



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

Appeal Number: HU/05002/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 11 January 2019**

**Decision & Reasons Promulgated
On 23 January 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE MONSON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MR MOHAMMED LUKMAN UDDIN
(ANONYMITY DIRECTION NOT MADE)**

Respondent/Claimant

Representation:

For the Appellant: Mr D. Clarke, Specialist Appeals Team

For the Respondent: Mr D. Lemer, Counsel instructed by JKR Solicitors

DECISION AND REASONS

1. The Specialist Appeal Team has appealed to the Upper Tribunal from the decision of the First-tier Tribunal (Judge Adio sitting at Hatton Cross on 20 September 2018) allowing the appeal of the claimant (d.o.b. 5 October 1969) against the decision of the Secretary of State for the Home Department (“the Department”) to refuse to grant him leave to remain on the grounds of family and private life established in the UK following his entry to the UK on 24 April 1982, and his continuous residence in the UK thereafter. The judge allowed the appeal under the twenty year rule in Rule 276ADE(1)(iii) and also on Article 8 ECHR grounds outside the rules. The First-tier Tribunal did not make an anonymity direction, and I do not

consider that the claimant requires anonymity for these proceedings in the Upper Tribunal.

2. Permission to appeal was granted as it was arguable that the Judge did not consider all parts of the immigration rules under which the refusal was made; and it was arguable that he had placed insufficient weight on the evidence that for a significant period the Appellant had employed deception in relation to his status.

Discussion

3. The Department accepted that the claimant had accrued thirty-five years continuous residence in the UK since arriving from Bangladesh in 1982. The Department refused the application on suitability grounds. In 1998 the claimant had become aware of his true parentage, and hence that he was not entitled to hold a British passport as the child of a British citizen. But the claimant had not disclosed this to the authorities, and he had renewed his British passport on two occasions after 1998 in the knowledge that he was not entitled to hold one. He had also failed to disclose in his application a conviction for a driving related offence in 2009 and a caution for common assault in December 2008.
4. While not withdrawing the Department's case that the Judge was wrong to excuse the claimant's conduct on the ground that he was "*a victim of circumstances*", and that the Judge had failed to take into account that the claimant had only come clean after he was "*found out*" by the passport office, Mr Clarke volunteered at the outset of the hearing that he had difficulty in arguing Ground 3.
5. Ground 3 is that, in the light of the Judge's errors in the disposal of the claim under the Rules, the Article 8 assessment outside the Rules is fatally flawed.
6. At paragraph [27] of his decision, Judge Adio applied the five-point test in **Razgar**, and concluded that the strength of the Appellant's family and private life claims outweighed the public interest in his removal, and accordingly the proposed interference was disproportionate. In reaching this conclusion, Judge Adio placed considerable weight on the fact that the appellant's wife and children were all British citizens; and that his removal would not be in the best interests of his youngest child, who was still under the age of 18.
7. Mr Clarke concedes that this conclusion would have been reasonably open to the Judge even if he had accepted the Department's case that the claimant failed under the Rules on suitability grounds. Indeed, Mr Clarke concedes that the strength of the private life claim of the youngest child impels a proportionality finding in favour of the claimant. Accordingly, if the Judge erred in his assessment of the claim under the Rules, his error is not, as Mr Clarke concedes, material to the ultimate outcome.

Notice of Decision

8. The decision of the First-tier Tribunal allowing the claimant's appeal on human rights (Article 8 ECHR) grounds did not contain an error of law, and the decision stands.

Signed

Date 14 January 2019

Deputy Upper Tribunal Judge Monson