



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

Appeal Number: AA106822014

THE IMMIGRATION ACTS

**Heard at Field House
On 15 March 2016**

**Decision &
Promulgated
On 8 June 2016**

Reasons

Before

DEPUTY UPPER TRIBUNAL JUDGE L J MURRAY

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

and

**KAMRUL ISLAM
(ANONYMITY DIRECTION NOT MADE)**

Appellant

Respondent

Representation:

For the Appellant: Mr A Melvin, Senior Home Office Presenting Officer
For the Respondent: Mr Coleman instructed by Lawland Solicitors

DECISION AND REASONS

1. The Respondent in this case was the Appellant before the First-tier Tribunal and the Appellant was the Respondent. For the sake of clarity I refer to the Respondent in this appeal as the Claimant and the Appellant as the Secretary of State.

Background

2. The Claimant's immigration history is that he left Bangladesh by plane and arrived in the United Kingdom on 10 January 2009 at which time he was approximately 12 years old and he claimed asylum on 16 January 2009. He was granted discretionary leave to remain in accordance with the Respondent's policy on unaccompanied minors until 29 April 2012. On 10 May 2012 he made an application for further leave to remain on the basis of asylum and human rights and that application was refused on 18 November 2014. He appealed the decision to refuse to grant of further leave under section 82 (1) of the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act"). In a decision dated 4 March 2014 First-tier Tribunal Judge Blake dismissed his asylum appeal and allowed his appeal on human rights grounds, namely under Article 8 of the European Convention on Human Rights and under paragraph 276ADE(vi). The Secretary of State sought permission to appeal that decision and there was no cross-appeal from the Claimant. First-tier Tribunal Judge Saffer granted permission to appeal on the basis that it was arguable that the judge erred in not properly considering the Claimant's circumstances should he be returned to Bangladesh and in particular regarding the ambiguous findings regarding what family he had there.
3. The matter came before me and I determined that there was a material error of law in relation to the findings of the First-tier Tribunal regarding paragraph 276ADE and Article 8. Those findings are set out in a decision that was made pursuant to a hearing on 8 September 2015 and which was sent to the parties.
4. My findings and reasons were as follows. The requirements of paragraph 276 ADE (1) (vi) are not satisfied unless an applicant demonstrates that there are very significant obstacles to his re-integration into the country to which he will return. That necessarily involves a First-tier Judge making findings of fact in relation to the circumstances in the country of return. In finding that there was inconclusive evidence as to whether or not the Claimant would receive any support in Bangladesh and finding also that it was an incredible aspect of the Claimant's claim that he had no contact with his family in Bangladesh I considered that the First-tier Tribunal made inconsistent findings and his conclusions in respect of paragraph 276ADE were inadequately reasoned. If there was inconclusive evidence and the burden was on the Claimant he should have found that he had not discharged the burden on him. Further, he failed to give adequate reason why he found the absence of ties determinative. I found therefore that the First-tier Tribunal gave inadequate reasons in relation to material matters and that that amounted to a material error of law.
5. Further, there was no express reference in the decision of the First-tier Tribunal to section 117. Whilst it was not necessary for the First-tier Tribunal to set in full each of the statutory provisions, it was required to demonstrate that the relevant statutory provisions had been taken into account, and that they had been applied to the facts of the particular appeal (**Dube (ss.117A-117D)** [2015] UKUT 00090 (IAC). At no point in

the decision did the First-tier Tribunal direct itself that little weight should be given to a private life which was established whilst the Claimant's immigration status was precarious. The Claimant's status was precarious because it depended on a further grant of leave (**AM (S 117B) Malawi** [2015] UKUT 0260).

6. I preserved no findings of fact in relation to the decision of the First-tier Tribunal under paragraph 276ADE and under Article 8. The matter therefore came before me as a re-hearing on those matters.

