



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

Appeal Number: IA/46789/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 19 November 2014**

**Decision & Reasons Promulgated
On 19 March 2015**

Before

UPPER TRIBUNAL JUDGE CONWAY

Between

**MR RAJIM HUSSAIN
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Karim

For the Respondent: Mr Jarvis

DECISION AND REASONS

1. The Appellant is a citizen of Bangladesh born in 1993. He appealed against decisions of the Respondent made on 25 October 2013 to refuse him leave to remain and to remove. The basis of the decisions was that the Appellant entered the UK with clearance as a visitor in June 2006 with leave until October 2007. He last entered the UK in July 2007. He overstayed. The Respondent concluded that he did not meet the requirements of the Immigration Rules. Also his removal would not breach his rights to private and family life.

2. He appealed.
3. Following a hearing at Taylor House on 10 July 2014 Judge of the First-tier Tribunal Kelsey dismissed the appeal under the Rules and on human rights grounds.
4. The judge's findings are at paragraphs 20-26. At [22] he noted an application that was made in September 2009 and refused in July 2010. It referred to a claim that family life existed between the Appellant and his second cousin. The judge noted that there was no reference to the Appellant's closer relatives including siblings all of whom are British citizens. The judge concluded that the Appellant had *'failed to disclose important and pertinent evidence when he made his application with the intent only of submitting evidence that he chose to submit, and of failing to submit significant evidence relating to his circumstances and his family members in the UK.'*
5. The judge did not believe the Appellant's evidence that he could not return to Bangladesh because his parents are not there and he has no relatives there. The judge noted evidence from others that the Appellant's mother was still there living with a maternal uncle. Also his father lives in Bangladesh. The parents phone the family in the UK occasionally [23]. The judge thus concluded that the Appellant has relatives in Bangladesh and has means of contacting his parents [24].
6. At [25] the judge saw no reason why the Appellant should if he wished to live in the UK not return to his home country and make an application.
7. The judge concluded (at [26]) by stating again that the Appellant had withheld evidence and had not been truthful; he had been fully aware that he had no right to stay in the UK but had made no effort to return to Bangladesh to make another application. Further, *'he has not given any evidence that he has any British friends or any private life in this country outside his own family'*. Also, *'he maintained that he has lost his connections to Bangladesh, but that (if it is the case) is a result of his own actions'*.
8. He sought leave to appeal which was granted on 8 October 2014.
9. At the error of law hearing Mr Karim made the following points. In summary, the judge erred in failing adequately or at all to consider Article 8 firstly within the Rules and secondly outside the Rules. He failed to consider paragraph 276ADE. He further erred in concluding that if ties were lost (relevant for the purposes of 276ADE(vi)) such was by the Appellant of his own accord. Such a finding was irrelevant. The fact that the Appellant may have lost ties whatever the reason may be, was an issue to be considered under the Rules.
10. Also the judge failed adequately to consider evidence relevant to private life including his length of time here, his education, his integration.

11. Further, he made no findings in respect of the evidence of witnesses other than the Appellant.
12. Moreover, his adverse conclusion about the Appellant's credibility based on his failing to mention close family members in the UK was perverse. Such failure to disclose that information could only prejudice his case as opposed to strengthening it. In that regard he also failed to consider family life in the UK with his family members.
13. In reply Mr Jarvis submitted that whether or not the determination could have been structured in a better way it was difficult to see how the Appellant could have succeeded. He could not satisfy paragraph 276ADE, nor was there anything exceptional that could have led to separate consideration under Article 8.
14. In considering this matter I concluded that there was merit in some of Mr Karim's submissions. In his brief findings the judge did take against the Appellant's credibility that he had failed to mention that he has siblings in the UK. Such was an irrational finding as his failure to do so could only, as Mr Karim said, prejudice his claim not strengthen it. His finding that any ties he might have had in Bangladesh were lost by his own actions was irrelevant. The fact that the Appellant may have lost ties, whatever the reason may be, was an issue to be considered under paragraph 276ADE.
15. Further, the judge failed to give adequate if any consideration to evidence that was before him as to private life in the UK. He erred also in failing to make findings on the evidence of the witnesses other than the Appellant.
16. I set aside the determination and noting that the directions served on the parties indicated that in such event matters should be concluded at that hearing, proceeded to remake it. There was no opposition to that course of action.
17. There was no oral evidence. It was agreed that the limited findings made by the First-tier should stand.
18. In his brief submissions Mr Jarvis said there was no family life. He needed to be living with adults and even if he was the relationships needed to be beyond normal emotional ties. Such was not indicated in this case. As for private life within the Rules paragraph 276ADE had been amended such that the Appellant would need to show very significant obstacles to his integration into his home country. Looking at factors such as his age, health, and ties there, he could not succeed under the Rules.
19. As for Article 8 outside the Rules even if such was reached the s.119 factors of the Immigration Act 2014 needed to be considered. In that regard there was no evidence that the Appellant was financially independent. Also his remaining here unlawfully did not assist his claim. He invited me to dismiss the appeal.

