



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

Appeal Number: IA/42185/2013

THE IMMIGRATION ACTS

Heard at Field House

On 25 July 2014

Determination

Promulgated

On 8 August 2014

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

MR S M SAIFUR RAHMAN

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms D Qureshi, Counsel, instructed by Taj Solicitors

For the Respondent: Mr S Whitwell, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Bangladesh, born on 15th May 1985. He appeals with permission against the determination of First-tier Tribunal Judge Paul promulgated on 10 March 2014 in which he dismissed the appeal against the respondent's decision made on 24 September 2013 to remove the appellant from the United Kingdom.
2. At a hearing before the Upper Tribunal held on 12 June 2014, Judge Paul's decision was set aside and directions for it to be remade at a hearing on

25 July 2014 were given. A copy of that decision is attached to this determination as an annex.

3. The appellant's maternal grandparents live in the United Kingdom, as does his mother and two of his brothers. The appellant's mother has lived here for several years as do her brothers. Two of the appellant's brothers live in the United Kingdom including the youngest, born here in 2005, who is a British citizen; another brother lives in Bangladesh with his father. Although the appellant's father (and the appellant and his brothers) made applications to come to the United Kingdom to join his mother in 2002, that application was refused as was a further application made by the appellant's father in 2013.
4. After the appellant's leave to remain had been curtailed, he was unable to make an application for further leave to remain as a student as his family were no longer able to support him financially to the necessary extent of paying fees. He therefore applied for leave to remain outside the Immigration Rules on the basis that he is dependent on his mother and his grandparents are dependent on him. It is also his case that he has lost ties to Bangladesh during the years he had come here.
5. The appellant's case is that he is entitled to leave to remain pursuant to paragraph 276ADE of the Immigration Rules and that his removal would be in breach of the United Kingdom's obligations pursuant to Article 8 of the Human Rights Convention given that he has a family and private life established here and the interference caused with that by removing him is disproportionate.
6. The respondent refused the application concluding:-
 - (i) that Appendix FM was not engaged as the family life claimed to exist fell outside the parameters of those provisions;
 - (ii) that the appellant did not meet the requirements of paragraph 276ADE (vi) as he has not shown that he has no ties to this country; and,
 - (iii) that the application did not raise or contain any exceptional circumstances which warranted consideration outside the Immigration Rules
7. When the appeal came before First-tier Tribunal Judge Paul he heard evidence from the appellant, the appellant's mother, the appellant's maternal grandmother and the appellant's uncle, Asadur Rahman. Judge Paul noted [25] that it had been conceded that the appellant could not succeed under Appendix FM in relation to family life. The judge found:-
 - (i) that the evidence given in relation to the family in Bangladesh had been embellished, the evidence that the family had been trying to get into the country for many years not being evidence of a family that had disintegrated and the appellant's evidence had not

persuaded him that there was no family life for the appellant in Bangladesh;

- (ii) that the appellant came here as a student expecting to return and in that context he was not satisfied that interference with family life is established or, were he wrong about that, that removal would be disproportionate having had regard to the factors set out by the respondent's representative;
- (iii) that there was no compelling evidence to show that the appellant plays such a significant role in the life of his mother, brother and grandparents so as to "trump any ongoing insignificant family life in Bangladesh".

8. The Upper Tribunal concluded that it was not possible to discern from the determination whether Judge Paul had concluded that a family life exists between the appellant, his brother, mother and grandparents in this case or not, there being confusion between the specific meaning of family life for the purposes of Article 8 and the wider, more general use of the term. On that basis that part of the decision relating to whether there the appellant had formed a family life was set aside; the finding by Judge Paul that the appellant did not meet the requirements of paragraphs 276 ADE of the Immigration Rules was preserved.
9. When the matter reconvened I heard submissions from both representatives. Ms Qureshi submitted that the appellant has a strong bond with the family in the United Kingdom consisting of his mother and younger brother, aged 9, as well as his older brother who is in full-time education. She asked me to note also that he lives in the same household as the mother and brother and that he looks after his grandparents and has other close relatives including uncles, aunts and so on. She accepted that he is 29 years old but that he has a strong bond and needed to support his mother who is suffering from depression and that his removal would have a detrimental affect on her and on his younger brother. She submitted it would be difficult for him to return to Bangladesh and that his siblings are not able to support the younger brother and mother and that the impact on the youngest child will not be in accordance with current case law. She submitted also that family life as it exists could not exist outside the United Kingdom.
10. Mr Whitwell submitted that the applicant had been here for a relatively short period and that he had failed to establish there was in fact a family life in this case between himself and his mother and his brother given there was no medical evidence to support that she was suffering from depression and that despite that she appeared to be continuing to work full-time. He submitted further that there was no separate evidence of the grandparents being in ill-health and so the extent to which they needed rather than desired assistance had not been shown. He asked me to note also that there were uncles of the appellant who could help and that there was no evidence regarding the position of the other brother, aged 27, who

