



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/07909/2016**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

On 14 March 2018

**Decision & Reasons
Promulgated
On 3 April 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

MR BODRUL ALOM
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Reza of Counsel, instructed by JKR Solicitors
For the Respondent: Ms A Brocklesby-Weller, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Bangladesh born on 12 December 1974. He made an application for asylum, humanitarian protection and on the basis of his human rights and had a screening interview on 28 January 2016 and a substantive asylum interview on 8 July 2016. This application was refused in a decision dated 19 July 2016. The Appellant appealed against this decision and his appeal came before Judge of the First-tier Tribunal Abebrese for hearing on 1 November 2017.
2. In a decision and reasons promulgated on 30 November 2017, the judge dismissed the appeal. An application for permission to appeal was made in time on 13 December 2017 on the basis that the Judge erred materially in

law: (i) in failing to find that the Appellant had resided continuously in the United Kingdom for more than 20 years, in accordance with paragraph 276ADE(1)(iii) of the Immigration Rules; (ii) the Judge erred in his assessment of proportionality.

3. In a decision dated 4 January 2018 Judge of the First-tier Tribunal Chohan granted permission to appeal in the following terms:

“2. The grounds argue that the judge erred in requiring documentary evidence to establish the Appellant’s claimed residence in the United Kingdom for a period of twenty years; that the judge failed to engage with Article 8; and that the judge gave no reasons as to why the evidence of the witnesses had been rejected.

3. It does appear from the judge’s decision that perhaps too much emphasis has been placed on the requirement of documentary evidence. That, per se, is not fatal to the judge’s decision but, the judge fails to engage in any meaningful sense, with the evidence of the witnesses.

4. Accordingly, there is an arguable error of law.”

4. A Rule 24 response was lodged by the Respondent on 29 January 2018 in which the Respondent opposed the Appellant’s appeal.

Hearing

5. The error of law hearing came before me on 14 March 2018. Having considered the judge’s decision, the grounds of appeal and the grant of permission, I informed the parties that, even if there were errors in the decision of First-tier Tribunal Judge Abebrese, ultimately these errors would not be material given that it would not have been possible for the Appellant to succeed in his appeal with regard to paragraph 276ADE(1)(iii) of the Immigration Rules for the reason that paragraph 276ADE(1) expressly provides that *at the date of application* the applicant needs to have resided continuously for twenty years. This is the reason that [48] of the Respondent’s decision provides as follows:

“When considering the requirements outlined in paragraph 276ADE(1) it is noted that you are a national of Bangladesh and you claim that you entered the UK in 1997. However, you have failed to provide documentary evidence to support this claim. Notwithstanding this, you have therefore lived in the UK for nineteen years and it is not accepted you have lived continuously in the UK for at least twenty years.”

6. Thus regardless of the presence or absence of documentary evidence, the fact remains that at the date of decision on 19 July 2016 the Appellant was not eligible to qualify under paragraph 276ADE(iii) of the Immigration Rules because even on his own account he did not enter the United Kingdom until 1997.

7. On this basis, whilst the appeal was brought on human rights grounds, an assessment of the proportionality of the decision is inevitably informed by whether or not the Appellant can meet the requirements of the Rules. On that basis I intended to find no error of law and uphold the decision of the First tier Tribunal Judge.
8. Neither representative had anything to add. I informed Mr Reza, acting on behalf of the Appellant, that it was open to the Appellant to now make an application under paragraph 276ADE of the Immigration Rules given that more than twenty years has now elapsed since he claims he arrived in the United Kingdom.

Decision

9. For the reasons set out above, I find that although there were potentially arguable errors of law in the decision of First-tier Tribunal Judge Abebrese for the reasons set out in the grounds of appeal *viz* the failure to engage with the evidence of the Appellant's sister and nephew and the absence at [25] of clear reasoning, these errors are not ultimately material given that the Appellant could not have succeeded in respect of paragraph 276ADE(iii) of the Immigration Rules at the date of application in any event and on the evidence before the Judge, the appeal correctly fell to be dismissed on human rights grounds.
10. In these circumstances I find no material error of law and uphold the decision of First-tier Tribunal Judge Abebrese.

Notice of Decision

The appeal is dismissed.

No anonymity direction is made.

Signed Rebecca Chapman

Date 28 March 2018

Deputy Upper Tribunal Judge Chapman