



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/34936/2015

THE IMMIGRATION ACTS

Heard at Field House
On 15th May 2018
Typed, corrected, signed, and sent to
Promulgation on 18th May 2018

Decision & Reasons Promulgated
On 23rd May 2018

Before

Upper Tribunal Judge Chalkley

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR MANIK MIAH
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant:

Mr S Kotas, Senior Home Office Presenting Officer

For the Respondent:

Ms R Popal instructed by Hunter Stone

DETERMINATION AND REASONS

1. In this appeal the appellant is the Secretary of State for the Home Department. To avoid confusion, I am going to refer to her as being the, "claimant".
2. The respondent is a citizen of Bangladesh born on 1st January 1968. He entered the United Kingdom in January 2001, apparently in possession of a visit visa, and decided not to leave the United Kingdom on expiry. On 31st March 2008, the

respondent made application for leave to remain on the basis of his Article 8 rights. That application was finally considered and refused by the claimant on 4th December 2015. The judge concluded that there would be very significant obstacles to the respondent's integration on his return to Bangladesh under paragraph 276ADE(vi). The Tribunal went on to consider Article 8 outside the Immigration Rules and concluded that the appellant had both a private and a family life in the United Kingdom. The judge said,

“The impression given was of a close-knit and supportive family unit with his nephews providing a high degree of mutual care and support for each other. The Tribunal was in no doubt that the operation of Article 8 considerations is engaged and that any such potential interference is lawful. The real issue for the Tribunal is whether it is proportionate.”

The judge then went on to conclude that the current relationships the respondent enjoyed involved “considerable emotional dependency” and that the respondent and his family in the United Kingdom have a “high degree of dependency” on each other as witnessed in the witness statements and oral evidence. She allowed the appeal under Article 8.

3. The claimant sought to challenge the determination and leave to appeal to the Upper Tribunal was granted by First-tier Tribunal Judge Lambert on the basis that the grounds argue an absence of adequate reasoning as to the very significant obstacles test under paragraph 276ADE(vi) sustaining the conclusion that the appellant, a 49 year old who had arrived in the United Kingdom at the age of 33 would be an outsider in understanding how life was conducted in Bangladesh. The conclusion under Article 8 outside the Rules that the respondent has a lack of any viable private life in Bangladesh was similarly challenged for lack of reasoning.
4. At the hearing before me Counsel appeared and told me that she had no documentation. She told me that she had a brief from Hunter Stone Law, her instructing solicitors, but did not have a copy of the Secretary of State's application for permission to appeal. Mr Kotas gave her a copy and I adjourned briefly to enable her to consider it. On resuming some 40 minutes later Counsel confirmed that she had had sufficient time to be able to present her case.
5. Mr Kotas referred me to paragraphs 14 and 16 of the determination. He suggested that the correct test which should have been applied was identical to that referred to in *The Secretary of State for the Home Department v Kamara* [2006] 4WLR 152 where, at paragraph 14 Sales, LJ said this:

“In my view, the concept of a foreign criminal's “integration” into the country to which it is proposed that he be deported, as set out in Section 117C(4)(c) and paragraph 399A, is a broad one. It is not confined to the mere ability to find a job or to sustain life while living in the other country. It is not appropriate to treat the statutory language as subject to some loss and it will usually be sufficient for a court or Tribunal simply to direct itself to the terms that parliament has chosen to use. The idea of “integration” calls for a broad evaluative judgment to be made as to whether the individual will be enough of an insider in terms of understanding how life in the society in that other country is carried on and a capacity to participate in it, so as to have a reasonable opportunity to be

expected there, to be able to operate on a day-to-day basis in that society and build up within a reasonable time a variety of human relationships to give substance to the individual's private or family life."

6. In order to meet the requirements of paragraph 276ADE(1)(vi) an applicant must show that they are aged 18 or over and that there would be very significant obstacles for their integration into the country to which they would have to go if required to leave the United Kingdom. Mr Kotas suggested that the respondent had spent his first 33 years in Bangladesh and had only been in the United Kingdom a comparatively short time. He pointed out that at the hearing before the judge the respondent needed an interpreter. The judge was simply not entitled to reach the conclusion she did at paragraph 14 on the evidence that was presented to her.
7. So far as family life in the United Kingdom was concerned there was no evidence of "considerable emotional dependency" or "a high degree of dependency" evidenced by the witness statements or referred to in oral evidence. The judge should have had regard to the fact that the respondent is over the age of 18 as were the respondent's nephews. She should have borne in mind that the respondent had overstayed his leave and decided not to return to Bangladesh and should have borne in mind also that he has a wife and child living in Bangladesh so that his integration back into life in Bangladesh will not cause him any obstacles. In allowing the respondent's appeal outside the Immigration Rules as the judge has purported to do, she has simply failed to identify any particular circumstances about the respondent which would justify the grant of leave under Article 8. The determination could not stand and Mr Kotas invited me to set it aside. Counsel suggested that the claimant's challenges were all simply disagreements with the judge's decision the grounds more or less reflect what the claimant had said in her Reasons for Refusal Letter and that the challenge was simply an expression of the Secretary of State's disagreement that the judge has failed to follow what the Secretary of State said in that letter. The judge found the appellant and his friends and relatives credible the Secretary of State is merely unhappy with the result and it should be dismissed. I reserved my decision.
8. The test this judge faced in considering whether or not the respondent met the requirements of paragraph 276ADE(1)(vi) are that he must show that he is aged 18 or above and **"that there would be very significant obstacles to their integration into the country from which they would have to go if required to leave the UK."** The fact that the respondent spent the first 33 years of his life in Bangladesh, has a wife and child in Bangladesh and has only lived in the United Kingdom since 2001 are clear pointers in deciding whether or not the appellant will be enough of an insider in terms of understanding how likely the society in that country is carried on and a capacity to participate in it serves to have a reasonable opportunity to be accepted there to be able to operate on a day-to-day basis in that society and to build up within a reasonable time a variety of human relationships to give substance to the individual's private or family life. The judge was wrong to allow the respondent's appeal under paragraph 276ADE(1)(vi).
9. The judge went on, however, not to consider whether there were any other provisions under the Immigration Rules which the respondent might meet, but

