IAC-HW-MP-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/36624/2013

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 23rd February 2015	**On 22nd April 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE RIMINGTON

Between

ABIDUR RAHMAN JUHEL
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr M Hudd, instructed by S Hirsch & Co, Solicitors
For the Respondent: Mr J Parkinson, Home Office Presenting Officer

DECISION AND REASONS

The Appellant

1. The appellant is a citizen of Bangladesh, said to be born on 7th May 1983 and he claims to have entered the UK illegally in May 1998 and to have remained in the UK since that date. On 3rd February 2005 he submitted an SET(O) application for leave to remain in the UK outside the Immigration Rules and he made an application for leave to remain further to Article 8 of the European Convention on Human Rights.

He appealed against the decision dated 20th August 2013 of the respondent, dated nearly eight years later, refusing the appellant's application.

2. The appeal was first dismissed by the First-tier Tribunal on 5th December 2013 but an error of law was found by Designated Judge Zucker who remitted the matter back to the First-tier Tribunal.

3. The matter came before First-tier Tribunal Judge Lawrence on 5th September 2014 and he too dismissed the appeal on 22nd September 2014. He noted that the appellant's representatives had made enquiries of the respondent to progress his application as early as 4th January 2007 and on 23rd November 2010 the respondent issued a Case Resolution Directorate Form. The appellant's representatives contacted the respondent four more times between 2011 and 2013 to chase the progress of the matter.

4. In essence the appellant's claim was that he lost his parents at the age of 14 years in April 1998 in a house fire and he was brought to the United Kingdom by a family friend, namely Mr Razzak and he lived with someone by the name of Mr Ali and his wife Sabia Begum in Smethwick in the West Midlands. He claimed he also lived with Sabia Begum's mother, Mrs Nessa, who lived in Whitechapel. He was not sent to school as the family were worried that he might be brought to the attention of the authorities and would be returned to Bangladesh. However at the age of 18 he was able to apply for documents in his own right without awkward questions being asked as to who was the guardian and this is what the appellant did. First-tier Tribunal Judge Lawrence accepted that documentary evidence only commenced in 2002 and the judge found he had only been in the UK for eleven and a half years, not fourteen years, as required by paragraph 276B(i)(b) further to the Immigration Rules as they were at the date of the respondent's decision.

5. First-tier Tribunal Judge Lawrence noted that the period before 2002 rested on oral evidence which he dealt with save that he failed to take into account the evidence of the third witness who appeared at court, Mohammed Hossein who had stated that "I have known Mr Abidur Rahman Juhel over ten years". His evidence was that he had known him since 2000.

6. It was also submitted that the judge considered the question of delay and **EB (Kosovo) (FC) v SSHD [2009] 1 AC 115** but did not approach the issue of delay, despite finding it quite extraordinary, with a view to reducing the weight to be accorded to the Secretary of State's position. The judge approached this in the light of "not advantaging the appellant". Further the judge failed to take into account the enforcement instructions and guidance at paragraph 53.1.1(iii) which stated that delay of six years would constitute an exceptional factor and "where the length of delay by the Home Office in deciding the application … [is] more than six years [this would be a factor in favour of a grant of leave]."

7. I found an error of law in Judge Lawrence's determination, not in relation to the Immigration Rules but in relation to Article 8 only and the weight attributed to the

Secretary of State's position. The evidence given by Mr Hossein was merely that the appellant had entered the UK in 2000 and therefore could not assist the appellant in terms of the Immigration Rules.

8. The basic findings of fact by Judge Lawrence [9 to 23] were preserved.

9. At paragraph 13 of Judge Lawrence's determination he reasoned that "*the appellant claims that his family died in a house fire. However the accounts the appellant gave in this regard is contradictory*". The judge found that there was a contradiction between the witness statement submitted by the appellant and his oral evidence before the judge. He stated "*there are differences in these two accounts and in my view they fundamentally affect the appellant's credibility*" and he did not accept that the substance of the account would so markedly change.

10. The judge did not consider that the differences in the account given in his statement and the one during cross-examination could be blamed on the appellant's previous solicitors as alleged by the appellant who had previously confirmed that the contents of his statement were correct. In effect the judge found that the first and second accounts of the house fire were false.