The Hearing

7. I heard evidence at the hearing from the Claimant and one witness, Mrs Nessa. The Claimant adopted his witness statement that was before the First-tier Tribunal at pages 2 to 9 of the Claimant's bundle. In answer to questions from Mr Coleman he said that he had been offered a place at University by Queen Mary College. He had achieved two 'A's and a 'B' at A level. He was proposing to do a BSc in IT management where he learnt code specific programmes and designed the outer layer of the programme and could edit it. He hoped to get a First Class honours degree and work for Stanley Morgan or KGMB as a programme manager. He described the contents of the photographs he submitted in an eight page bundle, namely that he was interviewed by Sky Sports and won an outstanding achievement award in cricket. He also described a newspaper article from Eastern Life and said he ran a mini club for people with behavioural issues and did sports sessions with them to help with social problems, for example knife crime. He had acquired a wide network of friends and from his school sports and voluntary work background. He said his late uncle had passed away in 2014 and he had heard from that uncle that his family may have moved. He had no brothers and sisters. He spoke Bengali. He could read and write in Bengali a little bit. His witness was his father's cousin. He called her his aunt. He had no other relatives in the UK apart from that.
8. Mr Melvin asked if the Claimant had heard from his late uncle in 2014 that his family may have moved. He said it must have been before 2014 because that was when his uncle died. He said that his uncle did not say where the family had moved. He was asked what attempts he had made to contact his family and he said he did not know where to start because he did not have anything to contact them. He had not phoned the Bangladeshi Embassy. He did not know whether there was any reason why the authorities could not help him with locating his parents. He did not try to ask for support from organisations that might be able to help him. He was asked if there was any reason he did not ask for support from organisations and he said Bangladesh was like a foreign country. Here he had friends and family and there was nothing back home in Bangladesh. He was asked if he blamed his parents for sending him here and he said it was like they did not want him. He was asked if he did not want to return and he said in Bangladesh he did not have anything. He would not be able to go to university in Bangladesh. He did not know if the qualifications

were very different. He was not perfect at reading or writing in Bengali. It was very difficult to brush up because he was always speaking English and the education system was very different here. He knew the course he wanted to do here and had done research but he did not know anything about those things there. He had made no attempt to look at Bangladesh universities. He did not intend to attend a management course which he had initially applied for here. He had applied for two courses and he had chosen his preferred course. He did not know if the same course was available in Bangladesh but he said the course was very rare because it was linked with a company.

9. He had done voluntary work and unpaid work here and had no contacts there. He looked after 35 children here and taught them sports. He did social work about knife crime and bullying. He was attending college here. He did not know about his aunt's relatives in Bangladesh. He was asked if he was deliberately trying to distance himself from Bangladesh and he said he did not understand the question. He had made no efforts to trace his family. He was busy with the children he helped and it was sad that his family had abandoned him. He wanted to improve things in his community here. He was asked if he had any fears if returned to Bangladesh and he said he would be frightened because he felt that he was born there but everything he had achieved was here and it was a strange country and he would be frightened and had friends and family here and not there.
10. Here in the UK he resided with his aunt and one cousin who had just finished university. He helped his aunt with the shopping and reminded her about her medication. She had seven children all of whom had moved away. They were at university and now lived elsewhere. He had contact with a few of them when they came to the house and the younger one grew up with him but they had less contact since he had been to university. The 21 year old was working with a company and had graduated from Oxford. He went in the morning and came back at night. He did not really help his aunt. The last time his aunt was in Bangladesh was around 2011. He could not remember how long she was there for. The flat he lived in had three bedrooms. It was a first floor flat. He did not know if she owned it. She was not working and he did not know if she had ever worked. He had lived there for seven years.
11. There was no re-examination. I asked him if he was not curious about his family in Bangladesh and he said he did not remember anything. I asked if he could remember what his parents said about why he was coming here and he said he did not remember anything about what they said, he just remembered he was going to school.
12. Mr Coleman then asked what his parents said before he left and he said he did not remember, he just knew he was here and he did not remember if they said he was coming to the UK.