has limited leave to remain here as a student. He submitted that there was nothing in the evidence before me indicative of anything above and beyond an ordinary family life and thus no family life for the purposes of the Human Rights Convention.

11. Mr Whitwell asked me to note also that it had always been the appellant's case that he wanted to be here as a student and intended to return to Bangladesh; that he has a father and brother in Bangladesh and in the circumstances the decision to remove was proportionate.
12. In reply Ms Qureshi submitted that the evidence of the appellant's mother and how he helps his brother is more than an emotional bond. It was accepted that he came here as a student, there had been a change of circumstances due to the mother's mental condition, the refusal of entry clearance to the mother and the situation had now changed.
13. In assessing whether there is, as the appellant claims, a family life for the purposes of Article 8 between him and his mother and him and his younger brother, the starting point is the decision of the Upper Tribunal in **Ghising (family life - adults - Gurkha policy) Nepal [2012] UKUT 160** as approved on that point by the Court of Appeal. I accept that as is noted in that case, this issue is highly fact sensitive and that family life may continue between the parent and child even after the child has attained his majority.
14. In this case, however, it could not be said that the appellant had lived all his life with his mother. She had come to the United Kingdom in 1994 and the appellant came to the United Kingdom on 11 October 2009 some fifteen years later. Whilst I accept that the relationship is close, I find that there is insufficient evidence to demonstrate that the family life between the appellant and his mother had continued despite the separation of fifteen years although I do accept there was some contact between them during this period. Similarly, whilst I accept that the family have had difficulty in the father being able to enter the United Kingdom, it does not follow that although the appellant, his younger brother and mother lived in the same household, that the situation has now changed to such an extent that the younger brother is dependent on the older when there is his mother, another brother and several other relatives on whom he can rely.
15. Further, I find significant merit in Mr Whitwell's submission that there is in effect no medical evidence to show that the various members of the family are suffering from medical conditions requiring the appellant to look after them and I note that although the mother is suffering from depression she appears to be able still to work part-time. Whilst I have no doubt that the various members of the family would prefer the appellant to remain here, I am not satisfied that the bonds between the appellant and his mother and the appellant and his younger brother are such that family life for the purposes of Article 8 exists between them.

16. I accept the appellant has a private life in this country and that that involves his continual interaction with his relatives in this country. I accept that he was unable to continue his studies owing to a lack of funds but equally I accept that he has a brother in Bangladesh, a father in Bangladesh although from whom he is estranged and that he had in the past indicated through his student applications that he intended to return there. I accept that intentions do change but equally the appellant had lived in the United Kingdom for a relatively short period. It is evident that he does not meet the requirements of paragraph 276ADE of the Immigration Rules.
17. Although I accept that there are some unusual factors in this case which require a full analysis of Article 8 outside the Immigration Rules, for the reasons set out above these are confined to a consideration of the impact of removal on the appellant's private life and on his mother and younger brother. There is no evidence that any significant harm will be caused to them and there is insufficient evidence to show that they would not be able to remain in contact by telephone, Skype or similar electronic means or that the brother and mother would be unable to visit the appellant in Bangladesh.
18. I consider that in the circumstances the interference with their private lives, that is the appellant and his family, would be proportionate given the strong public interest in the maintenance of immigration control which includes the maintenance of a system of Rules applicable to all. In summary, there is nothing in this case which I find is such, either taken singly or cumulatively, which debases the strong public interest in the maintenance of immigration control, bearing in mind that the appellant cannot meet the requirements of the Immigration Rules.