11. The judge went on to find further contradictions between the evidence given by Mr Mohammad Anam Ali and the appellant in relation to the relatives in Bangladesh and found that "far from not having any contact with any of his relatives in Bangladesh the appellant has relatives, distant may be, in Bangladesh and there is contact between them" and further "*the appellant 'seeks to paint a picture of destitution in Bangladesh. This has been fundamentally undermined by Mr M A Ali's evidence"* (19). The judge also recorded at paragraph 20 that there was a conflict in the evidence as to where the appellant lived. Clearly in his oral evidence Mr M A Ali stated the appellant had moved to London in 2002 but noted that he was registered with a GP practice in the Midlands in 2002 and that in the 2005 application a Smethwick West Midlands address was given as his address. When this was put to the appellant and the witness Mr M A Ali, the judge recorded "*they both individually changed their account and said the appellant moved from the London address and the Smethwick address*".

12. Nonetheless the judge found at paragraph 20 the first record of the appellant's presence in the UK was when he registered with a GP in 2002. The judge clearly found that he did not enter the UK at the age of 14 and that the evidence that a school refused to admit the appellant was not credible. The judge found the evidence of Mr M A Ali not to be a statement of truth (21).

13. At paragraph 23 the judge clearly found neither the appellant nor the witness Mr M A Ali to be truthful witnesses and did not find it possible that the appellant could be in the UK for four years without generating a single piece of documentary evidence.

14. At the hearing before me the appellant stated that he lived in Whitechapel permanently from the start of 2013 and before the start of 2013 he lived in Smethwick in Birmingham. He had stayed for three to four weeks in London when he first

arrived. He confirmed that he used the centre in Smethwick for Friday Prayers and he had done so since he came to the UK.

15. Mr Anam Ali gave oral testimony and stated the appellant came to live with him in 1998 and stopped living with him in 2013.

16. Mr A Ali produced his passport which confirmed that he himself had returned to Bangladesh in 2008, 2011, 2012 and 2014. He stated his father was deceased and he was selling off the assets the family had. He confirmed his wife's full name was Sabia Begum.

17. Mr Sadique of 5 Ponler Street, London attended and gave oral testimony and adopted his statement. He confirmed the appellant came to live with him in 2013 and he had a close relationship with him. He lived with him as he had nowhere else to live. Mr M Hossain, who had tendered a written statement, was his brother and he stated he saw him every two to three weeks because he used to travel a lot to Birmingham to visit family and friends. He confirmed that he was related to Mr Anam Ali. Initially he stated that Mr Juhel was not related to Mr Anam Ali or to himself but then he retracted that statement. The appellant was related to Mr Anam Ali. He confirmed that Nurum Nessa was his, Mr Sadique's mother and she was the mother-in-law of Mr M A Ali. He confirmed that Mr Juhel, the appellant, lived in Smethwick from when he arrived to 2013.

18. It was put to Mr Sadique that his mother, Nurum Nessa, had, in a written statement, confirmed that the appellant had left the West Midlands in 2002 and based himself in London to 2007 and Mr Sadique stated that must have been correct then as the appellant had no fixed address and therefore in fact he did not know where he lived.

19. Mr Parkinson challenged the nature of the relationship. The witness stated he saw him in London but did not live with him. He did not keep tracks on him. He confirmed that Mr M A Ali was married to his sister.

20. Mr Parkinson made his submissions not least that in the previous hearing neither the appellant nor Mr M A Ali were witnesses of truth. There were two very disparate accounts of where the appellant had been living. The witnesses were not credible. He accepted the appellant would have a private life having lived in the UK since 2002 but it was difficult to assess the nature of the private life he had established. He claimed that he had been in the UK since 1998 but this begged the question as to why his character reference from the Bangladesh Community Centre was not phrased to establish that point. The question was taking account of the delay of eight years without a decision whether that was sufficient to reduce the weight to be accorded to the Secretary of State's decision. This did not portray a dysfunctional system and in any event it was not determinative. He accepted that the weight may be reduced but I was referred to paragraph 32 of **EB (Kosovo) v SSHD [2008] UKHL 41**. The legitimate aim should carry great weight. The delay in this case was not such as to weight the balance to make the interference disproportionate. It was necessary to evaluate the extent of the social ties in relation to the appellant's private life.

21. Mr Hudd referred me to the series of witness statements and submissions made in the bundle. It was wholly illogical to suggest that a human had not formed a degree of private life if they had been in the UK for thirteen years. The appellant had waited for a decision for eight and a half years and ten years to the present day. He had not absconded or gone under the radar, the Home Office had not produced one piece of evidence to explain the delay. Eight and a half years was excessive and Judge Lawrence found the delay extraordinary. The appellant was living predominantly in Smethwick and occasionally in London.