13. Nutun Nessa gave evidence. Mr Coleman asked her to confirm her address. She adopted her witness statement. She said she forgot things as she was depressed. She was last in Bangladesh in 2012. The Claimant was her cousin's son. She treated him like her own son and he looked after her, helped with shopping and medication because she forgot to take it. Her children had grown up and moved away and were living on their own. Her children were married and from time to time came to visit her and were busy with their own children. Kamrul had lived with her for seven years and he was a good boy and had done his studying. He helped her quite a lot and she was lonely since her husband passed away in 2014. She did not know about the Claimant's family in Bangladesh. She was asked how she had first contact with him. She said her husband brought him and said he would stay with them and she would have to look after him and feed him. She was asked whether it was her husband's decision that he should come and join the family. She said, "my husband said he brought him over and said he is going to stay with us". Mr Coleman asked what she meant by brought him over and she said she could not remember, her husband brought him to the house. Mr Coleman asked if her husband brought him from Bangladesh and she said no, from the UK. She was asked if she was happy about this arrangement and she said he was a young boy and she looked after him. She was asked what she thought about her cousin sending him here and she said she did not know anything about it. She could not say what happened. She could not remember why he was sent here and she did not know.
14. She was asked whether her husband went with her in 2012 on holiday and she said that she went alone. She was asked whether she had made any effort to contact or find the Claimant's family and she said she did not ask their whereabouts, she could not find them. She was asked whether if the Claimant was allowed to stay he would live with her. She said he could stay with her as he helped her, he was a good boy and taught sports and did a good job in the community. She was asked if she had family members who would help him find his feet in Bangladesh and she said he was from a poor family and she did not know where he could stay. He had grown up here and if he went back it would be difficult. She had no income and could not send him any money.
15. Mr Melvin asked how often she visited Bangladesh and she said the last time she visited was the first time in a long time. When she went there she went with her children and stayed for two weeks and did not like it. She stayed in Sylhet. She was asked if she was deliberately avoiding his questions and she said no, she stayed in Sylhet. He asked who she visited and she said she stayed with her son at her in-laws' house and went to a few places for two weeks. Four of her children were working and another was at university and she could not remember things. It was put to her that the Claimant claimed his father was involved in politics in Bangladesh and she was asked if she knew anything about this. She said, "I know he is doing well, I don't know anything about back home". She was asked if her family received money to take care of the Claimant in the United

Kingdom and she said she did not know anything about that. Whatever her husband had done she did not know about. She was asked if her working family could assist the Claimant in Bangladesh financially and she said she did not think they would do that. They did not give her money so how could they give it to him. She did not think anyone had asked them and they did not visit her. She was asked how many of her sons and daughters went in 2012 and she said two of her children went with her and she could not remember how long she had had British citizenship but had to renew her passport there in 2016. She did not have any money to give the Claimant at university.

16. There was no re-examination.
17. I asked how she knew his family were poor. She said if he had to go back anyone who stayed there was from a poor background, they could not look after him. I asked her given he had described his father as a prominent businessman in the appeal before the First-tier Tribunal why she said he was poor. She said everybody was poor, they did not have enough money for everyday life and how could she give him to someone to look after. I said I wanted to understand her evidence correctly and asked whether it was true that she really did not ask why she had to look after him when her husband brought him. She said she did not know anything and she was finding it a bit difficult. I asked if she stayed with relatives in the two weeks she was in Bangladesh and she said she went to in-laws' houses and could not remember where she had been. Her sons had taken her there. I asked again whether she stayed with relatives and she said she stayed with family members and she did not remember who. It was in her in-laws' house.
18. Mr Coleman asked if she did not know anything about his family in Bangladesh and she said she did not know about his family members. She had been trying to find out but no one could tell her anything.
19. In submissions Mr Melvin relied on the refusal letter. He said that neither the Claimant nor his witnesses had any credibility whatsoever in this matter. It was clear that they were both hiding evidence from the Tribunal as to the exact circumstances regarding his arrival in the United Kingdom in 2009 and subsequent attempts to trace the parents. I had heard evidence that he had made no attempt to ask the Bangladeshi authorities to assist him to converse with Bangladeshi community groups and he had no interest in finding them. It was difficult to believe when the Claimant's own evidence was that his father was a businessman and involved in politics that he could not be found. The asylum claim was found to be without credibility and the Claimant did not attempt to resurrect his claim that there would be harm to him on return. There were relatives and parents in Bangladesh and Mr Islam had made no attempt to consider going to university. His focus was solely to remain here and to say or do anything to enhance his position including being untruthful about evidence given. His witness had proven to have a selective memory and blamed

medical issues. There were relatives on his aunt's side capable of assisting him on his return to Bangladesh after obtaining an education at public expense. He asked me to find that he could not succeed under paragraph 276ADE as there were cultural and family ties in Bangladesh if he was required to leave.