instead to consider Article 8 outside the Immigration Rules. In doing so she failed to identify what it was that constituted the “considerable emotional dependency” that the respondent and his family have, or to explain why he and his adult nephews have the “high degree of dependency on each other” as she claims were evidenced by the witness statements and oral evidence. This respondent enjoys a normal loving relationship with his adult extended family members, nothing more. The judge was wrong to find that he enjoyed a family life with them in the circumstances. The relationship that he had with his nephews of course constitutes part of his private life, but for the judge to say that there was a lack of any viable private life in Bangladesh was wrong: he still has a wife and a child in Bangladesh. The judge at paragraph 26 said this:-

“The Tribunal is satisfied that much of this is related to the circumstances of this particular individual; namely the circumstances of how he seems to have been cut off by his immediate family, the circumstances of his departure from his country of nationality and a lack of any viable private life in Bangladesh. The current situation appears to be one where the UK, mindful of public interest and the lack of any negative features, appears to be a forum for family life to be maintained continues. This is beyond merely “facilitating” a choice but is rather related to the level of the situation and in particular the evidence around the level of mutual support provided by the [respondent] to his nephews and their families and they to him. The medical evidence supports such a conclusion and is yet another factor in tipping the proportionality balance in the [respondent’s] favour. Taken together these factors go beyond mere hardship but satisfy the Tribunal that to refuse the matter would have unjustifiably harsh consequences for this particular applicant and his family unit.”

What the judge is eluding to there is medical evidence which was presented to him which show that he suffers from:

- (1) Non-Hodgkin’s Lymphoma stage 4 (liver) diffuse large B-Cell Lymphoma. He was treated by chemotherapy in 2010 following which he attends check-ups every three months.
- (2) Type 2 diabetes for which he takes two metformin tablets 500mgs twice daily.
- (3) Aortic stenosis diagnosed as narrowing of the main valve to the heart through which the blood flows from the heart to the aorta of the body. He underwent a replacement aortic valve in 2014.

10. The respondent came to the United Kingdom originally as a visitor and he overstayed. He said in his witness statement that he came to earn money for his family, the very same family that he claims to have lost contact with namely his wife and his child.
11. The fact that the respondent has received treatment free of charge from the NHS does not mean that the NHS is now responsible for his medical care for the rest of his life. The judge failed properly to take into consideration the factors that she was required to consider when considering the question of proportionality. She failed to take into

account that he came to the United Kingdom as a temporary visitor and overstayed. He has worked illegally in the United Kingdom. He has had expensive HNS treatment when he was not entitled to it. She has failed to properly consider and apply Section 117 B. The has given no consideration at all to the interests of the wider public in the maintenance of immigration control.

12. I have concluded that the determination cannot stand. I set it aside.
13. To meet the requirements of paragraph 276ADE(1)(vi) the respondent must show that he is aged 18 or above and "that there would be very significant obstacles to their integration into the country from which they would have to go if required to leave the UK." There would unquestionably not be any obstacles to the respondent's integration into Bangladesh. He speaks the language. He has a wife and child there. He lived there for the first 33 years of his life and has only lived in the United Kingdom since 2001. I agree with and adopt the submissions of Mr Kotas. The judge was wrong to allow the respondent's appeal under paragraph 276ADE(1)(vi).
14. Applying Lord Bingam's test set out at paragraph 17 of *R (Razgar) v Secretary of State for the Home Department* [2004] UKHL 27, I find that the proposed removal will be an interference by a public body with the exercise of the appellant's right to his private life. He has no family life in the United Kingdom, although he does, of course enjoy a private life here. Such interference will have consequences of such gravity as to potentially engage the operation of Article 8 and the interference will be in accordance with the law. As to whether such interference is necessary in a democratic society the answer must clearly be, "Yes", it is for the public safety or the economic wellbeing of the country as well as for the protection of the rights and freedoms of others. Lastly in deciding whether or not such interference is proportionate, one is required to give considerable weight to the wider interests of the general public in the maintenance of immigration control. This man had overstayed his leave to remain in the United Kingdom, has worked in this country illegally, he has taken full advantage of the United Kingdom's National Health Service and now has decided that he would rather stay here and not go and live in Bangladesh where his wife and child remain. I have concluded that the claimant's decision would be entirely proportionate.
15. There is nothing about the respondent or his circumstances which could possibly justify the Secretary of State in granting leave to the appellant in recognition of his Article 8 rights outwith the immigration rules. In making his decision Judge Lal **has materially erred in law**. I remake the decision myself. **The respondent's appeal is dismissed.**

Richard Chalkley

Upper Tribunal Judge Chalkley

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Richard Chalkley

Upper Tribunal Judge Chalkley