Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/44439/2014

THE IMMIGRATION ACTS

Heard at Glasgow	**Decision Promulgated**
On 20 August 2015	**On 4 September 2015**

Before

UPPER TRIBUNAL JUDGE DAWSON
DEPUTY JUDGE OF THE UPPER TRIBUNAL HUTCHINSON

Between

PALASH HAMID ABDUL
(ANONYMITY ORDER NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr D. MacLeod instructed by Taj Solicitors
For the Respondent: Mrs M. O'Brien, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, Mr Palash Hamid Abdul who is a citizen of Bangladesh and was born on 8 May 1989, has been granted permission to appeal against the decision of First-tier Tribunal Judge P. Grant-Hutchison dismissing his appeal against the respondent's decision of 22 October 2014 to remove the appellant from the UK as someone subject to administrative removal under Section 10 of the Immigration and Asylum Act 1999.

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2. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) we do not make an anonymity order. The First-tier Tribunal made no order and there were no issues before us that might require such an order.

Background

3. The appellant applied for leave to remain on 15 June 2011 on the grounds that removal would place the UK in breach of its obligations under the Human Rights Act 1998. His case is that he was born in Bangladesh but moved with his family to Dubai as a baby where he lived until 14. We observe that it is unclear as to exactly what age he was when he travelled to Dubai, with the respondent making references to an emergency travel document application noting the appellant as 6 years old and the appellant's grounds of appeal against the respondent's decision indicating that he did not have a clear recollection of when. He states that he was brought to the UK in 2003 by his parents who left him in the care of Mr Aziz Abdul and his family and did not return to care for him.

4. The appellant had applied for leave to remain as a student on 23 February 2006 by when he was aged 16, but that application was refused with no right of appeal on 31 July 2007. Earlier on 12 June 2007 the appellant was served with an IS.151A as an illegal entrant as he could not provide any evidence of lawful entry to the UK. On 15 June 2011 he applied for leave to remain under Article 8 of the ECHR. That application was also refused with no right of appeal. On 24 November 2011 the appellant asked the respondent to reconsider his application. Following judicial review proceedings the respondent issued the decision of 22 October 2014 which gave rise to these proceedings.

5. It is the appellant's case that he was then looked after by Mr Aziz and his family whom he regards as his adoptive family. The appellant claimed that his removal would be a breach of his human rights as he claimed it would deprive him of his right to family life with his 'adopted family' and interfere with his private life established during his time in the UK. Additionally he stated that removing him to Bangladesh would be a danger to his health as he suffered from a kidney problem in 2012.

6. The respondent set out the grounds for refusing the application in a letter dated 22 October 2014 with reference to Appendix FM and paragraphs 276ADE (1). It was not considered that the appellant could satisfy the Eligibility criteria under Appendix FM of the Immigration Rules as a partner or a parent and consequently it was concluded that the appellant cannot claim to have established family life within the meaning of Article 8 under the Immigration Rules.

7. The appellant's case was also considered under paragraph 276ADE. It was not considered that the appellant could fulfil the requirements on the basis of his private life under paragraph 276ADE because he was 25

years of age at the date of decision and claimed to have entered the UK in September 2003. He had spent no more than 11 years in the country. He therefore failed to meet the requirements of paragraph 276ADE (1) (iii)-(v). The respondent considered that the appellant will have remained somewhat familiar with Bangladeshi culture as he had resided with Mr Aziz Abdul and his wife Mrs Shahana Begum, both of whom were originally from Bangladesh and that it was reasonable that they would have friends and relatives in Bangladesh who would be able to assist him on his return. The respondent noted that the appellant spoke Bengali and did not consider that there would be very significant obstacles to the appellant establishing private life in Bangladesh and the respondent found he could not fulfil the criteria of Paragraph 276ADE(1)(vi) of the Immigration Rules.
The respondent went on to consider whether there were any exceptional circumstances that would make it appropriate to allow the appellant to remain outside of the Immigration Rules but found, having considered all the relevant factors, that there were no such circumstances that might justify allowing the appellant to remain exceptionally.

8. The judge heard evidence from the appellant and Mr Abdul Aziz but reached the same conclusion. He found that the appellant did not meet the criteria of Appendix FM as he was neither a partner nor a child and that he could not meet the terms of Appendix FM.EX.1. The judge found that the appellant's relationship with Mr Aziz and his wife did not constitute family for the purposes of Appendix FM. The judge also concluded that whilst the appellant had built up a considerable private life he had not lived continuously in the UK for at least 20 years and neither had he spent half of his life living continuously in the UK. Further, the judge did not accept that there were very significant obstacles to the appellant integrating into Bangladesh. The judge noted that the appellant had been raised by his own father and mother until he was 14 years old and by another Bengali family thereafter. The appellant could speak Bengali and appeared to be an intelligent, educated individual who should have no great difficulty integrating into Bengali society either with or without the assistance of Mr Aziz or Mrs Begum's extended family. The judge did not consider it necessary to go on to consider Article 8 outside the rules but did so in any event, finding that removal would be proportionate.