Summary of Conclusions

- (1) The determination of the First-tier Tribunal did involve the making of an error of law and was set aside to be remade in part.
- (2) I remake the decision by dismissing the appeal on all grounds.

Signed

Date

Upper Tribunal Judge Rintoul

Annex - Error of law finding



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

Appeal Number: IA/42185/2014

THE IMMIGRATION ACTS

Heard at Field House

**Determination
Promulgated**

On 12 June 2014

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Before

**THE HONOURABLE LORD MATTHEWS,
SITTING AS A JUDGE OF THE UPPER TRIBUNAL
UPPER TRIBUNAL JUDGE RINTOUL**

Between

MR S M SAIFUR RAHMAN

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Hashim, Counsel, instructed by Taj Solicitors
For the Respondent: Ms J Isherwood, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

19. The appellant is a citizen of Bangladesh, born on 15th May 1985. He appeals with permission against the determination of First-tier Tribunal Judge Paul promulgated on 10 March 2014 in which he dismissed the

appeal against the respondent's decision made on 24 September 2013 to remove the appellant from the United Kingdom.

20. The appellant arrived in the United Kingdom on 11 October 2009 with leave to enter and remain as a Tier 4 Student. His leave to remain in that capacity was later extended until 30 May 2015 but was later curtailed to expire on 7 September 2013 as the college to which he had been admitted had had its licence revoked.
21. The appellant's maternal grandparents live in the United Kingdom, as does his mother and two of his brothers. The appellant's mother has lived here for several years as do her brothers. Two of the appellant's brothers live in the United Kingdom including the youngest, born here in 2005, who is a British citizen; another brother lives in Bangladesh with his father. Although the appellant's father (and the appellant and his brothers) made applications to come to the United Kingdom to join his mother in 2002, that application was refused as was a further application made by the appellant's father in 2013.
22. After the appellant's leave to remain had been curtailed, he was unable to make an application for further leave to remain as a student as his family were no longer able to support him financially to the necessary extent of paying fees. He therefore applied for leave to remain outside the Immigration Rules on the basis that he is dependent on his mother and his grandparents are dependent on him. It is also his case that he has lost ties to Bangladesh during the years he had come here.
23. The appellant's case is that he is entitled to leave to remain pursuant to paragraph 276ADE of the Immigration Rules and that his removal would be in breach of the United Kingdom's obligations pursuant to Article 8 of the Human Rights Convention given that he has a family and private life established here and the interference caused with that by removing him is disproportionate.
24. The respondent refused the application concluding:-
 - (i) that Appendix FM was not engaged as the family life claimed to exist fell outside the parameters of those provisions;
 - (ii) that the appellant did not meet the requirements of paragraph 276ADE (vi) as he has not shown that he has no ties to this country; and,
 - (iii) that the application did not raise or contain any exceptional circumstances which warranted consideration outside the Immigration Rules.
25. When the appeal came before First-tier Tribunal Judge Paul he heard evidence from the appellant, the appellant's mother, the appellant's maternal grandmother and the appellant's uncle, Asadur Rahman. Judge

Paul noted [25] that it had been conceded that the appellant could not succeed under Appendix FM in relation to family life. The judge found:-

- (i) that the evidence given in relation to the family in Bangladesh had been embellished, the evidence that the family had been trying to get into the country for many years not being evidence of a family that had disintegrated and the appellant's evidence had not persuaded him that there was no family life for the appellant in Bangladesh;
- (ii) that the appellant came here as a student expecting to return and in that context he was not satisfied that interference with family life is established or, were he wrong about that, that removal would be disproportionate having had regard to the factors set out by the respondent's representative;
- (iii) that there was no compelling evidence to show that the appellant plays such a significant role in the life of his mother, brother and grandparents so as to "trump any ongoing insignificant family life in Bangladesh".

26. The grounds of appeal, at seven and a half pages in length, are unnecessarily prolix and unfocused, referring in excessive detail to reported decisions rather than focusing on errors in the judge's reasoning. In summary the grounds challenge the judge's decision on the basis that:-

- (i) the judge had failed to identify whether a family life had been established for the purposes of Article 8 between the appellant and his mother [15] and between the appellant and his brother [19];
- (ii) that the judge had failed to give adequate reasons for concluding that the appellant had ceased to have ties to Bangladesh and thus that his finding that the requirements of paragraph 276ADE were not met was unsafe [24]; and,
- (iii) the judge's conclusions were not properly reasoned [23].