20. Mr Karim submitted that in considering his human rights the Appellant has considerable factors in his favour including that he had come to the UK at the age of 14, had gained GCSE qualifications and has close ties with family members here. As for ties in Bangladesh his evidence was that they were almost zero. His position about his parents was that relations were not good. The evidence about contact with them was not necessarily a discrepancy. His position is that he has no contact. It may be that his sister does have contact. It would be difficult for him to reintegrate.
21. Mr Karim added that there was evidence of family life with his relatives here. He is living with them and dependent on them. It was more than just normal ties. Even if there was no family life he has ties and the numerous references enhanced his private life claim.
22. Mr Karim accepted that several of the s.117 factors count against the Appellant but emphasised that he was an English speaker and had established life here through no choice of himself having been abandoned. Looking at the factors overall the case should succeed.
23. I consider first whether the Appellant has family life with his siblings and others. In **Ghising (family life - adults - Gurkha policy) [2012] UKUT 00160 (IAC)** the Tribunal said that a review of the jurisprudence disclosed that there was no general rule that Article 8 can never be engaged when the family life it is sought to establish is between adult siblings living together. Rather than applying a blanket rule with regard to adult children, each case should be analysed on its own facts, to decide whether or not family life exists, within the meaning of Article 8(1). Each case is fact sensitive.
24. In this case the evidence is that he has not been living with his siblings. Indeed, for reasons unexplained he made no mention of his brothers and sister in an application submitted in late 2009. Such does not suggest any great closeness. The evidence then and now was that he has been living most of the time with a less close relative, a cousin. It may well be that there is affection between them but I see nothing in the evidence to indicate especially strong ties. His cousin's wife in her statement describes him as 'bright and intelligent.' Such is confirmed by his ability to access and successfully pursue qualifications. Such indicates a considerable level of self dependence. On the evidence I do not find that the Appellant has shown that he has family life protected by Article 8.
25. As for private life within the Rules the relevant paragraph is 276ADE. There is no dispute that the only aspect of that paragraph that could apply is (vi), which at the time of the Respondent's decision read '(the applicant) *is aged 18 years or above, has lived continuously in the UK for less than 20 years ... but has no ties (including social, cultural or family) to which he would have to go if required to leave the UK.*'
26. Mr Jarvis noted that that paragraph had been amended from 28 July 2014 to read ' *...is aged 18 years or above, has lived continuously in the UK for*

less than 20 years...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, ' He queried whether it was necessary to apply that version.

27. In my judgement the Appellant does not establish either that he has 'no ties' or that there would be 'very significant obstacles' to his integration.
28. The evidence from his sister was that his father and mother are in Bangladesh and that she at least is in occasional contact with them. His claim was that his parents are not there. I do not believe that evidence. Even if he himself has no contact with them I do not accept that he would not have known through his sister that they were there. Such does not assist his credibility about other family members there. There was evidence from the sister, which I see no reason to doubt, of some five uncles there. I find that even if he has no contact with his parents, at the very least he has some family ties in Bangladesh. I find also that having lived the majority of his life in Bangladesh including his formative years, he has social and cultural ties there. He is not a stranger to the country, the people, the way of life. Further, he is a healthy young man with no medical conditions. He has qualifications got whilst in the UK, is fluent in English and also speaks Bengali. He is likely to be in a better position than many young single men to get work and support himself. I conclude that as well as having ties in Bangladesh, there would not be very significant obstacles to his integration. He cannot satisfy paragraph 276 ADE in either version.
29. I was urged by Mr Karim were I to be against the Appellant under the Rules to find for him on Article 8 directly.
30. If the Rules are not a complete code (and it was not submitted that they were) I need to consider whether there are good reasons to consider Article 8 directly. A good reason is one that is compelling or because there are exceptional circumstances. There is no test of exceptionality, there does not have to be anything extreme to move to Article 8 directly. A good reason may be present if the Rules do not provide discretion to examine whether the immigration decision is proportionate in light of all of the Appellant's circumstances but only if the consequences of the decision are likely to have a significant impact on the private life continuing.
31. I consider it appropriate to consider Article 8 (private life) directly.
32. I am prepared to accept that the Appellant has established a private life not least because he has been here for about seven years. It may well be that he was effectively left here by his parents. It may be that as indicated by the various witness statements he also has ties with the considerable number of family members here.
33. It may also be that his removal would potentially engage Article 8. In that regard the seriousness test for private life is different from family life; an

Appellant has to show that moral and/or physical integrity would be compromised by removal.

34. It is not disputed that the decision is in accordance with the law.
35. Advancing to proportionality I need to have regard to the considerations set out in s 117B of the 2002 Act as introduced by the Immigration Act 2014.
36. The Appellant is entitled to have taken into account in his favour in the balancing exercise his length of residence in the UK of some seven years from the age of fourteen and his ties with relatives lawfully here. It appears that he is fluent in English (s 117B(2)), and has passed a number of certificates.
37. On the other hand, most of his private life has been established at a time when his presence here has been unlawful. As such I give it little weight (s 119B(4)). There is no indication that he is financially independent (s117B(3)). As indicated, he is a young, healthy, adult. He cannot satisfy the Rules. There is no indication on the evidence before me that he has taken up any significant ties or connections beyond his family members here. He has no work or property here. Even if he no longer has dealings with his parents and does not wish to, there is evidence of other relatives in Bangladesh. He spent his first 14 years there and it is reasonable to conclude having spent the vast majority of his life there that he has exposure to and developed an understanding of cultural norms there. He knows the language. Having attained some qualifications including GCSE and in e-learning and engineering, and having fluency in English as well as Bengali, he is likely to be in a better position to get employment or otherwise support himself than many of his fellow citizens. I conclude that he clearly has a connection to life in that country. He can keep in touch with family members here and they would no doubt give him support as necessary, as they have here.
38. Looking at the factors in the round the balance weighs heavily against the Appellant in the proportionality exercise.
39. I find that the decision to remove is not disproportionate to the legitimate aim.
40. The appeal fails on human rights grounds also.

Notice of Decision

The decision of the First-tier Tribunal contained a material error of law. It is set aside and remade as follows:

The appeal is dismissed under the Immigration Rules.

The appeal is dismissed under Article 8 ECHR.

No anonymity direction is made.

Signed

Date **18 March 2015**

Upper Tribunal Judge Conway