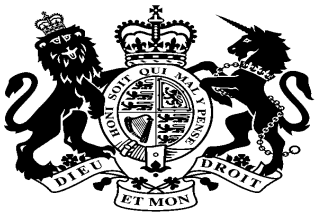

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/01320/2019

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
on 13 September 2019	**on 18 September 2019**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

AKLAKUR RAHMAN
(anonymity direction not made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr K Mukherjee instructed by Rodman Pearce Solicitors Ltd.
For the Respondent: Mr S Walker Senior Home Office Presenting Officer.

ERROR OF LAW HEARING AND REASONS

1. On 21 June 2019 First-tier Tribunal Judge Talbot dismissed the appellant's appeal on human rights grounds. Permission to appeal has been granted to the appellant.

Background

2. The appellant, a citizen of Bangladesh born on 21 December 1968, appealed on human rights grounds the respondent's decision of 4 January 2019 refusing an application dated 3 March 2018 for leave to remain.
3. There is also a previous determination of First-Tier Tribunal Judge Watson promulgated on 5 September 2016 which was considered by the Judge on the *Devaseelan* principles.
4. The Judge notes there was no claim in relation to family life pursuant to Appendix FM, the claim concerning only the applicant's private life [18].
5. The Judge finds no adequate reasons for departing from the findings of Judge Watson subject to the proviso the respondent has now accepted the appellant's continuous residence since July 2005 which the Judge finds does not amount to 20 years continuous residence prior to the application; leading to it being concluded the appellant could not meet the requirements of paragraph 276ADE(1)(iii) of the Immigration Rules. [20].
6. The Judge did not find very significant obstacles to the appellant's integration into Bangladesh.
7. In relation to article 8 outside the Rules the Judge writes at [23]:

> "23. I accept that the Appellant has established a private life in the UK, having lived here continuously since July 2005. However, I take into account the provisions of Section 117B the 2002 Act. I note that the Appellant does not appear to have acquired a knowledge of English to any extent and that all of the Appellants residence in the UK has been unlawful and therefore little weight is to be attached to it. I accept that it may be challenging for the Appellant to re-establish his life in Bangladesh after such a long absence but he has a native knowledge of the language and culture and is likely to have family members there who may be able to offer some assistance. He has also acquired skills in the UK which may serve him on his return. In any event on the evidence currently before me, I am not satisfied that there are sufficiently compelling circumstances as to justify a grant of leave outside the ambit of the Immigration Rules or that the Respondent's decision is not proportionate as against the public interest in the maintenance of effective immigration control."

8. The appellant sought permission to appeal asserting the Judge erred in the treatment of the evidence of continuous residence as follows:

> "3. The FTT erred in finding that:
>
> a) Despite there being two earlier judgements, the SSHD's subsequent acceptance that A was in the UK in 1999 and 2001 does not show *continuous residence* from those dates to 2005 (when it was accepted he was resident from) [paragraph 19 of judgment]. A's evidence was that he *could not* have left the UK and returned after 1999 because he has no travel documents, nor money to do so. The evidence was detailed and consistent with knowledge of immigration control. It is not possible to leave the UK legally without a travel document, nor re-enter without one. If A did not

have one, then he would need to pay money to get one, which he did not have. The FTT was obliged to provide cogent reasons for rejecting this evidence. It erred in not doing so. Further, the FTT dismisses A's witness statement, Mr Mohammed Choudhury's evidence, because it was *very brief and not supported by supporting documentation* [paragraph 19]. Evidence is not required to be of a certain length and supported by documents. This evidence was not before previous judges and therefore the FTT was obliged to provide cogent reasons why, despite being short and unsupported, it should not be accepted.

b) If the evidence of continuous residence from December 1999 was accepted, A would satisfy Paragraph 276ADE(1)(iii) (20 years long residence) in December 2019. This is a Rule which recognises that continuous *unlawful presence* in the UK can found a claim under Article 8 (private life) and that 20 years provides the proper balance. Therefore, this length of time cannot be given little weight under section 117B. The decision of the 4.1.19 may stop the clock, but it remains a case where a compelling factor may make A's claim exceptional under Article 8. There is therefore no subsequent consideration of the significant delay in considering A's claim in the balancing exercise as recorded in para 2(d) above, where it is recognised that delay can be a compelling factor (see *EB (Kosovo) v SSHD).* If the claim had been considered properly, there is no reason why it could not be allowed on this basis.

9. Permission to appeal was granted by another judge the First-Tier Tribunal on the basis the grounds disclosed arguable errors of law.

Error of law

10. Judge Watson in a decision promulgated on the 5 September 2016 at [36] found:

> "36. I find that the appellant has not shown residence in the UK prior to 2007. It follows that he is not shown residence of 14 years under the Rules as at the date of application in 2009, nor has he shown 20 years under the new Rules. I have taken into account the letter referred to by Judge Munro regarding a 2006 NHS appointment, but as the appellant had denied having any medical treatment at the 2008 hearing I find that it cannot show on the balance of probabilities any residence in 2006. The Judge found it unreliable along with the other documents provided."