20. With regard to Article 8, he did not accept that there was family life engaging Article 8 and his submissions were set out in his skeleton argument including those in relation to Section 117 of the 2002 Act. He referred me to the latest Upper Tribunal decision in **Rajendran (s117B - family life)** [2016] UKUT 00138 (IAC). Little weight should be given to a private life based on the disingenuous claim for asylum. As the Upper Tribunal noted the Claimant's life was one of a precarious nature and as such little weight should be placed on it. He was assisting local authorities with voluntary work and there was no challenge to that fact. A small part of voluntary work was not sufficient to displace the legislation and he asked me to dismiss the appeal.
21. Mr Coleman submitted that it was entirely speculative that he was lying and hiding evidence and there was no basis for that conclusion. There had been no inconsistencies. His aunt had been unable to be specific about anything. She was fairly recently bereaved. The husband made the important decisions in her life. The fact that she did not know was true. She was a poor Bangladeshi woman who had taken him under her wing. He was a person of good character and was entitled to be believed and Mr Melvin did not score any points in cross-examination.
22. With regard to the evidence of lack of family circumstances, if the Home Office were unable to trace his family, to suggest that he should be able to find his family was absurd. What we knew for sure was that he arrived when he was 12 years old and a child and I could be sure that he could have been in no way complicit in being sent here. His precarious immigration status was not his fault. He was sent here and whether her late husband was complicit was not clear. She did not know and we could be sure that she was not a part of that. There was no hint or suggestion that he had to work as a domestic servant as he had really excelled academically. There had been nothing untoward and she loved him due to his achievements and he had achieved a great deal as a result of hard work and against adversity. He would be a tremendous asset to the United Kingdom.
23. In terms of Section 117 whether someone could contribute positively was relevant and he was a role model for underprivileged children and children who were not on the straight and narrow and that made his position very attractive. On the evidence he was for whatever reason abandoned by his family and there had been never any suggestion that he had been indirectly in contact. He felt sad when he thought about his parents. He blamed them and he could not be blamed for feeling abandoned. He did not want to return and would therefore not look into making

arrangements. He could not have been properly criticised for failing to make arrangements. There had been a two year delay in the decision making process and in relation to someone of his age it was a relevant factor and it meant that he became more established here. He had been here for seven years and for two of those he was awaiting a decision. He was a Bangladeshi and read and wrote some but minimal amounts. He had no home, no job, no family and no friends. He had been here since he was a child and he would be vulnerable as an individual and frightened as a 19 year old. It was an alien country to him. It was not his fault and those factors amounted to very significant obstacles I could be satisfied that there was no social and familial support. There would have to be some firm evidence that his family were in touch with him, so he had social ties but the evidence suggested that he had no one and he would not be returning to anything and that satisfied paragraph 276ADE(vi). It was not a threshold that was unobtainable. Some cases fitted into it and in relation to a child that was the type of case that it was envisaged would succeed. There was of course Article 8 and there were exceptional circumstances because there were unjustifiably harsh consequences for the individual. He was a boy sent here at 12 years old and he submitted that it would be unjustifiably harsh in those circumstances. He had a degree of private life deserving of respect. He could not have been expected to develop a family life here. He was an adult and he had lived with his aunt for seven years. His education, his voluntary work and his network of friends and outstanding achievements amounted to a glowing private life and it was hard to imagine a more entrenched one. The precariousness of his immigration status that had been spent here as a child were not matters that should be given weight and the balance tipped in his favour.

24. Mr Melvin replied in relation to a point of law that in relation to delay the case of **Nnyanzi v United Kingdom** 21878/06 ECHR 282 in the skeleton argument was relevant and he referred me to the case of **EU and others [2013] EWCA Civ 32** with regard to the tracing duties of the Appellant.