22. Further to **EB (Kosovo)** the delay was important and capable of forming a highly relevant factor when looking at the proportionality balance. It was simply not credible to argue that there should be significant weight attributed to the immigration control.

23. In addition the Enforcement Instructions should be considered and this was an issue that should be taken into account.

Conclusions

24. The decision was set to be remade in respect of Article 8 only.

25. Having applied the immigration rules, **Singh v SSHD [2015] EWCA Civ 74** confirmed, at [64], the basic point that there is no need to conduct a full separate examination of article 8 outside the Rules where, in the circumstances of a particular case, all the issues have been addressed in the consideration under the Rules. The Rules do not, to my mind cover all the points relevant in this case, not least the delay, and I therefore turn directly to **Razgar v SSHD UKHL 27** which sets out the questions to be asked in relation to an Article 8 assessment.

    1. Will the proposed removal be interference by a public authority with the exercise of the applicant's right to respect for his private or family life?
    2. If so, will such interference have consequences of such gravity as potentially to engage the operation of Article 8?
    3. If so, is such interference in accordance with the law?
    4. If so, is such interference necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others?
    5. If so, is such interference proportionate to the legitimate public end sought to be achieved?

26. I accept that the appellant must have established a private life as it is accepted that he has been here since 2002. This was the finding made by Judge Lawrence. At the hearing Mr M A Ali stated that the appellant had lived with him from 1998 until 2013 when he went to live in London. By way of contrast Mr M A Sadique stated with reference to his mother's, Mrs Nurum Nessa's witness statement, in which she had stated that the appellant had moved to London between 2002 and 2007 that that must

be correct. I therefore find that neither is a reliable witness. In turn this undermines the claimed strength of the ties and therefore private life with those witnesses.

27. The appellant stated at paragraph 5 of his witness statement

> "I submit that my friendships with Mr Mohammed Anam Ali and Mr Mohammed Abdus Sadique and Mr Kabir Hossain in particular most clearly define my life in the UK and they together with my commitment to the Bangladesh Islamic Association/Centre provide me with a huge sense of community support".

28. The appellant no longer lived with Mr M A Ali and he did not appear to realise that the appellant had in fact lived for five years in London, as claimed by Mr Sadique's mother, and Mr Abdus Sadique did not know that until it was pointed out that in his mother's witness statement that he had in fact lived in London during 2002 to 2007. He however confirmed that her statement must be true. This leads me to believe that the appellant does not have the very close relationship with those witnesses as claimed by the appellant and those attending court on his behalf.

29. I took into account the statement of Mr Mohammed Kabir Hossain whose own witness statement was that "I have known him since the year 2000 if not earlier". First this witness does not appear to know exactly when the appellant did come to the UK and when he did start to know him and secondly he states that there was a "very close relationship with Mr Mohammed Anam Ali".

30. As Mr Hossain states at paragraph 4 of his witness statement

> "… it is very difficult for Mr Juhel to rely on others just to meet his daily needs and he clearly does his best to avoid this. I know that the work he does provides him with much needed self-esteem and makes him feel worthy even if it only enables him to afford the most basic of necessities at least he is not reliant on anyone".

31. Although Mr Kabir Hossain stated that he lived with the appellant, the evidence was from Mr Sadique that he has only done so since 2013 and nonetheless Mr Hossain has made it clear that the appellant is financially independent and relies on other forms of support.

32. Therefore, taking the above into consideration, I conclude that the appellant has engaged some form of private life but the strength of the relationships claimed and thus the private life is not as strong as claimed. I take into account the numerous letters of support but the oral evidence from the witnesses who claimed to know the appellant best was contradictory and in turn undermined the letters of support. However, further to **AG (Eritrea) [2007] EWCA civ 801** the threshold for any interference is low.

33. I find that the respondent has made a decision in accordance with the law, not least that the appellant could not comply with the Immigration Rules. (Indeed that is taking the claim at its highest because **Singh** makes clear that following the introduction of A277B and A277C of the Immigration Rules by HC565, where the appellant does not meet the requirements for indefinite leave to remain, the application should also be decided following paragraph 276ADE accordance with the

