



IAC-AH-SC-V1

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

Appeal Number: IA/34371/2014

THE IMMIGRATION ACTS

**Heard at City Centre Tower, Decision & Reasons Promulgated
Birmingham
On 18th December 2015**

On 28th January 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE RENTON

Between

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

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Howard of Fountain Solicitors

For the Respondent: Mr D Mills, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The Appellant is a male citizen of Bangladesh born on 2nd June 1980. Apparently the Appellant first entered the UK sometime in 1991 and in June 2007 he applied for leave to remain. Thereafter the Appellant has a lengthy immigration history. Suffice it to say that following a Judicial Review application made in June 2014, the Respondent agreed to reconsider an application made by the Appellant on 13th February 2014 for

leave to remain on human rights grounds under Article 8 of The European Convention on Human Rights (ECHR). The reconsideration resulted in the application being refused again for the reasons given in the Respondent's letter of 14th August 2014. At the same time the Respondent decided to remove the Appellant under the provisions of Section 10 of the Immigration and Asylum Act 1999. The Appellant appealed, and his appeal was heard by First-tier Tribunal Judge J Pacey (the Judge) sitting at Birmingham on 14th November 2014. She decided to dismiss the appeal for the reasons given in her Decision dated 21st November 2014. The Appellant sought leave to appeal that decision, and on 5th February 2015 such permission was granted.

Error of Law

2. I must first decide if the decision of the Judge contained an error on a point of law so that it should be set aside.
3. It was the Appellant's case that he had lived and worked in the UK continuously since 1991. The Judge dismissed the appeal because she found the Appellant not to be a credible witness and that therefore she could not place any reliance upon his evidence. She therefore rejected his case.
4. The Judge gave various reasons for finding the Appellant not to be credible. She found contradictions in the Appellant's evidence which she also described as, at times, inherently implausible. The Judge noticed that there was a paucity of documentary evidence, and that which was produced contained contradictions. The Judge also found discrepancies in the evidence of the Appellant and that given by two witnesses at the hearing, namely Mohammed Miah and Abdul Kaium.
5. In the grounds of application and at the hearing Mr Howard argued that the Judge had erred in law in coming to her conclusion as to the credibility of the Appellant. This was because the judge had failed to take into account and make findings in respect of the evidence of Christopher Poynton, Margaret Ullah, and Iftikhar Shah. These witnesses had made statements included in the Appellant's Bundle of Documents which was before the Judge. The Judge referred to these documents at paragraph 27 of the Decision, but there was no analysis of their content.
6. In response, Mr Mills argued that there had been no such error of law. The Judge had come to a conclusion concerning the Appellant's credibility which was open to her upon the evidence before her, and which she comprehensively explained. The Judge had carried out a careful analysis of the evidence and had identified various discrepancies and contradictions which bearing in mind the standard of proof of a balance of probabilities, justified her finding as to credibility.
7. I find that there was an error of law in the decision of the Judge as argued by Mr Howard so that that decision should be set aside. I accept the

argument of Mr Mills that the Judge analysed most of the evidence before her and gave a number of reasons for finding that the Appellant lacked credibility. However, the Judge failed even to refer to the evidence of three witnesses who, although they did not give oral evidence at the hearing, made statements. Those statements were material to the issues in the appeal as they dealt with the length of time which those witnesses had known the Appellant in the UK. This amounts to such a significant body of evidence for the finding of the Judge as to credibility to be regarded as safe, even when applying the standard of proof of the balance of probabilities. In my view this amounts to an error of law.

8. I did not proceed to remake the decision of the Judge. Instead I direct that the appeal is returned to the First-tier Tribunal for that decision to be re-made there and new findings of fact made. None of the findings of fact of the Judge are to be preserved. This is in accordance with paragraph 7.2(b) of the Proactive Statements.

Notice of Decision

9. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.
10. I set aside the decision.
11. The decision will be re-made in the First-tier Tribunal.

Anonymity

12. The First-tier Tribunal did not make an order for anonymity. I was not asked to make such an order, and indeed I find no reason to do so.

Signed

Date

Upper Tribunal Judge Renton