Discussion and Findings

25. In coming to my conclusions in this appeal I have taken account of all of the evidence submitted by both parties.
26. The First-tier Tribunal dismissed the Claimant's asylum appeal. There was no cross-appeal by the Claimant in relation to his asylum appeal. In **Devaseelan** 2002 UKIAT 00702, the Tribunal held that where a second appeal deals with the same issues as a previous appeal, the first Tribunal's determination stands as an assessment of the claim the Appellant was making at the time of that first determination. It is not binding on the second Tribunal but, there again, the second Tribunal is not hearing an appeal against it. The Tribunal set out various principles: the first decision is always the starting point; facts since then can always be considered; facts before then but not relevant to the first decision can

always be considered; the second Tribunal should treat with circumspection relevant facts that had not been brought to the first Tribunal's attention; if issues and evidence on the first and second appeals are materially the same, the second Tribunal should treat the issues as settled by the first decision rather than allowing the matter to be relitigated. **Devaseelan** was approved by the Court of Appeal in **Lkrim Djebbar 2004** EWCA Civ 804.

27. In **DK (Serbia) v Secretary of State for the Home Department** [2008] 1 WLR 1246 Latham LJ made the following observations in relation to the procedures then in place for reconsideration of a decision following the identification of an error of law in the decision:

“25. Accordingly, as far as the scope of reconsideration is concerned, the tribunal is entitled to approach it, and to give directions accordingly, on the basis that the reconsideration will first determine whether or not there are any identifiable errors of law and will then consider the effect of any such error or errors on the original decision. That assessment should prima facie take place on the basis of the findings of fact and the conclusions of the original tribunal, save and in so far as they have been infected by the identified error or errors of law. If they have not been infected by any error or errors of law, the tribunal should only revisit them if there is new evidence or material which should be received in the interests of justice and which could affect those findings and conclusions or if there are other exceptional circumstances which justify reopening them.”

28. I have set out the relevant conclusions in my decision in respect of the error of law above. The First-tier Tribunal made the following findings of fact. At paragraph 75 of the decision he found that the Claimant's account was not credible. He rejected the Claimant's account that he would be at risk because of his father's involvement with a political party. The political party named by the Claimant could not be found to exist. At paragraph 78 he found that the Claimant's family had gone to great lengths to remove him from Bangladesh and place him with an uncle in the UK and that this was inconsistent with his claim that he had lost all contact with his family. At paragraphs 81 and 82 he did not accept that the Claimant's father had gone into hiding.
29. In accordance with the case law cited above, I find that these findings of fact are not infected by the errors of law identified in relation to the First-tier tribunal's conclusions in relation to paragraph 276ADE and Article 8 ECHR.
30. The Claimant contends that he meets the requirements of paragraph 276 ADE (vi) of the Immigration Rules. In **YM (Uganda) 2014 EWCA 1292** the Court of Appeal held at [39] that for applications which are decided after 28 July 2014 the relevant wording 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 United Kingdom". This version of the Rule therefore applies to the Claimant as his application was decided in November 2014.

31. I have not been referred to any specific authority in relation to the wording "very significant obstacles to the applicant's integration". In **YM (Uganda) v SSHJD Case C5/2013/1864** the Court of Appeal considered the previous version of the Rule which required that the Appellant demonstrate that he had "no ties (including social, cultural or family) with the country to which he would have to go if required to leave the UK" and endorsed **Ogundimu (Article 8 - new rules) Nigeria [2013] UKUT 00060 (IAC)** and stated that the test was an exacting one. The exercise that had to be conducted was a "rounded assessment of all the relevant circumstances", which were not to be confined to "social, cultural and family" issues. Similarly, I consider that the test in the new version of the Rule is an exacting one and in assessing whether there are very significant obstacles to the Claimant's integration, a rounded assessment must be conducted and the existence of ties will be relevant.
32. The Claimant adopted his witness statement before the First-tier Tribunal at page 1 of his bundle. In that statement he maintained that he would be at risk on the basis of his father's political involvement in Bangladesh and that he would be at risk from the Bangladeshi authorities and influential groups. He asserted that his father was a well-known activist and leader of the local party. He claims that since his arrival in the UK he has lost contact with his parents and heard that they had moved to another place as they believed their lives were in danger. He states that he has no other relatives in Bangladesh and has no social or cultural ties to that country. He claims that his life would be in danger and he would be destitute if he went back.
33. The Claimant did not seek to argue before me that he would be at risk of harm on return. It is clear from reading the Claimant's interview dated January 2009 at A2 of the Respondent's and in the light of the First-tier Tribunal's findings of fact that the Claimant's family arranged for him to join a family in the UK, namely that of his father's cousin, Mrs Nessa. The Claimant informed the Immigration Officer in that interview that he left his parent's home and came with a man and woman to the UK who pretended to be his parents. On arrival the people he travelled with dropped him at Mrs Nessa's and her husband's house. The Claimant stated at A5 that he had previously met the uncle in 2007 at his home.
34. The First-tier Tribunal found, as stated above, that the Claimant's circumstances were not as claimed in Bangladesh. He found that his father was not a member of a political party, did not go into hiding and his family went to great lengths to get him out of Bangladesh. I find it wholly unbelievable that the Claimant and his aunt do not know his parent and wider family's whereabouts in Bangladesh. There was clearly an elaborate arrangement involving deception regarding the Claimant's identity to get him to the UK. The Claimant maintained his account to be at risk of