principle in **Odelola** and that HC 565 applies to pending applications. Nonetheless this appeal was being decided in relation to Article 8 only as identified above). I was referred to the Home Office guidance in relation to extenuating circumstances, Chapter 53 Enforcement Instructions and Guidance. This states "it is the policy of the Home Office to remove illegal migrants from the United Kingdom unless it would be a breach of the Refugee Convention or ECHR or there are exceptional circumstances for not doing so in an individual case". Paragraph 53(1) sets out when to consider exceptional circumstances but the guidance also makes the point that the relevant factors need to be taken as a whole rather than individually. One of the factors at 53(1)(iii) is the length of time in the UK accrued for reasons beyond the migrant's control after their human rights or asylum claim has been submitted or refused. It is clear that the refusal letter from the respondent took into account the delay and pointed out that chapter 53 states that the discretion would not be exercised on the basis of one factor alone. It was accepted that in the eight years since he submitted his application he could reasonably have been expected to develop ties in the UK but this went on to state that "the evidence which you have submitted is confused and contradictory in terms of your place of residence and this casts doubt on your claims relating to your private and family life in the UK".

34. I am not persuaded that the situation has changed from this description and from my findings above it is clear that the appellant's evidence in relation to where and when he was living remained contradictory. Nonetheless the factor of delay was taken into account and is taken into account in my decision.

35. That said I find that the decision in relation to the appellant's removal was made in accordance with the law. I shall return to the enforcement instructions below in the assessment of proportionality.

36. I will note here that the considerations under paragraph 395C and 353B were dealt with by Judge Lawrence in his decision and this appeal was confined to a consideration of Article 8 only. Indeed it was found by First-tier Tribunal Judge Zucker that the judge was not required to look at paragraph 395C. That said, albeit that the guidance notes referred to above are to be considered in the context of paragraph 353B, the guidance does not mean that delay was not a relevant factor for the judge to consider in the wider aspects of Article 8 and I do so.

37. Any such interference in the appellant's private life must be necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. Further to **Shahzad (Art 8: legitimate aim)** [2014] UKUT 00085 (IAC) I can accept that the removal of the appellant is for a legitimate aim, that being the protection of the rights and freedoms of others through the maintenance of immigration control and for the economic wellbeing of the country.

38. I turn to the key question in this and that is one of proportionality and whether the decision is disproportionate.

39. The appellant arrived in the UK, it has been established, in 2002 and thus I do not accept that he was a minor when he entered the UK. It is accepted that he cannot explain that he entered the UK lawfully and has remained in the UK illegally. The key question to be asked is that in **Huang v SSHD** [2007] UKHL 11, taking into account all the relevant factors is the interference with the appellant's private life is proportionate to the legitimate ends sought to be achieved?

40. I have identified that the appellant claims that he is involved in the Bangladesh Centre but it is clear from the evidence given by the witnesses who appeared at court that they did not have a very clear understanding of where he lived over the years and further to **MM (Tier 1 PSW Article 8 "private life") Zimbabwe [2009] UKAIT 00037** when determining the issue of proportionality it will always be important to evaluate the extent of the individual's social ties and relationships in the UK.

41. The appellant can have had no expectation of a right to remain in the UK, certainly up until the time he made his application for leave to remain in 2005. As stated in **MM**, private life claims are likely to advance a less cogent basis for outweighing the public interest in proper and effective immigration control than are claims based on family life. Although the appellant claimed to live with Mr Sadique and Mr Hossain there was no suggestion that he was financially dependent upon them and indeed the evidence submitted was that he worked in a restaurant to support himself. The appellant has not engaged in a particular business or invested in property or married or formed a relationship or have children.

42. In **EB (Kosovo) [2009] IAC 115** the House of Lords held that delay may be relevant in three ways.

> "(i) the asylum seeker might during the period of any delay develop closer personal and social ties and established deeper roots in the community than he could have shown earlier. The longer the period of the delay, the likelier that was to be true. To that extent that it was true, a claim under article 8 would necessarily strengthened;
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> (ii) the second way was less obvious. An immigrant without leave to enter or remain was in a very precarious situation, liable to be removed at any time. A relationship so entered into may well be imbued with a sense of impermanence, but if months passed without a decision to remove being made, and months became years, it was to be expected that that sense of impermanence would fade and the expectation would grow that if the authorities had intended to remove the applicant (i.e. the Secretary of State) would have taken steps to do so;
>
> (iii) thirdly, when considering the proportionality of removal, delay might be relevant in reducing the weight otherwise to be accorded to the requirements of firm and fair immigration control if the delay was shown to be the result of a dysfunctional system that yielded unpredictable, inconsistent and unfair outcomes …"

43. It should be stated at the outset that albeit that there was a delay on the part of the respondent of eight years, which could be construed as excessive, delay is not a determinative factor.

