Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/05130/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 6 May 2015	**On 15 May 2015**

Before

UPPER TRIBUNAL JUDGE PITT
DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

TA
(ANONYMITY DIRECTION MADE)

Respondent

Representation:
For the Appellant: Miss J Isherwood, Home Office Presenting Officer
For the Respondent: Mr E Anyene, Counsel, instructed by Capital Solicitors

DECISION AND REASONS

1. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) we make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings. We do so in order to avoid a likelihood of serious harm arising

to the appellant from the contents of his protection claim and on the basis of his minority.

2. For the purposes of this decision we refer to TA as the appellant and to the Secretary of State for the Home Department as the respondent, reflecting their positions before the First-tier Tribunal.

3. This is an appeal against the decision of the Secretary of State which refused TA's application for leave to remain on Article 8 ECHR grounds.

4. The decision of the respondent was originally also made on asylum grounds, but it was common ground before us that that matter went no further where it had been decided against the appellant in the First-tier Tribunal and no cross-appeal against it was brought before us at any stage.

5. The Article 8 ECHR claim came before us following the decision of the Honourable Mrs Justice Andrews and Upper Tribunal Pitt dated 13 November 2014 which found an error of law in the decision of First-tier Tribunal Judge Samimi. That error of law decision is appended hereto.

6. In summary the Tribunal found that the failure to address a clear conflict in the evidence between that of the appellant and his aunt concerning contact with the appellant's parents in Bangladesh and a British High Commission Field Report had not been addressed, the failure to do sufficiently undermining the decision that it had to be set aside and remade.

7. We heard oral evidence from the appellant's aunt, Miss Nessa, and submissions from the two legal representatives.

8. We should indicate initially that on the day before the hearing we were provided with a psychological report of Dr Michael George dated 27 March 2015. This was new evidence not before the First-tier Tribunal and not before the Upper Tribunal at the time of the error of law hearing in November 2014. We asked the representatives to address the provisions of Rule 15(2A) of Tribunal Procedure Rules. Rule 15(2A) indicates that in an asylum or in an immigration case if a party wishes the Upper Tribunal to consider evidence that was not before the First-tier Tribunal that party must send or deliver a notice to the Upper Tribunal and any other party indicating the nature of the evidence and explaining why it was not submitted to the First-tier Tribunal.

9. Firstly we should indicate that Mr Anyene conceded that no such notice had been served on the Upper Tribunal. It was also argued that there was really nothing by way of an explanation as to why that evidence had not been before the First-tier Tribunal. Further, as indicated by paragraph 15(2A)(B) it is also a criterion when considering whether to admit evidence that we address whether there has been unreasonable delay in producing the evidence. It was our view that there had been such unreasonable

delay given that the claim was made to the respondent over a year ago, that the application was refused, that it came before the First-tier Tribunal and has already been once before the Upper Tribunal but no such report provided. The unreasonable delay is compounded by the fact that the report appears to have written on 27 March 2015 and was only received over a month later by the Upper Tribunal on 30 April 2015.

10. Those matters led us to decline to admit the psychological report.

11. We should also deal with a further preliminary matter which is that Miss Nessa gave her evidence in English and without an interpreter. She indicated at the beginning that it would be easier for her to give evidence as she had done before the First-tier Tribunal with an interpreter. It remains the case that directions issued for the hearing indicated in terms at paragraph 4 that no interpreter would be booked for the hearing unless the party was unrepresented. Miss Nessa is represented.

12. That original direction was repeated in the specific direction of Upper Tribunal Judge Pitt dated 18 November 2014 which at paragraph 3 stated:

> "It is expected that the appellant's aunt will give evidence. If an interpreter is required a request should be made within 14 days of the date of issue of this direction."

1. No such request has been made at any time.

2. It also appeared to us from the responses that Miss Nessa gave at the hearing that she understood the questions and was able to put her answer in sufficiently clear terms. It was not suggested by either of the parties that this was not so. No application for an adjournment was made before us on this or any other basis. For all of those reasons we proceeded with the hearing in the absence of an interpreter.

3. As referred to briefly above, a key matter before us was to reach a finding on the conflict in the evidence between the contents of the British High Commission Report dated 30 June 2014 covering the visit to the appellant's family in Bangladesh and the evidence of the appellant in his written statements that he had had no contact with his mother since she telephoned some four years ago to say she was returning to Bangladesh without him, that also being the evidence of his aunt in her written and oral evidence.

4. Miss Nessa told us that she could not comment on the content of the report which stated that there was monthly regular telephone contact between the appellant and his parents in Bangladesh. She did not know why the report said that and she could not take the matter any further. She, and as we understood it, Mr Anyene, did not seek to dispute the fact that the field visit had taken place. It appeared to us from the details provided giving the address, family details and so on that were entirely consistent with those provided by the appellant that it had taken place. The amount of detail in the report indicated to us that, on the balance of

probabilities, it was a reliable document. Where it said that regular contact was maintained on a monthly basis between the appellant and his family in Bangladesh, having considered all of the evidence before us, including that of Miss Nessa and the appellant to the contrary, it was our view that we could place weight on the field visit report.