persecution that he made on arrival at the hearing before the First-tier Tribunal in 2015. That account was disbelieved. He has not sought to appeal that decision or argue before me that his account was true. Mr Coleman argued that the Claimant was not complicit in the arrangement to get him to the UK. That may well be true, but he nevertheless maintained a false account 6 years after his arrival here. It also follows from the First-tier Tribunal's findings of fact in relation to his credibility that if his father was not at risk, there would be no need for him to go into hiding or indeed to cease his contact with the Claimant. Further, in the light of the effort and in all likelihood expense of arranging for the Claimant to come to the UK it is unlikely, in the absence of any risk, that contact would be severed.

35. I found the evidence of both witnesses regarding their knowledge of his parent's whereabouts to lack credibility. It was the Claimant's account in his evidence before me that he had made no attempts to trace his family. I note that the Respondent also stated in paragraph 57 of the Reasons for Refusal Letter that the Claimant had not provided the contact information required and that the Home Office was unable to utilise therefore the limited service that the British High Commission in Dhaka had to trace his family. I do not find it credible that he simply would have acquiesced in a situation where he would be content to have no contact with his birth parents. On his own evidence his uncle was aware of their whereabouts because he stated that he had heard from his uncle some time before 2014 that his parents may have moved.
36. I found Mrs Nessa's evidence to be unbelievable. According to her witness statement at p1 of the Claimant's bundle dated 14 March 2016, since his arrival to the UK, her husband had attempted to contact his family on numerous occasions but without any success. She also states that whenever she spoke to relatives in Bangladesh she would ask of news of his family but nobody knew of their whereabouts. In oral evidence when she was asked what she thought about her cousin sending him here she said she did not know anything about it. She could not say what happened. She could not remember why he was sent here and she did not know why it was. When asked about the Claimant's father she said she did not know anything about him. When she was asked if her family received money to take care of the Claimant in the United Kingdom and she said she did not know anything about that.
37. I simply do not find it credible that she would know nothing about the Claimant's circumstances in Bangladesh, nothing about the arrangement to bring him here or remember why he was sent here. I do not find it credible that even if her husband had made the arrangements that she would not ask why he she was being asked to take him into her home or about his circumstances in Bangladesh. On her evidence, the Claimant's father is her cousin. In the circumstances her asserted utter absence of curiosity or knowledge of any of the circumstances relating to the Claimant's background in Bangladesh or arrival here is highly unlikely.