44. It is perfectly clear that the appellant has developed closer social ties but that said he has always known that he was liable to be removed at any time. It could also be expected that a sense of impermanence would fade and it is clear that an argument could be made that if it was so important and of such necessity for the legitimate aim that the authorities would have taken steps to remove the appellant prior to eight years. I do note that in **EB Kosovo** the second factor in relation to the fading of impermanence was considered in the light of forming a family life but I accept that this could too apply to private life.

45. The third and important question is whether the delay might be relevant in reducing the weight otherwise to be accorded to the requirements of firm and fair immigration control if the delay was shown to be the result of a dysfunctional system. In **EB Kosovo** it was noted in that case that the appellant's cousin had entered the country an applied for asylum at the same time and whose position was not said to be materially different was granted exceptional leave to remain during the two year period which it took the respondent to correct an erroneous decision to refuses the appellant's application on grounds of non-compliance. Similarly in the case of JL Sierra Leone hearing by the Court of Appeal there was a similar pattern of whereby an appellant's half brother was given leave in similar circumstances and the appellant was so. As stated in EB Kosovo "a system so operating cannot be said to be predictable consistent and fair as between one applicant and another" or as yielding "consistency of treatment between one aspiring immigrant and another" and "To the extent that this is shown to be so, it may have a bearing on the proportionality of removal".

46. The appellant in his witness statement set out that he had remained in the UK waiting for a decision during the prime years of his life from the ages of 21 ¾ to 30 years. He referred to the correspondence to the Home Office on 4th January 2007 reminding of the application of 1st February 2005 and he stated this showed that the Home Office were asked for permission for him to work but did not act on this, in effect, to prevent him from working. The fact is that the appellant 'requested permission to work' which is not the same as actually informing the respondent that the appellant *was* working. Further chasing letters to the respondent were sent on 23rd February 2010, 7th May 5th June and 13th June 2013. Finally a method of entry questionnaire was sent to the appellant on 24th June 2013. The response to the delay by the Home Office was that it was 'deeply regrettable'.

47. Even if I find that the delay was excessive and was a result of a dysfunctional system that yielded unpredictable inconsistent and unfair outcomes, it is still only one factor which is capable of *reducing the weight* to be accorded to the Secretary of State's case. Indeed further to **Akaeke v SSHD** [2005] EWCA Civ 947 even if it is accepted that there is unreasonable delay on the part of the Secretary of State is capable of being a relevant factor then the weight to be given to it in the particular case is a matter for the Tribunal.

48. As Mr Parkinson submitted the extent of the appellant's private life was not underlined by the witnesses who did not seem to know where the appellant lived for

stretches of time. It does not appear that the appellant has established a very strong private life.

49. I have also considered the factor that enforcement instructions and guidance invite that the length of delay by the Home Office in deciding the application or where there factors preventing departure, the caseworker following an individual assessment of the prospect of enforcing removal and where the factors outlined in "character" and "compliance" do not weigh against the individual, concludes that the person will have been in the UK for more than six years.

50. I take these into account and note that the appellant does not have a previous criminal record and that he has worked (albeit illegally) in the United Kingdom. Bearing in mind the conflict in the evidence as to his living arrangements and the lack of specific reference to the appellant's length of time in the UK, in the letter from the Bangladeshi Islamic Association Centre, dated 18th October 2013, I do not find that there is demonstrated an entrenched tie with any particular organisation or that the appellant would be precluded from joining such an organisation in Bangladesh. This letter from the Centre merely stated that the author had known him 'for many years' and he was a 'user of' the centre.

51. I return to the enforcement instructions and note that those instructions simply state that where there has been significant delay not attributable to the migrant the respondent should merely ''consider' the fact. Although the reference to six years delay is given in an example, due weight should still be accorded to the relevant factors and the cases should be considered on a case by case basis. However, I find that the weight to be accorded to the Secretary of State's position is weakened by the delay and the failure to respond to follow up requests, and I take into account the Enforcement Instructions and thus I accord reduced weight to the position of the Secretary of State in effecting immigration control.

52. The appellant has spent, by the date of the hearing, over 13 years in the United Kingdom but I must also assess the weight to be accorded to the Appellant's Article 8 case and I must take into account further factors to assess the strength of the appellant's private life. This appeal is now, post July 2014, to be decided within the framework Section 117 of the Nationality, Immigration and Asylum Act 2002 and I must have regard when deciding questions of public interest to Section 117B of the same. The Tribunal cannot just rely on the listed public interest factors as a basis for rejecting a claim but must carry out a balancing exercise where a person's circumstances engage article 8(1) to decide whether the proposed interference is proportionate in all the circumstances. I set out the relevant aspects of Section 117 for clarity.

