



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

Appeal Number: HU/10880/2018

THE IMMIGRATION ACTS

Heard at Birmingham

On 8 October 2019

**Decision & Reasons
Promulgated**

On 4 November 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

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

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms I Hussain of Counsel instructed on a direct access basis
For the Respondent: Mr Mills, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Bangladesh. He is currently residing in France pursuant to a residence permit granted there. There is an issue as to his date of birth but he claims in his current application to have been born on 5 September 1990. He previously came to the UK on 23 January 2011 as a Tier 4 Student. The passport submitted on that occasion had

the date of birth of 5 September 1992. This application was refused and the Appellant subsequently left the UK.

2. On 14 December 2017 the Appellant made an application to enter the UK as the spouse of Ms Nasima Akhtar, the Sponsor. This application was refused in a decision dated 25 April 2018. The Appellant appealed against this decision and his appeal came before Judge NMK Lawrence of the First-tier Tribunal for hearing on 5 April 2019. In a decision and reasons promulgated on 17 April 2019, the judge dismissed the appeal on a number of bases, but in particular finding at [11] that the Appellant had attempted to hide the fact that he had used the passport previously in his 2011 application with a different date of birth, which he considered was a deliberate decision to deceive.
3. Permission to appeal was sought out of time. However a decision was made to extend time on the basis that the judge's decision and reasons were sent to his previous solicitors and that he was no longer represented by them.
4. The grounds in support of the application for permission to appeal asserted that the judge had erred materially in law in respect of:
 - (i) his finding at [11] and his findings relating to the Appellant's identity pursuant to paragraph 320(3) of the Immigration Rules;
 - (ii) secondly, that the judge erred in considering whether there were sufficiently aggravating circumstances so as to justify refusing to exercise discretion pursuant to paragraph 320(11) of the Rules. Reference was made to the judgment in PS (paragraph 320(11) discretion care needed) India [2010] UKUT 440 (IAC);
 - (iii) thirdly, the judge erred in finding that it was a requirement that the Appellant showed that the French authorities accepted his current claimed date of birth;
 - (iv) fourthly that the judge erred in finding that the Sponsor was required to demonstrate family life could be re-established in France where the Appellant has limited leave;
 - (v) fifthly, that the judge erred in finding that the Sponsor was not a creditworthy witness at [17] and in failing to balance his finding with the fact that the Sponsor had reported her previous first husband to the immigration authorities due to the fact that he was residing illegally in the UK, and
 - (vi) sixthly the judge erred in his assessment of proportionality.
5. Permission to appeal was granted by Upper Tribunal Judge McWilliam in a decision dated 25 July 2019 with reference to grounds 1 and 5. Permission however was granted on all grounds.

Hearing

6. At the outset of the hearing before the Upper Tribunal, Mr Mills on behalf of the Secretary of State, accepted that the grounds disclosed that the judge had made a material error of law in that it was clear from the judge's finding at [11] that he had proceeded on the basis of a factual error, finding that the Appellant had attempted to hide the fact that he had used the previous passport, whereas it was clear from section 99 on the Visa Application Form, part 8 additional information, that the Appellant had explained this stating:

"The current passport is my first passport. The passport used to enter the UK was arranged by agent and was retained at the UK Immigration on arrival and was not returned to me. I did not keep a copy hence I am unable to provide details. My date of birth on the first passport is recorded as 5th September 1992. This is not my date of birth, the correct date of birth is 5th September 1990."

7. Mr Mills accepted on that basis that the judge had clearly erred in failing to take that material admission into account. The parties were agreed that the appropriate course of action would be a remittal *de novo* to the First-tier Tribunal in Birmingham

Findings and Reasons

8. In light of Mr Mills' helpful concession, which I accept as being properly made, I find that the judge materially erred in law in finding against the Appellant at [11] in that it is clear from his application form that the Appellant expressly acknowledged that he had previously used a different passport with a different date of birth and there was thus no deliberate decision to deceive. That finding goes to the heart of the judge's assessment of the claim, thus I set the Judge's decision and reasons aside and remit the appeal for a hearing *de novo* before the First tier Tribunal. I make the following directions:

DIRECTIONS

- (i) The case should be listed for two hours. No interpreter is required.
- (ii) Any further evidence upon which the parties wish to rely should be submitted five working days before the hearing to the First tier Tribunal and the other party.

No anonymity direction is made.

Signed Rebecca Chapman
Deputy Upper Tribunal Judge Chapman

Date 31 October 2019