38. I also found her evidence in relation to who she visited in Bangladesh to be less than truthful. In answer to my questions she said that could not remember where she had been and she did not remember which relatives she had seen in Bangladesh. I do not accept that she could have forgotten this in the light of the fact she was there in 2012. No medical evidence has been presented to show she has issues with memory.
39. I have taken account of the fact that the Claimant has an excellent academic record and has made significant contributions to his community in relation to voluntary work and attained great sporting achievements. However, this does not persuade me that he has been telling the truth about his contact with his family in Bangladesh. He clearly has an interest in maintaining that there is no contact in the light of his evidence that he does not want to return to Bangladesh and wishes to study and remain here.
40. I find therefore that the likelihood is that the Claimant and his aunt retain contact with the Claimant's family in Bangladesh. He left at the age of 12 and is likely therefore to have acquired familiarity with customs there at an age when it was not unreasonable to think he would retain a rudimentary understanding of how to function and get on in that society. He speaks Bengali and his aunt, with whom he has lived since his arrival here in 2009, clearly retains links with the Bangladeshi community both here and in Bangladesh. According to his evidence before the First-tier Tribunal, his father was a prominent businessman. In the circumstances I do not think it is likely that the Claimant would be destitute on return. Further, he has significant academic gifts and laudable A'level results which would undoubtedly ease his path either to further education or employment on return. I conclude therefore that he retains family, linguistic, social and cultural ties to Bangladesh and notwithstanding the length of his absence he has not demonstrated that there would be very significant obstacles to his integration.

Article 8

41. The first issue is whether there are compelling circumstances warranting a consideration of the Claimant's case outside the Immigration Rules (**SSHD v SS (Congo) & Ors** [2015] EWCA Civ 387). The two-stage approach has been approved by the Court of Appeal in a number of cases including **Singh and Khalid v SSHD** [2015] EWCA Civ 72. The decision-maker should adopt a two-stage process. The first question is whether the individual can succeed under the Rules and the second is, if not, can he or she succeed outside the Rules under Art 8. There is no threshold requirement of arguability before a decision maker reaches the second stage. However, the extent of any consideration outside the Rules will depend upon whether all the issues have been adequately addressed under the Rules. In **Singh and Khalid** the Court of Appeal, Underhill LJ opined at [64]:

“there is no need to conduct a full separate examination of Art 8 outside the Rules where, in the circumstances of a particular case, all the issues have been addressed in the consideration under the Rules.”

42. In **SS (Congo)** [2015] EWCA Civ 387 at [32] Richards LJ in the Court of Appeal clarified the relationship between the Immigration Rules and the public interest considerations:

“However, even away from those contexts, if the Secretary of State has sought to formulate Immigration Rules to reflect a fair balance of interests under Article 8 in the general run of cases falling within their scope, then, as explained above, the Rules themselves will provide significant evidence about the relevant public interest considerations which should be brought into account when a court or tribunal seeks to strike the proper balance of interests under Article 8 in making its own decision. As Beatson LJ observed in *Haleemudeen v Secretary of State for the Home Department* [2014] EWCA Civ 558; [2014] Imm AR 6, at [40], the new Rules in Appendix FM:

“... are a central part of the legislative and policy context in which the interests of immigration control are balanced against the interests and rights of people who have come to this country and wish to settle in it. Overall, the Secretary of State’s policy as to when an interference with an Article 8 right will be regarded as disproportionate is more particularised in the new Rules than it had previously been.”

43. Accordingly, a court or tribunal is required to give the new Rules “greater weight than as merely a starting point for the consideration of the proportionality of an interference with Article 8 rights” (para. [47]).”

44. The Claimant does not meet the private life requirements of the Immigration Rules in terms of length of residence nor has he demonstrated that there are very significant obstacles to his integration. He argues that he has established a private life since coming here in 2009 at the age of 12 which deserves respect and that if he were returned to Bangladesh there would be a breach of that private life.

45. I accept that the Claimant has established a significant private life in the UK. He has not sought to argue that he has a family life here for the purposes of Article 8. The Claimant has been educated here, achieved 8 GCSE’s and 3 A’levels. He has integrated into Mrs Nessa’s family and grown up with her children who have now left home. He has been offered a place at Queen Mary University of London to study Information Technology Management for Business in September 2016. The Tower Hamlets Youth Sport Foundation have written two letters, one at page 12 of the Claimant’s bundle and the other produced at the hearing describing his great talents as a cricketer. It is said that he has quickly established himself as a leading coach within the Tower Hamlets Sport Foundation and has worked as a physical education teaching assistant in primary schools around the Borough. It is said that his all-round abilities as a sportsman and the respect he commands amongst his peers also make him an incredibly important figure at his local primary schools and

in the community. I have also taken account of the certificates of achievement in the Claimant's bundle. The Claimant evidently has made a valuable contribution to his local community and is valued by his peers and associates. I accept also that he has a close relationship with his aunt, Mrs Nessa and that he assists her with household chores.

