



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/01405/2016

THE IMMIGRATION ACTS

Heard at Field House
On 10 May 2018

Decision & Reasons Promulgated
On 24 May 2018

Before

**DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL**

Between

**MR MOHI UDDIN
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr T Shah, Taj Solicitors
For the Respondent: Mr T Melvin, Home Office Presenting Officer

DECISION AND REASONS

1. In a decision posted on 18 August 2017 Judge Devittie of the First-tier Tribunal (FtT) dismissed the appeal of the appellant, a citizen of Bangladesh, against the decision of

the respondent dated 26 February 2016 refusing leave to remain on the ground that removal would not breach Article 8.

2. The grounds contended that the judge had failed to conduct a proper assessment under paragraph 276ADE of the Immigration Rules of whether the appellant would face very significant obstacles to reintegrating into Bangladesh society. It was argued that the judge failed to factor into this assessment his own positive findings in relation to the appellant's length of residence in the UK since 1998 when he was aged 13 and the extent of his integration into UK society and had not considered his job situation or his ability to find work or his network of friends and relationships.
3. It was also submitted that there had been a complete failure on the part of the judge to assess the appellant's Article 8 circumstances outside the Rules and to apply the considerations set out in Section 117 of the NIAA 2002, in particular that the appellant was financially independent and had never been a burden on the taxpayer and spoke English.
4. I heard concise submissions from both representatives.
5. In respect of the first ground, I am not persuaded that the judge erred in law. It is true he does not set out in a systematic way all the factors relevant to assessment of whether there would be very significant obstacles. However, read as a whole it is sufficiently clear that the judge conducted a balancing exercise taking into account all relevant factors. The judge found in the appellant's favour that he had resided in the UK continuously since 1998 and that he had integrated into UK society. It is also clear that he had regard to the appellant's work history and his likely situation on return to Bangladesh. At paragraphs 7(i) and (ii) and 8 the judge wrote:

“7. (i) I accept that the appellant has lived in the United Kingdom for almost 19 years. It must follow that he has integrated substantially. He arrived at the age of 13 and completed his secondary education in the United Kingdom. There can be no doubt therefore that his integration in Bangladesh will pose real obstacles to him. He however has the advantage that he does not suffer from any serious medical conditions. He would have spent his first 13 formative years in Bangladesh, and consequently would have retained fluency in the language. During his time in the United Kingdom he has worked within the Bangladeshi community, and therefore would most certainly have retained social and cultural ties with his country of origin.

(ii) I accept that his siblings no longer live in Bangladesh. But the appellant is an independent adult, who would be able to return and re-establish himself in Bangladesh with the assistance of distant relatives or indeed the local community of the place where his parents live. He would be able to apply for resettlement assistance with the international migration programme and this would greatly facilitate his integration into Bangladesh. I accept that there would be obstacles to his integration, but I am unable on the evidence before me, to find that such obstacles would be very significant.

8. In reaching this conclusion I have taken into account the case law to the effect that those who arrive in the United Kingdom at a very young age, are in a position where it can be said that they are home grown, and have assimilated into the way of life in the United Kingdom such that they have little or no ties with their country of origin. I did not find this to be the case with this appellant for the reasons I have stated”.
6. From the above it is clear that the judge gave specific consideration to the appellant's likely circumstances on return. Mr Shah submitted it was wrong of the judge to assume that the appellant would retain social and cultural ties with Bangladesh when he had been away since he was 13, but the judge’s reasoning makes clear that he was satisfied the appellant's close connections whilst in the UK with the Bengali community would make it very likely he would either retain or soon regain social and cultural ties in his country of nationality.
7. Ground 2 has greater force. It focuses on the fact that the judge says nothing specific about Article 8 outside the Rules. Nor does the judge refer to any relevant case law, in particular **Hesham Ali** [2016] UKSC 60. In my judgement this does constitute an error of law.
8. However, I cannot set aside the decision of a First-tier Judge unless satisfied that the error of law is a material one. Here, the great difficulty in the way of Mr Shah’s submissions is that the substantive findings made by the judge on the issue of whether there were very significant obstacles were ones that had clear implications for the issue of the appellant's Article 8 circumstances outside the Immigration Rules. As the Supreme Court noted in **Hesham Ali** , failure to meet the Article 8 requirements of the Rules is a relevant factor counting against an appellant in the balancing exercise to be applied outside the Rules. Furthermore, in order to succeed outside the Rules appellants must establish that there are compelling circumstances giving rise to unjustifiably harsh consequences. From the judge’s findings it is sufficiently clear that the main factors weighing in favour of the appellant were his lengthy residence in the UK (nineteen years at the date of decision), the fact that he came here as a minor and so spent five of his formative years in the UK, and that he has integrated into UK society, spoke English and had not been a burden on public funds. These factors established that he had significant private life connections with the UK, attested to by his witnesses. On the other hand, it was equally clear that there were a number of factors weighing heavily against him, in particular that he had not shown he had any family life ties; that as regards his private life ties, although he had integrated into UK society he has lived and worked since the completion of his education in 1999 within the Bengali community (see paragraph 6 of the judge’s decision); that he was very likely to have retained social and cultures ties with Bangladesh; that he would likely be able to fend for himself economically; and that he had no specific health problems.
9. Mr Shah rightly complains that the judge failed to apply any of the Section 117A-D considerations to the appellant's case. That is also an error of law but again, I am not persuaded it was material. Applying those considerations, it could be said in favour


of the appellant that he spoke English and had not been a burden on public funds. That said, the grounds are simply wrong to assert he had shown he was financially independent. On the appellant's own evidence at the time of the hearing he was being supported by friends and although he had worked he had done so unlawfully. Further, one of the essential considerations set out in Section 117B(5) is that little weight is to be attached to a person's private life if it has been established whilst his immigration status is precarious. That consideration worked squarely against the appellant's case. Even if allowance is made for the fact that the decision to bring him to the UK illegally in 1998 was clearly not his responsibility (he being a minor), even after he became an adult he took no steps to approach the immigration authorities with a view to regularising his status until 2015.

10. Put simply, whilst the judge's decision manifestly failed to consider the appellant's Article 8 circumstances outside the Rules, the evidence before the judge fell well short of establishing any compelling circumstances such as to warrant a conclusion that his Article 8 rights had suffered a disproportionate interference. Considering the appellant's Article 8 circumstances it was abundantly clear that the factors counting against the appellant's claim (one based solely on private life) strongly outweighed those counting in his favour.
11. In such circumstances, I conclude that the judge's decision is not vitiated by material legal error. Accordingly, the judge's decision to dismiss the appellant's appeal must stand.

No anonymity direction is made.

Signed

Date: 22 May 2018



Dr H H Storey
Judge of the Upper Tribunal