IAC-FH-NL-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/10573/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 20th February 2015	**On 27th February 2015**

Before

UPPER TRIBUNAL JUDGE MARTIN

Between

MD ABADUR RAHMAN
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr S Bellara of Counsel instructed by Edward Alam & Associates
For the Respondent: Ms A Everett, Home Office Presenting Officer

DECISION AND REASONS

1. This appeal to the Upper Tribunal with permission is made by the Appellant in relation to a determination of First-tier Tribunal Judge Walters promulgated on 14th July 2014. The Appellant claims to have been in the UK since December 1991 and to have made an application on 21st July 2006 for indefinite leave to remain on the basis that he had been here fourteen years. This was made under Rule 276B, which was in force at the

time but subsequently deleted from the Rules on 9th July 2012. However the application fell to be decided under that old Rule. Unfortunately, and for reasons best known to herself, the Secretary of State did not actually make a decision until some eight years later on 11th February 2014 when she refused it. The matter then came before the First-tier Tribunal Judge and it was accepted by the Secretary of State that the Appellant had been in the UK since November 2001. It was not accepted that he had been so for the previous ten years and that was the issue essentially that was before the Judge.

2. The grounds first of all suggest that the Judge erred in that he did not specifically refer to paragraph 276B and the provisions thereof and that it is not at all clear what law the judge was applying. I find no merit at all in that submission and I think to be fair Mr Bellara did not press the point. It is quite clear throughout the decision that the Judge was dealing with the long residence Rule and he was dealing with fourteen years and given that the only issue in the appeal was the length of continuous residence there was no other applicable Rule.

3. The second ground of appeal concerns the Judge's treatment of the evidence itself. It is argued that the Judge unreasonably rejected the oral evidence of the witnesses and did not take into account that the Appellant came to the UK as a child. The witnesses gave consistent evidence that the Appellant had been in the UK since 1991 and that in requiring corroborative evidence the Judge erred. Before me this submission was made in particular in relation to the second witness, Mr Miah. Mr Bellara submitted that the Judge did not give reasons why his evidence was vague and why he attached no weight to it. The grounds criticise the Judge's comment that "there is not a shred of documentary evidence" and that the judge erred by requiring documentary evidence and not taking into account the oral evidence which could have corroborated the Appellant's claim.

4. Finally there is criticism of the way in which Article 8 was dealt with.

5. I deal firstly with the evidence and what the judge said about that. The oral evidence criticised before me or rather the treatment of it that was criticised before me was that of Mr Miah. I was provided with his statement, which for some reason is no longer on the court file, which is brief in the extreme and says very little. It simply says that he met the Appellant in the UK at his workplace and since then they have known each other and maintained their relationship and contacts but he was aware the Appellant had been waiting a long time for a decision. Beyond saying they were good friends and he would miss him if he had to leave, he says very little.

6. In the determination that evidence is dealt with in paragraph 18 in particular. The Judge noted that the Appellant claimed that he started work when he was 16 years of age. At the hearing he summarised his work record broadly consistently with what was said in the bundle of

documents except that the Appellant was wholly unable to provide him with precise particulars of the restaurants where he worked, their addresses, the names of his bosses and so forth. The Judge states that the Appellant said he had approached the restaurants that are still in business but they were not willing to provide any corroboration and would not assist him, fearful for the consequences for them if they did so. The Judge refers to the lack of any contracts, documentary evidence, payslips, anything at all in relation to that employment. The Judge refers to the total lack of any documents prior to November 2001. The Judge went on to say that the Appellant's witnesses claimed that he had been in the UK from that time and that Mr Sabu Miah claimed to be a friend of the Appellant who had worked with him during the 1990s, but his account was vague and lacking in particularity. Mr Bellara, who was not at that hearing was unable to say what the oral evidence had been and therefore was unable to say that his evidence was anything other than vague and lacking in particularity. The Judge has said, and I have no reason to disbelieve him that that was the case and that Mr Miah only had a loose friendship with the Appellant. The judge goes on to say that other than the accounts provided by the Appellant and his witnesses there was nothing to support his claim to have been in the UK prior to November 2001.

7. The Judge takes note of the fact that he is not required by law to ask for corroboration but he is not obliged to accept oral evidence if he has other reasons to doubt the Appellant's reliability and credibility and in that regard he goes on to consider other matters which, whilst not strictly dealing with matters prior to 2001, directly affect the Appellant's credibility and he does so in the following paragraphs. He finds Mrs Rehana Chowdhury, another witness, at paragraph 19 to be lacking in credibility on the basis she cannot remember the dates when the Appellant arrived in the UK despite linking it to her birthday. At paragraph 20 he noted a discrepancy in the evidence between the Appellant himself and his witness, Mrs Chowdhury because the Appellant said he had not worked since 2007 whereas Mrs Chowdhury said he had been working throughout. At paragraph 21 he points out another discrepancy where the Appellant had said that for the last seven or eight years he had been living with Mrs Chowdhury along with other people but her evidence was that he had been working and only dropped in from time to time. Those are very significant discrepancies and the Judge was entitled to take those into account in looking at the Appellant's credibility overall. They clearly impact on the lack of evidence prior to 2001. I also pause to note at this point that if the Appellant is able to produce evidence sufficient to satisfy the Secretary of State and no doubt the Judge of what had been going on since 2001 there was no good reason why he should not have been able to provide it before then. Accordingly, I do not find that the Judge has erred in his finding in that regard.

8. Another matter raised is that there were photographs produced to the Secretary of State and referred to in the Respondent's bundle and in the refusal letter. Although they are referred to in the Letter of Refusal only some of them appear in the papers that I have. I was provided with

copies. There are six photographs in total, each one with a date handwritten beside it. However there is nothing about the photographs themselves which date them and thus all they are are a set of photographs which show nothing other than the Appellant in various places, some of which are obviously in the UK, others not so. The Judge did not refer to the photographs in the judgment but given that those photographs cannot add anything, I do not find that to be a material error. He should have dealt with them, he did not, but that error is immaterial.

9. Before me the Article 8 criticism was not pursued, whether that was by accident or design I am not sure. However, the Judge dealt with Article 8 between paragraphs 31 and 35. Obviously the Article 8 claim is reduced by the fact that the judge only found him to have been here since 2001 and not 1991. He noted it was plain from the evidence that most of the Appellant's family are in Bangladesh; that the Appellant is not married, has no partner and no child in the UK. He has distant relatives in the UK. Although he claimed to have brothers in the UK there was no evidence from them. The Judge noted at paragraph 35 that the Appellant had spent his childhood in Bangladesh and has only been in the UK since 2001, he had retained ties with Bangladesh and speaks the language. His parents and other close family members are there and according to him he has not been employed for a number of years in the UK. He could only possibly rely on private life and not family life on the evidence and as the Judge found he does not succeed on the basis of private life. The Judge has given full consideration to the Appellant's private life and on the facts of the case no other outcome would have been possible, particularly in light of recent case law concerning the relationship between the Immigration Rules and Article 8.

10. For the above reasons I find that the Judge's decision is one which is not tainted by material error of law and I uphold it.

11. The appeal to the Upper Tribunal is dismissed.

12. No anonymity direction is made.

Signed Date 27th February 2015

Upper Tribunal Judge Martin