in fact the respondent before this Tribunal) has

been in the UK since the year 2000 but on the other hand a long period of his presence in the UK has been for the purposes of exercising his appeal rights and he has not been in the UK for the whole of that period. His original basis for coming here was as a visitor in 2000. He was subsequently granted permission to remain in the UK for the purposes of private medical treatment and his last basis for being here was that of a student visa which, it appears, followed a period of six months in Bangladesh in 2008. He returned to the UK in October 2008 with entry clearance as a student. That student visa was only valid until 30 September 2012. Therefore, since 30 September 2012 there has been no basis for the appellant to be in the UK other than on the freestanding basis that he qualifies for a private or family life under Article 8. It was on that basis that he succeeded before the First-tier Tribunal.

2. The basis of the Article 8 claim was set out in the Immigration Judge's determination. It is right to say that she rejected the application for further leave to remain on the basis of Article 3 being satisfied but she was persuaded that the appellant should be entitled to ongoing treatment under the National Health Service which is not a basis for leave to remain in the UK under the Immigration Rules. The Immigration Judge was also persuaded, having heard evidence from Ms Hobbs, that the appellant had formed a relationship with that lady and that it would be unlawful to interfere with that relationship by returning the appellant to Bangladesh. This was notwithstanding the finding that she made that the appellant would be easily able to get a job in Bangladesh and the fact that he had actually returned to Bangladesh as recently as 2008.

Discussion

3. The starting position for these cases is to consider the requirements of the Immigration Rules. Ms Ali, who has ably represented the appellant today, I think accepts that the case of **Gulshan [2013] UKUT 00640 (IAC)** essentially says, at least as it is summarised in the grounds of appeal, that there must be compelling circumstances not recognised by the Immigration Rules for permitting an applicant to remain in the UK beyond the requirements of the Immigration Rules. The Immigration Rules clearly recognise the need to travel to the UK to take advantage of superior medical treatment because one can come to the UK and one can remain in the UK for that purpose provided it is paid for privately.
4. The Rules also recognise the need to remain in the UK for the purposes of a private or family life but only if you have been in the UK for a greater number of years than this appellant has been in the UK for.
5. Ms Ali, who represented the appellant at the First-tier Tribunal as well as before this Tribunal, accepted that this appellant would not qualify under the private or family life provisions of the Rules, either as they stood before or after 9 July 2012. Therefore, it seems to be common ground between the appellant and the respondent but for the human rights claim

the appellant would not qualify under the Immigration Rules on to remain on the basis of his long residence in the UK, even though he had formed a private or family life here.

Conclusions

6. Whilst I accept the findings of fact of the First-tier Tribunal, the case of **Gulshan** provides guidance on the correct application of Article 8 to those facts. Before the First-tier Tribunal could embark on a free-standing consideration of Article 8 there had to be compelling circumstances not recognised by the Immigration Rules. The appellant's circumstances appear neither compelling nor are they unrecognised by the Rules.
7. The need for respect for one's private or family life formed in the UK is recognised by the Rules but not in the circumstances which the appellant finds himself in. Since December 2012 the appellant has had a relationship with Ms Hobbs and they have subsequently moved in to live with one another, but I take into account that that relationship has developed at a time when both parties would have known of the appellant's precarious immigration status within the UK. Indeed if I return to the history, the latest application for indefinite leave to remain was, in fact, submitted in July 2012 and the refusal was in July 2013. Therefore the relationship with Ms Hobbs developed between those dates.
8. I do not consider the relationship with Ms Hobbs qualifies as an exceptional or compelling circumstance justifying departure from the requirements of the Immigration Rules. There are undoubtedly difficulties and hardships involved in the appellant having to return to his own country of Bangladesh and these are recognised in paragraph 23 of the determination. They particularly relate to the difficulties the appellant will experience in obtaining the quality of medical attention in Bangladesh which is available in the UK at no cost at the point of delivery. However, the true purpose of Article 8 is to prevent the respondent acting in a way which interferes unlawfully with a person's private or family life not to enable an individual to choose which country to conduct his family or private life in or to improve his life chances generally. I accept that in some cases the respondent not only has a negative obligation not to unlawfully interfere with that private or family life but may have to positively facilitate private or family life which did not previously exist within the UK. However, this does not appear to be such a case. I am satisfied, based on the test laid down in the case of **Gulshan**, which was decided last year by the Upper Tribunal, that there are no compelling circumstances which would justify departure from the requirements of the Immigration Rules here and for that reason the Immigration Judge's analysis and conclusions appear to amount to a material error of law.
9. Given that there is no challenge to the fact-findings of the judge and all those findings remain in place it nevertheless seems to follow from those findings that the appellant does not satisfy either the requirements of the

Immigration Rules or the requirements of a freestanding Article 8 claim which must be advanced in the exceptional circumstances not recognised by those Rules

Decision

10. For these reasons the respondent's appeal against the decision of the First-tier Tribunal is allowed. I find there to be a material error of law in the decision of that Tribunal. I leave the fact-findings in place but I substitute the decision of the Upper Tribunal which is to dismiss the appellant's appeal against the decision of the Secretary of State to refuse further leave to remain in the UK.

Signed

Date

Deputy Upper Tribunal Judge Hanbury