



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

Appeal number: IA/09926/2014

THE IMMIGRATION ACTS

Heard at Field House

Decision and Reasons

Promulgated

On July 22, 2015

On July 23, 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

**MR MUHIBUR RAHMAN
(NO ANONYMITY DIRECTION)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

Appellant

Mr Islam, Counsel.

Respondent

Mr Walker (Home Office Presenting Officer)

DETERMINATION AND REASONS

1. The appellant is a citizen of Bangladesh. On January 21, 2014 the appellant applied for an extension of his discretionary leave that had been granted to him on February 16, 2012 and which was valid until February 18, 2014.
2. The respondent considered the matter under the amended Immigration Rules and treated his application, lodged on January 21, 2014, as an application to remain in the United Kingdom on the grounds of private life.
3. The respondent refused that application on February 13, 2014 on the grounds he did not satisfy the requirements of paragraph 276 ADE HC 395

and there were no exceptional circumstances meriting consideration outside of the Immigration Rules. A decision to remove him was also taken under section 47 of the Immigration, Asylum and Nationality Act 2006.

4. The appellant appealed that decision on February 20, 2014 under section 82(1) of the Nationality, Immigration and Asylum Act 2002.
5. The matter came before Judge of the First-tier Tribunal Newberry on September 8, 2014 and in a decision promulgated on February 5, 2015 the Tribunal upheld the refusal and dismissed the appellant's appeal.
6. The appellant applied for permission to appeal on February 16, 2015 submitting the Tribunal had erred. Permission to appeal was initially refused by Judge of the First-tier Tribunal Grant-Hutchinson on March 26, 2015 but following renewed grounds, Upper Tribunal Judge Kebede granted permission to appeal on the grounds it was arguable the Tribunal had failed to have regard to the appellant's immigration history including his long residence and subsequent grant of limited leave.
7. The First-tier Tribunal did not make an anonymity direction and pursuant to Rule 14 of The Tribunal Procedure (Upper Tribunal) Rules 2008 I see no reason to make an order now.

PRELIMINARY ISSUE

8. At the commencement of the hearing Mr Walker and Mr Islam drew my attention to the appellant's bundle that have been submitted to the Tribunal when the matter was originally heard. Contained within that bundle was a copy of the endorsement contained within the appellant's passport and this endorsement clearly referred to the fact that the appellant had been given discretionary leave.
9. My attention was also drawn to page 23 of the appellant's bundle which set out the transitional arrangements that applied in cases where an applicant had been granted discretionary leave before the amended Immigration Rules came into force on July 9, 2012.
10. The respondent's own guidance confirmed that anyone who had been granted leave under the discretionary leave policy in force at the time (prior to July 9, 2012) would normally continue to be dealt with under that policy. On the basis there was no adverse criminality finding and the circumstances prevailing at the time of the original grant continued to apply, a period of three years discretionary leave should normally be granted.
11. The only reason a further period of three years leave would not be granted is where there were circumstances that warranted departure.
12. Both Mr Walker and Mr Islam agreed there no such circumstances existed and both further agreed that this application should have been considered under the transitional provisions.

13. Mr Walker accepted that there had been an error made not only by the respondent caseworker but also by the Tribunal. The appellant should have been granted a further period of discretionary leave under the transitional arrangements and he did not object to the setting aside of the original decision.

DECISION

14. There was a material error. I set aside the original decision and I remake the decision and allow the appeal under the Immigration Rules and extend the appellant's discretionary leave.

Signed:

Dated:



Deputy Upper Tribunal Judge Alis

**TO THE RESPONDENT
FEE AWARD**

I direct the respondent do refund the appellant's court fees. The relevant evidence had been placed before her at the time the application was submitted.

Signed:

Dated:



Deputy Upper Tribunal Judge Alis