11. At [19] of Judge Talbot's decision reference is made to the above finding and the fact Judge Watson found inconsistencies in relation to both the oral and documentary evidence before him. Judge Talbot also notes it appears that before more than one Tribunal the appellant sought to rely upon documents purportedly corroborating his presence in the United Kingdom and activities which subsequent oral evidence had shown to be unreliable. This creates understandable suspicion or concern in the decision-maker's mind regarding the reliability of the evidence being relied upon in an appeal.

12. The Judge noted the respondent accepted that the appellant had been in the UK in December 1999 and between June and December 2001. The appellant claimed in his oral evidence to have been in the UK since 31 December 1991 [11]. 20 years from which will be met on 31 December 2019.
13. The Grounds repeat the assertion the Judge should have accepted the appellants claim to have lived in UK for the requisite 20-year period for the reason stated. This argument was advanced at the hearing and considered and not found to be determinative by the Judge.
14. The claim the appellant could not have left the UK as he had no travel documents nor money to secure the same was not established by evidence. The appellant claimed to be working during the time he has been in the UK illegally and so would have access to funds. Similarly, Judge Watson noted documents relied upon in the claim before him to have been forged/fabricated. The assertion in the grounds that it is not possible to leave the UK legally without a travel document and or to re-enter without one, is correct in terms of legal entry and exit, but entry by illegal migrants is surprisingly common and on the whole does not involve legally issued travel documents.
15. The weight to be given to the evidence was a matter for the Judge. It has not been shown the weight given is arguably irrational or unreasonable. The Judge noted the evidence of Mr Choudhury [19] having had the benefit of seeing and hearing such evidence being given. The comment such evidence was brief and not supported by documentation is a factual assessment that has not been shown not to be available to the Judge. The Judge did not consider the evidence to warrant the weight the appellant claims should have been attributed to it.
16. Having assessed this and the other available evidence the Judge writes at [20]:

> "20. After careful consideration of all the evidence before me, I can see no adequate reason for departing from the findings of Judge Watson subject to the proviso that the Respondent has now accepted the Appellants continuous residence since July 2005. This does not amount to 20 years continuous residence prior to his application and I conclude that the Appellant cannot meet the requirements of paragraph 276ADE(1)(iii)."

17. It has not been shown this is not a finding open to the Judge when giving the weight the Judge considered appropriate in all the circumstances to the evidence.
18. In relation to weight to be given to duration of residence as found by the Judge, everyone who, not being a UK citizen, is present in the UK and who has leave to reside here other than to do so indefinitely has a precarious immigration status for the purposes of section 117B(5). It is also the case that the concept of a precarious immigration status under section 117B(5) did not include the situation of a person present in the UK unlawfully. In subsections (4) and (5) of section 117B Parliament has drawn a clear distinction between unlawful presence and a precarious immigration status. Section 117B (4) and (5) of 2002 Act state:

> '(4) Little weight should be given to—
>
> (a) a private life, or
>
> (b) a relationship formed with a qualifying partner,

that is established by a person at a time when the person is in the United Kingdom unlawfully.

(5) Little weight should be given to a private life established by a person at a time when the person's immigration status is precarious.'

19. In Treebhawon and Others (NIAA 2002 Part 5A - compelling circumstances test) [2017] UKUT 13 (IAC) it was held that the Parliamentary intention underlying Part 5A of NIAA 2002 is to give proper effect to Article 8 ECHR. Thus a private life developed or established during periods of unlawful or precarious residence might conceivably qualify to be accorded more than little weight and s 117B (4) and (5) are to be construed and applied accordingly.
20. In Rhuppiah [2016] EWCA Civ 803 it was held that Section 117A(2)(a), when read in conjunction with section 117B(5), indicated that although courts should have regard to the consideration that little weight should be given to private life established when immigration status was precarious, it was possible to override such guidance in exceptional cases where the private life had a special and compelling character. Such an interpretation was necessary to prevent section 117B(5) from being applied incompatibly with Article 8. This part of the Court of Appeal's decision was approved by the Supreme Court in Rhuppiah [2018] UKSC 58
21. In Kaur (children's best interests / public interest interface) [2017] UKUT 14 (IAC)it was held that the "little weight" provisions in Part 5A of the 2002 Act do not entail an absolute, rigid measurement or concept; "little weight" involves a spectrum which, within its self-contained boundaries, will result in the measurement of the quantum of weight considered appropriate in the fact sensitive context of every case.
22. In this appeal the Judge finds there is nothing special and/or any compelling characteristics in the appellant's private life sufficient to warrant other than little weight being attached to it. No arguable legal error is made out in relation to this finding.
23. The Judge's finding that there are no sufficiently compelling circumstances to warrant a grant of leave under the Immigration Rules or sufficient to override the public interest in the appellant's removal from the United Kingdom has not been shown to be a finding infected by arguable legal error. The Judge was entitled to attach the weight given to the evidence and to approach the same with caution especially in light of there being two occasions in which it has been found that evidence relied upon by the appellant is not reliable.

Decision

24. There is no material error of law in the Immigration Judge's decision. The determination shall stand

Anonymity.

25. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed…….
Upper Tribunal Judge Hanson
Dated the 13 September 2019