9. Permission to appeal to the Upper Tribunal was granted on the basis that it was arguable that the approach to Article 8, the consideration of section 117B of the 2002 Act was flawed and that errors of law were disclosed by the application.

Error of Law Consideration

10. Permission was granted on all grounds by the First-tier Tribunal as it was arguable that the judge's approach to Article 8 and the consideration of section 117B was flawed.

11. Mr MacLeod's submitted that the judge gave inadequate reasons for his findings. He conceded that an irrationality argument could not succeed, given the very high threshold. We pause here to observe that he was correct to do so as a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible: **R (Iran) & Ors v Secretary of State for the Home Department [2005] EWCA Civ 982.** Mr MacLeod accepted that the grounds were somewhat discursive and he identified that the core of the appellant's challenge was to be found at paragraph 7 of the grounds. This is in essence that the judge failed to adequately assess paragraph 276ADE(1)(vi) of the immigration rules.

12. Paragraph 276ADE(1)(vi) provides as follows:

"276ADE (1). The requirements to be met by an applicant for leave to remain on the grounds of private life in the UK are that at the date of the application, the applicant:

....

(vi) subject to sub-paragraph (2), is aged 18 years or above, has lived continuously in the UK for less than 20 years (discounting any period of imprisonment) but there would be very significant obstacles to the applicant's integration into the country to which he would have to go if required to leave the UK."

13. Our analysis is as follows. The judge at [16] of the decision directed himself to consider 'whether the Appellant has established a private life in the UK under paragraphs 276ADE-276DH'. It was not argued before us and we find that there was no error in the judge's finding that the appellant had not lived continuously in the UK for at least 20 years, nor had he spent half of his life living continuously in the UK. Given his age and the length of time he has spent in the UK the appellant has no arguable case under 276ADE, other than 276ADE(1)(vi).

14. Although the judge's subsequent reasoning in [16] on the question of whether there were 'very significant obstacles' to the appellant's integration into Bangladesh was brief, we are satisfied that he directed himself appropriately and made findings that were open to him on the evidence.

15. Paragraph 276ADE(1)(vi) confirms an acceptance that there are cases where an applicant cannot meet the 'length of residence' requirements set out at subparagraphs (i) - (v) of the rule, but that if the appellant can show that there is something which will amount to a very significant obstacle to him integrating into the country of return, than this will give rise to a disproportionate interference with the appellant's private life. As we indicated at the hearing, unlike in any Article 8 assessment outside the immigration rules, the weight to be given to the public interest has already been factored into the provision.

16. No indication is given in paragraph 276ADE(1)(vi) as to what would meet the test but in our view there is a very high threshold and clearly a more demanding test than the previous requirement to show a 'lack of ties' to the claimant's country of return. Each word must be given its ordinary meaning and it is incumbent on the appellant to identify obstacles (which there are in this case) but also to demonstrate that they are very significant. That is to say they could not reasonably be overcome.

17. We have considered the meaning of integration: an individual returning to their home country has to be in a position to participate in life in his country. The judge took into account that the appellant had not lived in Bangladesh since he was a very young child, having moved to Dubai with his family. Although Mr MacLeod submitted the judge was incorrect to refer to the appellant being 6 years old when he moved to Dubai, the judge was correct to identify that there was a dispute in relation to this issue. The appellant in his witness statement before the First-tier Tribunal stated that he did not say, in his Emergency Travel Document interview on 16 April 2008, that he was 6 years old when his family moved to Dubai. The judge did not resolve this dispute but found that it was not of great significance whether the appellant went to Dubai as a baby or at 6 years old. That was a finding open to him as the appellant was clearly on any basis a very young child when he left Bangladesh. The judge does not suggest in his findings that the appellant's early residence in Bangladesh could assist him in his integration. It is clear that the judge took into consideration the length of time the appellant has both been in the UK and that he left his country of origin as a very young child.

18. The judge referred to the fact that the appellant had been raised by his own father and mother until he was 14 years old and then 'by another Bengali family thereafter'. It is clear from the findings at [16] that the judge was aware that the appellant's parents lived with him outside of Bangladesh for the majority of the time until he was 14. What the judge did find would assist the appellant in integrating was the fact that he had been brought up until the age of 14 by his own Bengali parents.

19. The judge also took into consideration that the appellant was then raised in the UK 'by another Bengali family'. Although Mr MacLeod made detailed submissions on this point including that there was a confusion in the judge's findings between language and culture and that living in Scotland with Scottish siblings is not the same as living in Bengali culture, the judge set out the evidence including the oral evidence from Mr Aziz that he and his wife, although naturalised British nationals, were of Bangladeshi origin. Mr Aziz is recorded as stating that 'he uses the Bengali language with his children but they have no knowledge about the culture'. It is clear that the judge was aware of the circumstances of the appellant's life in the UK. It was open to the judge to make the general finding that he did, in relation to the combination of the appellant's own Bengali parents and his subsequent

life in the UK with family of Bengali heritage, albeit a family that is now British, being a factor in the appellant's ability to integrate in Bangladesh.