46. Since the impugned decision is in accordance with the law and in furtherance of a legitimate aim, namely the maintenance of immigration control, the next question to be addressed is whether it is proportionate. Where the question of proportionality is reached, the 'ultimate question for the appellate immigration authority is whether the refusal of leave to enter or remain, in circumstances where the life of the family cannot reasonably be expected to be enjoyed elsewhere, taking full account of all considerations weighing in favour of the refusal, prejudices the family life of the applicant in a manner sufficiently serious to amount to a breach of the fundamental right protected by Article 8' **Huang** [2007] UKHL 11.
47. Proportionality is the "public interest question" within the meaning of Part 5A of the 2002 Act. With regard to the factors in section 117B, I have taken account of the fact that the maintenance of immigration controls is in the public interest. It is also in the public interest that a person seeking to enter or remain speaks English. The Claimant speaks fluent English. It is in the public interest that persons who seek to enter or remain in the United Kingdom are financially independent. No evidence was called in relation to his finances. The Claimant has not claimed to be financially independent. In any event, in **Forman (ss 117A-C considerations)** [2015] UKUT 00412 (IAC) the Upper Tribunal held that the public interest in firm immigration control is not diluted by the consideration that a person pursuing a claim under Article 8 ECHR has at no time been a financial burden on the state or is self-sufficient or is likely to remain so indefinitely. The significance of these factors is that where they are not present the public interest is fortified.
48. According to section 117B, 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. Little weight should be given to a private life established by a person at a time when the person's immigration status is precarious. In **AM (S 117B) Malawi** [2015] UKUT 0260 the Upper Tribunal held that a person's immigration status is "precarious" if their continued presence in the UK will be dependent upon their obtaining a further grant of leave.
49. The Claimant's private life was at all times precarious because his continued presence in the UK was dependant on his obtaining a further grant of leave. He made an application for further leave to remain in May 2012 and the Respondent did not determine that application until November 2014. In **EB (Kosovo) (FC) v SSHD 2008 UKHL 41 and LU**

15.8.08 the House of Lords said that delay could be relevant as during the period of the delay the applicant may develop closer personal and social ties and establish deeper roots in the community than he could have shown earlier. The longer the period of delay the likelier this is to be true. To the extent that it is true the applicant's case will be strengthened. Delay may be relevant in reducing the weight that would otherwise be accorded to fair and firm immigration control if the delay is shown to be the result of a dysfunctional system which yields unpredictable and unfair results.

50. I accept that the Claimant has strengthened his private life ties during the period of the delay and that he has established significant private life ties in the UK in the form of friendships and community ties since 2009. However, I find that the Respondent's decision to refuse further leave to remain and remove him from the UK is proportionate for the following reasons. By virtue of statute, I am required to give little weight to his private life. Not only was that private life established whilst his status was precarious as he had discretionary leave but it was established against a backdrop of a false asylum claim and in circumstances in which I have found that the likelihood is that he and his aunt and uncle were well aware of the whereabouts of his parents. In the circumstances he has benefited from an education in the UK at public expense as a result of this artifice. He does not meet the requirements of the Immigration Rules and I have found that there would not be very significant obstacles to his return to Bangladesh where I have found that he is likely to have family ties and consequently support. I do not need to repeat the findings here as the considerations were addressed in my findings under the Rules. The Claimant is concerned that he will not be able to pursue his further education in Bangladesh, however, there is no evidence before me in this regard nor has he personally conducted an inquiries. Further, in **MM (Tier 1 PSW; Art 8; "private life") Zimbabwe [2009] UKAIT 00037** the Tribunal held that respect for 'private life' in Art 8 does not include a right to work or study per se. Weighing all relevant factors in the balance, I consider that public interest in his removal outweighs his private life ties and that consequently the Respondent's decision is a proportionate one.

Notice of Decision

The appeal is dismissed under the Immigration Rules and on human rights grounds.

No anonymity direction is made.

Signed

Date 3rd June 2016

Deputy Upper Tribunal Judge L J Murray