> **117B Article 8: public interest considerations applicable in all cases**
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> **(1) The maintenance of effective immigration controls is in the public interest.**
>
> **(2) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are able to speak English, because persons who can speak English—**

(a) are less of a burden on taxpayers, and

(b) are better able to integrate into society.

(3) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are financially independent, because such persons—

(a) are not a burden on taxpayers, and

(b) are better able to integrate into society.

(4) Little weight should be given to—

(a) a private life, or

(b) a relationship formed with a qualifying partner,

that is established by a person at a time when the person is in the United Kingdom unlawfully.

(5) Little weight should be given to a private life established by a person at a time when the person's immigration status is precarious.

53. According to Section 117B little weight should be accorded to the appellant's private life on two counts. First that the appellant entered the UK unlawfully and secondly little weight should be accorded to the appellant's private life when he has had a precarious immigration status. Even though I accept that the Secretary of State was 'chased' for a decision and delay ensued, the appellant had always known that his status was unlawful and precarious. I accept that the appellant must be able to speak some English as he has been in the UK since 2002. I note that the appellant claims that he has been working and been financially independent.

54. Not only has the appellant always known that he entered the UK unlawfully and that it has been found that he did not enter the UK as a minor. He was found to have entered in 2002 and did not make a claim until 2005. Throughout this period and the period of delay he has known that he has been in the UK on a precarious and risky basis. Despite the second point regarding delay in **EB Kosovo** the very fact of his solicitors chasing the respondent indicates that he remained fully aware of the instability of his position and that he was unable to work.

55. Despite his distant family relatives, I did not consider that the appellant showed any actual family life in the United Kingdom or that he had displayed ties beyond the normal emotional ties one might have with cousins. There was no indication of financial dependence and although the appellant claimed he lived with his cousin the history of his accommodation and relationships, on review of the letters of support provided, did not indicate that the appellant had forged a particular bond with any one person. His witness statement confirmed that he had worked in the Indian Restaurant Industry both as a waiter and kitchen porter (albeit unlawfully) in order to sustain himself.

56. I accord therefore when assessing his private life overall little weight to that life established whilst in the UK.

57. I also turn to a consideration of what might be his ties in Bangladesh particularly as submissions had been made in respect of his ties there. A rounded assessment should be made with respect to his ties. The appellant claimed that he had no relatives in Bangladesh. That is not correct. It is clear that Mr M A Ali has visited Bangladesh on a number of occasions in the last five years and he himself stated that he had relations in Bangladesh. In his evidence to Judge Lawrence Mr M A Ali stated that he had other relatives in Bangladesh and as Mr Ali and the appellant are related and as was confirmed in the evidence before me, I find that the appellant too has relatives and contacts in Bangladesh with whom he can reconnect. Mr Ali has returned to Bangladesh on numerous occasions and clearly retains contact. I conclude that the appellant therefore also retains contact. He can speak the language and it was not accepted that there were any reasons why he would fear a return to Bangladesh.

58. Further to **Huang v Secretary of State for the Home Department [2007] UKHL 11**, taking full account of all considerations, the length of the appellant's stay in the UK, the connections with friends and the reduced weight accorded to the respondent's position I am not persuaded that any family life of the claimant was prejudiced in a manner sufficiently serious to amount to a breach of the fundamental right protected by Article 8. I also considered the factors as they relate to the private life of the appellant as described above. It was argued that nothing in Section 117 B displaces the factors in **EB Kosovo** but that case still refers to the proportionality exercise and a reduction in weight and does not rule that delay is a deciding factor. I have also considered whether the appellant has been prejudiced by the delay in that he is now 'caught' by Section 117 but the factors spelled out are factors which have always been issues to take into account it is merely that their consideration is now mandatory.

59. Simply is the decision proportionate? I take into account the length of time the appellant has spent in the UK and the delay by the Secretary of State who took eight years to make a decision but in view of my findings above on the strength of the appellant's case, and the application of Section 117B, I am persuaded that even with the substantial reduction in weight accorded to the position of the respondent, that the Secretary of State has shown that the decision is proportionate. I therefore dismiss the claim with respect to Article 8.

Order

Appeal dismissed.

No anonymity direction is made.

Signed Date 21st April 2015

Deputy Upper Tribunal Judge Rimington

TO THE RESPONDENT
FEE AWARD

No fee was payable and therefore there can be no fee award.

Signed Date 21st April 2015

Deputy Upper Tribunal Judge Rimington