



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

Appeal Number: IA/24499/2015

THE IMMIGRATION ACTS

Heard at Field House

On 6 July 2017

**Decision &
Promulgated
On 11 July 2017**

Reasons

Before

DEPUTY UPPER TRIBUNAL JUDGE SHERIDAN

Between

NAHID AHMED

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

Respondent

Representation

For the Appellant: Mr E. Fripp, Counsel instructed by D J Webb & Co Solicitors
For the Respondent: Mr T. Wilding, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Bangladesh born on 5 April 1980 who entered the UK as a domestic worker in July 2001 with leave until 8 January 2002. He remained in the UK after expiry of his leave. In October 2009, July 2013 and on 5 February 2015 he applied, unsuccessfully, for leave to remain on the basis of his private and family life. On 28 April 2015 he applied again for leave to remain on basis of his private and family life in the UK. The application was refused on 25 June 2015. The appellant appealed to the First-tier Tribunal where his appeal was heard by Judge Easterman. In a decision promulgated on 24 October 2016 the appeal was dismissed. The appellant is now appealing against that decision.

2. The appellant's case, in summary, is that he has been in the UK for a very long period of time (over 15 years) and all of his adult life. He claims that he has lost his connection to Bangladesh, where he no longer has friends and family. He also claims that he has cohabited with his uncle and with his sister (both British citizens) and that he has very close ties to both of them. He claims also to be extremely close to his sister's children, who would be upset if he had to leave. He also says that he has many close friends in the UK. Furthermore, the appellant has suffered from depression following the death of his parents and relies on his UK family's support.

Decision of the First-tier Tribunal

3. The judge, firstly, considered whether the appellant was able to satisfy Paragraph 276(1)(vi) of the Immigration Rules, where the issue in contention was whether there would be very significant obstacles to the appellant integrating into Bangladesh. The judge found that there would not be very significant obstacles on the basis that the appellant is of Bangladeshi origin, lives with people who are of Bangladeshi origin, and is involved with the Bangladeshi community. The judge also found that although the appellant says he suffers from depression and is dependent on his sister for moral support, there was "no independent evidence that he suffered any more than any other person when they lose a close family member or a parent or even a sibling."
4. The judge then considered the appeal outside the Immigration Rules. At paragraph 46, he found that the appellant's relationship with his sister was "no more than one would expect of a close brother and sister and does not amount to protected family life." However, at paragraph 47 he found that the appellant's private and family life "built up over fifteen years may amount to protected private and family life."
5. At paragraph 47 the judge found that the appellant spoke English (and did not hold against him that he used an interpreter) and is not a burden on the economy. At paragraph 48 the judge concluded:

"When I weigh the friendships formed at a time when had no right be in the country and his family life fostered at a time when had no right to be in the country, and I weigh against that the Secretary of State's right to control immigration, I find the decision to be proportionate."

Grounds of appeal and submissions

6. There are two grounds of appeal. The first ground is that the judge failed to undertake a balanced proportionality assessment. It is contended that the judge failed to consider that in October 2009 the appellant sought to regularise his status but since then no enforcement action was taken against him.

7. The second ground of appeal is that the judge failed to consider, when evaluating Article 8 outside the Rules, the appellant's length of residence.
8. Although the grounds challenge only the Article 8 assessment outwith the Immigration Rules, in his submissions before me Mr Fripp argued that the judge's error extended to his consideration of "very significant obstacles" under paragraph 276ADE(1)(vi). Mr Fripp's contention was that the judge failed to consider (or give inadequate consideration to) important factors in his evaluation of the appeal. These factors are:
 - a) that the appellant had suffered depression/mental health problems since the loss of his parents;
 - b) that the appellant had cohabited with his sister and had an extremely close relationship with her and her children; and
 - c) that he had lived a very long period of time in the UK, and that whilst the respondent had been tolerating his stay, by taking no steps to remove him, his family and private life had developed.
9. Mr Fripp argued that the failure to consider these issues undermined both the judge's consideration of Paragraph 276ADE(1)(vi) and of Article 8 outside the Rules.
10. Mr Wilding's response was that the judge had considered the appellant's family connections in the UK, the death of his mother and length of residence. The Immigration Rules provide for leave to be granted where a person has lived 20 years in the UK but the appellant's length of stay in the UK falls short of this. He argued that the judge had taken into account all material matters and there was simply nothing to fault in the approach the judge had taken.

Paragraph 276ADE(1)(vi)

11. Under Paragraph 276ADE(1)(vi) of the Immigration Rules the issue to be resolved was whether there would be very significant obstacles to the appellant's integration into Bangladesh. The judge addressed this at paragraphs 43 - 46 of the decision. His consideration included a range of factors, including:
 - a) the appellant's connection to Bangladesh (paragraph 43);
 - b) his involvement with the Bangladeshi community in the UK (paragraph 43);
 - c) his ability to return to Bangladesh with the funds available to him (paragraph 44);
 - d) his connection to his sister and dependence on her for moral support and because of his depression (paragraph 45); and

e) the level of medical support he has required in the UK for his depression (paragraph 45).

12. Mr Fripp's argument that the judge erred by failing to consider the appellant's mental health and/or his relationship to his sister is untenable because the judge has taken these factors into account (as set out in paragraph 45 of the decision). The argument that the judge erred by failing to take the appellant's length of residence in the UK into account is equally untenable as length of time spent in the UK is not relevant to an application under paragraph 276ADE(1)(vi). Paragraph 276ADE(1)(iii) provides a route to leave to remain based on length of residence and this requires continuous residence of 20 years, which the appellant clearly cannot satisfy.

13. Accordingly, I am satisfied that the judge was entitled, for the reasons given, to conclude that the appellant was unable to succeed under the Immigration Rules.

Article 8 proportionality assessment

14. I now turn to the judge's proportionality assessment under Article 8 ECHR outside the Rules.

15. Contrary to the argument made in the grounds, the judge has taken into account the appellant's length of residence in the UK. This is mentioned in paragraph 47.

16. The judge has also had regard to the appellant's mental health and family relations (paragraphs 45 and 46).

17. Mr Fripp argued that the judge's decision is undermined by failing to refer to the appellant and his sister cohabiting. However, it is not necessary for a decision to record every detail from an appellant's evidence. It is clear from the decision that the judge has considered the appellant's relationship with his sister and accepted that it was "close". Reviewing the decision as a whole as well as the evidence that was before the First-tier Tribunal, I am satisfied that the judge has not overlooked any material aspect of the appellant's relationship with his sister.

18. The grounds argue that the judge ought, in carrying out the proportionality exercise, to have weighed in the appellant's favour that enforcement action had not been taken against him. This argument has no merit. It does not weigh in the appellant's favour that the Secretary of State has failed to take action to remove him. The Secretary of State is entitled to proceed on the basis that an overstayer will leave on his own volition. See paragraph 29 of the judgment in Patel v Secretary of State for the Home Department [2013] UKSC 72.

19. In carrying out the proportionality assessment, the judge has taken into account all of the material evidence that was before the Tribunal about the appellant and his family. The weight to attach to this evidence was a matter for the judge and I am satisfied that the judge reached a conclusion that was open to him based on that evidence and which has been adequately explained in the decision.

Decision

20. The appeal is dismissed.

21. The judge has not made a material error of law and the decision of the First-tier Tribunal stands.

Signed



Deputy Upper Tribunal Judge Sheridan

Dated: 10 July 2017