IAC-FH-AR-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/15062/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 5 February 2015	**On 16 March 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE R C CAMPBELL

Between

KHANDAKAR SHOEB ALI
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Miss S Prasoody, Counsel, instructed by M-R Solicitors
For the Respondent: Miss J Isherwood, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant's appeal against a decision to remove him from the United Kingdom was dismissed by First-tier Tribunal Judge A E Walker ("the judge") in a decision promulgated on 13 October 2014. The appellant relied upon Article 8, in relation to private life ties and claimed that the requirements of the rules, regarding fourteen years residence here, were met.

2. The appellant entered the United Kingdom with a visit visa in 1999. He applied under the "overstayer regularisation scheme" in 2000,

unsuccessfully. Representations were made on his behalf by his representatives between 2011 and 2013. He was served with form IS151A on 5 April 2013, which "stopped the clock" at a time when he could show, at most, that he had been in the United Kingdom for thirteen years and ten months.

3. The judge found that the appellant could not meet the requirements of the rules in their post-9 July 2012 form, under paragraph 276ADE. He could not meet the requirements of the pre-9 July 2012 rules either. He heard submissions regarding the decision of the Court of Appeal in Edgehill [2014] EWCA Civ 402. The judge took into account delay by the respondent in dealing with the appellant's case and the friendships he had established here since his arrival. He made an Article 8 assessment, concluding that the appellant's removal would not be disproportionate or amount to an unjustified interference with his private life. The appellant could re-establish himself in Bangladesh and maintain his friendships from abroad. The judge took into account the presence in Bangladesh of the appellant's parents and the potential use there of the work experience gained here. He concluded that there would be no significant obstacles to the appellant's integration into Bangladesh.

4. In an application for permission to appeal, it was contended in typed grounds that the judge erred in relation to Edgehill and that he ought to have applied the immigration rules "in line with facts at the time of the hearing". If he had done so, the appellant would have "satisfied this prerequisite of fourteen years of residence in the UK". It was also contended briefly in handwritten grounds that the judge failed to properly assess the Article 8 case.

5. In a short Rule 24 response, it was submitted on the Secretary of State's behalf that the judge made no error and that the grounds were misconceived. Service of form IS151A in April 2013 prevented the appellant from meeting the requirements of paragraph 276B of the rules in June that year.

Submissions on Error of Law

6. Miss Prasoody said that the Secretary of State accepted that the appellant could show thirteen years and ten months' residence in the United Kingdom. The judge erred in failing to apply a "near-miss" principle. He ought to have taken this principle into account in balancing the competing interests. Reliance was placed on a decision from the Court of Appeal in 2010: MM and SA (Pakistan). The judge's conclusion was unfair. When both sides were evenly balanced, the near-miss principle gave more weight to the appellant's case and the judge should have exercised discretion in his favour as the appellant was only short of fourteen years by a period of two months.

7. Miss Isherwood said that there was no material error and, as the author of the Rule 24 response suggested, the grounds were misconceived. IS151A

stopped the clock. The judge took into account the appellant's circumstances. There was no family life claim and the appellant relied on private life ties. Here, the judge found only general friendships and no special ties. He was entitled to conclude that removal was proportionate. The Article 8 findings were open to the judge on the new or the old rules. The judge was also entitled to find that there were no significant obstacles to the appellant's integration in Bangladesh.

8. Miss Prasoody said that it was accepted that there was no family life but the appellant had formed close friendships. Some of his friends appeared before the judge, and they were in attendance before the Upper Tribunal. The judge erred in finding what he described as general friendships. The appellant had been present here for almost more than fourteen years and was far away from his parents. He had close ties here and it could not be said that he had close ties to Bangladesh. There were real obstacles to his return and to re-establishing himself there.

Decision on Error of Law

9. Dealing first with the typed grounds in support of the application for permission to appeal, I agree with the author of the Rule 24 response and with Miss Isherwood that they are misconceived. The clock was stopped by service of form IS151A in April 2013. The judge did not err by failing to assess the position as at the date of hearing, on the basis that the appellant had resided here for fourteen years. He correctly found that the appellant could not show that the requirements of the rules were met in their pre or post-9 July 2012 form. As noted earlier, the judge recorded submissions from the representatives on Edgehill and took that judgment into account. Having found that the requirements of the rules were not met, he went on to make an Article 8 assessment, taking into account the evidence before him. He was entitled to find that only general friendships had been established here by the appellant. His assessment was carefully made and cogently reasoned. He was also entitled to find that there were no real obstacles to the appellant's integration into Bangladesh on return. His parents were still alive and might assist in this context and the appellant might make use of work experience gained here.

10. So far as Miss Praisoody’s oral submissions are concerned, there is simply no room for a “near-miss” principle, in the light of Patel and Others [2013] UKSC 27. As was made clear in that case, where Article 8 is relied upon, the proper focus is on the ties established by a claimant. The judge maintained that focus, carefully weighing the evidence before him. There is nothing in the decision and reasons suggesting any unfairness and there was no room for the judge properly to exercise any discretion in the appellant's favour.

11. Returning to the brief handwritten grounds, the judge did not err in his Article 8 assessment. Again, he made findings which were open to him and carefully weighed the competing interests. He was entitled to conclude that the balance fell to be struck in the Secretary of State's

favour. There was little of real substance weighing against the respondent's case that removal is a proportionate response and entirely lawful.

12. As no material error of law has been shown, the decision of the First-tier Tribunal shall stand.

Decision

13. The decision of the First-tier Tribunal contains no material error of law and shall stand.

Signed Date: 10 February 2015

Deputy Upper Tribunal Judge R C Campbell

Anonymity

There has been no application for anonymity and I make no direction or order on this occasion.

Signed Date 10 February 2015

Deputy Upper Tribunal Judge R C Campbell