5. We also reached this view where Miss Nessa accepted that she had known of the report at least a year ago. The High Commission had apparently had no difficulty in finding the appellant's family and obtaining a mobile telephone number for the appellant's father. It was difficult for us to understand why the family in the UK had made no effort on behalf of the appellant to contact his parents in Bangladesh given that it was clearly possible to do so. This was an additional reason for us placing less weight on the evidence of Miss Nessa and the appellant. We did not find that we could accept the claim that the appellant had been abandoned by his family in Bangladesh given the contents of the field report and limited weight attracting to the evidence of Miss Nessa and the appellant.

6. Moving on to the Article 8 assessment, in light of those findings of fact, it was common ground before us that the appellant cannot meet the provisions of the Immigration Rules contained in Appendix FM or paragraph 276ADE regarding family and private life. We therefore had to look behind those provisions to a second stage Article 8 assessment to establish whether there were compelling circumstances that should lead to the matter being allowed nevertheless.

7. We approached the second stage assessment in light of the five **Razgar** questions. It was our view that given that the appellant came to the UK aged 11 and is now 15, it was the case that he had established a private life during the four years that he has been here and also a family life with those relatives with whom he has been living full-time in that period. We found this to be so where he is a minor and these are formative years and he can be expected to still need to form close bonds with family members around him who are caring and supporting him.

8. We should indicate immediately, however, that we reach this view in the light of our finding above that he has retained contact with his parents in Bangladesh with whom he has lived for most of his life and that his relationship with them remains a primary one not reduced significantly by his having lived with other family members in recent years. It was also our view that his ongoing relationship with his parents must to some, if not a large, extent reduce the strength of the family life that he has established here in the UK with family members.

9. Our finding that he has a private life must also be tempered by the fact that he has still lived by far the majority of his life in Bangladesh where he will have retained some form of private life if he returns.

10. It was not suggested at any point that in these proceedings that the next three **Razgar** questions should not be answered in the appellant's favour and we therefore move on to a proportionality assessment.

11. We considered first the appellant's best interests, as we are required to do by Section 55 of the Borders, Citizenship and Immigration Act 2009. We found that his best interests were served relatively equally in both the scenario of remaining in the UK and returning home to his family in Bangladesh. There are clearly better educational opportunities in the UK and what appears to be a stable social and financial environment with extended family members living close by. There will be disruption for him returning to Bangladesh to reintegrate into a different education system, re-establishing social networks with his peers and so on. However on the positive side it can only go towards his best interests that he return to his immediate family having been separated from his parents and siblings for four years. Contact with the family in the UK can continue, the evidence from the British High Commission suggesting that it is not difficult for that to take place, particularly as the father has a mobile telephone number. There can be visits between the two countries as there have been in the past. It was therefore our view that the best interests of the appellant did not strongly indicate either way whether he should remain in the UK or remain in Bangladesh.

12. Mr Anyene referred in his submission to the difficulties the appellant put forward as part of his asylum claim as to having been harassed and bullied as a result of his father's political activities. The asylum claim was not found to have merit and it was not found by the First-tier Tribunal that much weight could attract to those arguments as the evidence was simply not strong enough. That is additionally so before us where we have the British High Commission report of the father remaining in the family home and of nothing to indicate difficulties for any of the other siblings who have remained. We did not find that is a factor that could assist the appellant in showing that return to Bangladesh would be too difficult.

13. We also have to weigh as part of our decision the provisions of Section 117B of the Nationality, Immigration and Asylum Act 2002. We note that the appellant speaks English and therefore will be less of a burden on the tax payer and will be better able to integrate into society and we adjust our approach to the public interest in his favour accordingly. It appears to us to be neutral as to whether he was financially independent given that he is still a minor and that albeit his family may be providing him with finance he is currently being educated within the UK state system at a cost to the tax payer and nothing before us suggested that the UK relatives will not be able to send some finance to Bangladesh to assist him if needed.

14. Section 117B(4) indicates that little weight should be given to a private life established by a person at time when they are in the United Kingdom unlawfully. That is so here. The appellant came as a visitor and has remained as an overstayer for some four years or more. We can therefore,

following the statute, attribute little weight to his private life. The other provisions of Section 117B were not of relevance to the decision before us.

15. What we are left with, then, is a child aged 11 brought to the UK by a parent, left with his extended family but who remained in contact with his immediate family in Bangladesh. He has been well looked after by his family here and progressed in his studies. It remains the case that the appellant does not qualify for leave under the Immigration Rules and has remained unlawfully for some time. The evidence before us does not indicate that he will have anything approaching serious hardship on return to Bangladesh now. He can return to his parents and siblings.

16. Where those matters are so, it is our conclusion that the decision refusing leave could not be said to amount to a disproportionate interference with the appellant's family and private life and we refuse the appeal under Article 8 of the ECHR.

Notice of Decision

The appeal is re-made as dismissed.

Signed  Date 14 May 2015

Upper Tribunal Judge Pitt