27. Mr Hashim submitted that the judge had erred in setting out his findings at [32] as he failed to give adequate reasons as to why it had been embellished. He submitted further that the judge had failed to set out whether he considered family life had been established and if so with whom and that it was not possible to discern the reasoning process by which he had reached his conclusions. He submitted further that with regards to findings in respect of paragraph 276ADE, there is an insufficiency of reasoning and no reference is made to the evidence given.

28. Ms Isherwood submitted that the determination did not involve the making of a material error of law and that the reasons given by the judge for his findings could not be insufficient if there was (as she submitted was the case here) simply no evidence to support the propositions put forward. She submitted that the judge had taken account of the evidence given at

[10], [12] and also at [19] and [25] and had been entitled on the basis of what was put before him to consider that the evidence had been embellished in the context of the family trying to come here and in the context that this was related to what was said about the family relationship in Bangladesh.

29. Ms Isherwood submitted also that following the decision in **Gulshan (Article 8 – new Rules – correct approach)** [2013] UKUT 640 (IAC, the judge had found for proper reasons that there were no compelling reasons why the appellant should not be removed to Bangladesh.
30. In reply Mr Hashim submitted that it cannot be discerned from the determination what evidence the judge accepted and what he did not.
31. This is a case in which it is asserted, unusually, that family life exists between the appellant who is 28 and his mother; and also between the appellant, his younger brother aged 9 and his maternal grandparents. Ordinarily such a family life for the purposes of Article 8 does not exist between adults other than partners, unless there is more than the usual emotional ties (see **Kugathas v Secretary of State for the Home Department** [2003] EWCA Civ 31 and **Ghising (family life - adults - Gurkha policy)** [2012] UKUT 00160 (IAC) approved on that issue by the Court of Appeal). It is not possible to discern from the determination whether Judge Paul had concluded that such a family life exists between the appellant, his brother, mother and grandparents in this case or not. There appears to be confusion between the specific meaning of family life for the purposes of Article 8 and the wider, more general use of the term. The reference by the judge [33] to family life existing in Bangladesh, presumably between the appellant, his father and brother despite the fact the appellant is 28 and has lived apart from them for five years, is indicative of a degree of confusion.
32. Whether a family life for the purpose of Article 8 exists in this case is important; it is not in dispute that such a family life would not fit within the parameters of Appendix FM and thus, following **Gulshan**, would require further consideration.
33. Whilst the judge does refer to the submissions made by Mr Davies on behalf of the Secretary of State, these do not deal with the specific issues nor could it be said that they provide adequate reasoning for concluding, as would have been open to the judge, that there were no compelling circumstances here such that the appellant should not be removed given that it is not at all clear what findings of fact had been reached. A finding that a family life exists in this case would have proceeded from a finding of dependency over and above normal emotional ties and such a finding requires a proper analysis with respect to article 8, which is not found here.
34. Accordingly, we are satisfied that the determination of First-tier Tribunal Judge Paul did involve the making of an error of law and it is set aside.

That part of the decision will need to be remade and we give below directions as to how this is to be done.

35. We are not, however, satisfied that the errors affect the finding with regard to paragraph 276ADE. The judge has given sufficient reason for concluding that the appellant had not lost all ties to Bangladesh and indeed, given the appellant's own evidence [19] that his closest friends remain in Bangladesh, a country he left at the age of 23, some five years ago, it is difficult to see how he could come to any other conclusion.

Summary of Conclusions and Directions

- 1 The decision of First-tier Tribunal Judge Paul did involve the making of an error of law and is set aside in part to be remade. The finding that the appellant had not lost ties to Pakistan is preserved.
- 2 The matter is to be listed before the Upper Tribunal at a reconvened hearing on 25 July 2014 at Field House.
- 3 If either party wishes to adduce further evidence, it must be served on the other party and on the Upper Tribunal on or before 18 July 2014. It must also be accompanied by a statement pursuant to rule 15 (2A) of the Procedure Rules explaining in detail why it should be admitted and why it was not submitted to the First-tier Tribunal.

Signed

Date: 1 July 2014

Upper Tribunal Judge Rintoul