20. The judge went on to find that the appellant can speak Bengali. The appellant in his witness statement at paragraph 5 indicated that when he arrived in the UK at the age of 14 he could not speak English. He went on to state at paragraph 9 that he 'can speak a little Bengali'. Although Mr MacLeod initially submitted that the appellant had stated in evidence that he only spoke a 'bit' of Bengali and thus a very significant obstacle to integration this did not reflect the judge's record or that of the presenting officer. We drew Mr McLeod's attention to the record of proceedings noting that the appellant's answer on speaking Bengali as 'not fully, but a little'. The presenting officer's note was 'not fluently, but a little'. It is undisputed that the appellant spoke only Bengali up until arriving in the UK in 2003. The evidence was that he had lived in a household where the father uses the Bengali language with his children. The judge was clearly entitled as he did to find that the appellant could speak Bengali.

21. The judge went on to find that the appellant appeared to be an intelligent, educated individual who should have no great difficulty integrating in Bengali society with or without the help of Mr Aziz or Mrs Begum's extended family''.

22. It was open to the judge to take into account the appellant's level of education and intelligence in assessing whether there were very significant obstacles to the appellant integrating into Bangladesh. The judge had before him evidence of the appellant's SQA qualifications in Scotland together with evidence of further studies and work experience.

23. Mr MacLeod referred on a number of occasions to a letter from Brewmeister brewery dated September 2014 in which the director of the business indicates the company is interested in working with the appellant as a potential business associate in establishing an Indian beer product. The letter referred to the appellant being 'able to speak with potential customers who own Indian restaurants' and being able to 'translate their culture for our understanding'. It is clear there is no reference to Bengali culture. Rather this letter is further evidence that the appellant is a 'capable young man' as indicated by the author of the letter. Although the judge recorded the respondent's submissions on this letter as showing that he had not lost contact with his culture, he also recorded Mr MacLeod's submission that the letter shows it is in the public interest that the appellant should be allowed to stay. The judge's findings do not show that the judge misdirected himself in relation to the letter or in making a finding that the appellant appears to be an intelligent and educated individual. It was not necessary for him to make a specific finding on the letter.

24. Mr MacLeod submitted that the judge was incorrect to place weight on the appellant integrating 'with the help of Mr Aziz or Mrs Begum's extended family' having regard to the evidence that Mr Aziz and Mrs Begum have no extended family in Bangladesh with the exception of one elderly mother. There is no error in this finding. Mrs Begum's mother is 'extended family'. Even if there were an error it would not in our view be material as the judge made his finding that the appellant could in the alternative integrate without such assistance.

25. It is not disputed that the appellant has no contact with his biological family and has no recall of living in Bangladesh having lived outside of his home country for the vast majority of his life. Although that may be an obstacle to integration, the judge made no error in not finding this to be a very significant obstacle. The grounds refer to the appellant's witness statement and the appellant's claim there that he received NHS treatment as his 'one of my kidneys was down to 20 per cent' which the grounds argue indicates that there is no possibility that the appellant will be provided with adequate care and attention should there be any further kidney difficulties. However there was no medical evidence before the judge (as recorded at [7]) and no material error in the lack of a specific finding on this point. Similarly there was no error in the judge's finding that the cumulative factors lead to the conclusion at [16] that there are not very significant obstacles to the appellant's integration into Bangladesh.

26. Despite initially accepting that there was in essence just the one ground, Mr MacLeod indicated in the course of his submissions that he relied on others. These included the assertion that the typographical errors in the determination cumulatively affected the decision. In any event the errors referred to are insufficient to amount to a material error and are likely to have resulted from a lack of proper proofreading. We are satisfied that the judge understood the case before him and properly engaged with the issues. He adequately explained his reasons and it is clear to both parties why the appellant's appeal was not successful.

27. The final aspect we consider is in relation to the judge's findings at [17] of the determination and reasons on Article 8 outside the immigration rules. Although the judge did not specifically set out the public interest considerations set out at section 117B of the Nationality, Immigration and Asylum Act 2002, the judge directed himself to take account of these considerations at [14]. In any event any error would not in our findings be material. Compelling circumstances are required to be identified to support a claim for a grant of leave to remain outside the immigration rules; **SSHD v SS (Congo) & Ors [2015] EWCA Civ 387** applied. In addition section 117B(4) requires that little weight should be given to a private life that is established by a person at a time when the person is in the United Kingdom unlawfully and there is no evidence of any lawful stay by the appellant in the UK. Even if the period of time the appellant was here as a minor private life then developed, it is unarguable that he has been aware as an adult of his

unlawful status since 2007. Mr MacLeod conceded that Article 8 considerations were dealt with within the immigration rules consideration.

Decision:

28. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law. The appeal is dismissed and the decision of the First-tier Tribunal stands.

Signed: Dated: 27 August 2015

M M Hutchinson
Deputy Judge of the Upper Tribunal