



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

Appeal Number: HU/15862/2018

THE IMMIGRATION ACTS

**Heard at FIELD HOUSE
On 12th June 2019**

**Decision & Reasons Promulgated
On 20th June 2019**

Before

**DEPUTY JUDGE OF THE UPPER TRIBUNAL
G A BLACK**

Between

**MR MOHAMMAD RASHIDUL HOQUE
NO ANONYMITY ORDER MADE**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: MR A. HAQUE (Legal representative)

For the Respondent: MR L. TARLOW (Home Office Presenting Officer)

ERROR OF LAW DECISION AND REASONS

1. This is an error of law hearing. The appellant appeals against the decision of the First- tier Tribunal (Judge Goodrich) ("FtT") promulgated on 11.4.2019 in which the appellant's human rights claims was dismissed.

Background

2. The appellant is a citizen of Bangladesh. He entered the UK as a student with leave until 19.6.2015. His wife was granted ILR in a letter dated 21.6.2018 and the respondent decided to reconsider the appeal under EX 1.
3. The refusal letter stated that the appellant had met the requirements under Suitability and Eligibility. It was accepted that the relationship was genuine and subsisting. The reason for refusal was that there were no insurmountable obstacles to family life outside of the UK and the appellant failed to meet the private life requirements under paragraph 276ADE.
4. Further grounds (SAG) were submitted with evidence to show that the appellant met the financial requirements. At the hearing before the FtT the HOPO consented to the SAG being raised as new matters. The FtT acknowledged that the financial requirements were met at the time of the hearing [10].
5. In determining the issue of family life the FtT took issue with the reasons for refusal letter which stated in terms that the suitability and eligibility requirements were met. The FtT found that the letter had in all likelihood omitted the word "do not" meet the eligibility requirements [40]. The FtT proceeded on that basis and concluded that although the appellant had otherwise met the Immigration Rules [44], he was an over stayer and the Rules were not met. In considering Article 8 the FtT concluded that it was proportionate that he return to Bangladesh to make an out of country application. There was public interest in the maintenance of a fair immigration control [71].

Grounds of appeal

6. In grounds of appeal the appellant argued that the FtT erred by misconceiving the facts and law which lead to the making of inappropriate findings that the appellant was an over stayer. The FtT failed to apply the correct provisions which would mean that the appellant was not in fact an over stayer as his application was made before 28.11.2016 and within 28 days of the expiry of leave.
7. The FtT erred by failing to properly consider the SAG raised and consent was given by the respondent's representative for those matters to be considered.
8. The FtT was wrong to question the content of the refusal letter with regard to suitability and eligibility requirements, which the respondent had accepted were met [40] and to substitute alternative wording. Indeed the respondent's representative had also confirmed to the FtT that it was the respondent's case that these requirements were met.

9. The FTT failed to properly carry out a balanced assessment of all relevant factors and the consequences of the appellant having to return to Bangladesh.

Permission to appeal

10. Permission to appeal to the Upper Tribunal (UT) was granted by FTJ Davidge who considered that the FtT was arguably wrong to presume at [40] that the decision maker who had stated that the eligibility requirements were met in fact intended to write "were not met". The decision under Article 8 was thus arguably infected by the error.

Rule 24 notice

11. There was no rule 24 response.

Submissions

12. At the hearing before me Mr Haque, representing the appellant, expanded on the grounds of appeal. He argued that the FtT had confused the provisions in force at the material time and was wrong to have doubted the decision made by the respondent who had not taken issue with the eligibility requirements. Mr Haque submitted that the HOPO had not raised any issue that the appellant was an over stayer. The FtT ought to have considered if the appellant met the Immigration Rules having regard to the SAG in which there was evidence that the rules were met.
13. In response Mr Tarlow acknowledged that in light of the grounds and submissions there was an error of law in the decision and reasons. The FtT ought not to have inferred words in the refusal letter. It was accepted that the FtT had no basis in law for the finding that the appellant was an over stayer. Mr Tarlow indicated that the UT was in a position to simply remake the decision.

Discussion and conclusion

14. I find that there were material errors in law in the decision and reasons of the FtT. The grounds are made out. The FtT erred by presuming that the respondent had made an error in the refusal letter when it was clear that the position of the respondent was that the eligibility and suitability requirements were met. It was premised on the law applicable such that the appellant was not an over stayer. This position was also confirmed by the Presenting officer who attended the hearing, although there is some contraindication in the decision and reasons. The FtT nevertheless took the view that the refusal letter was wrong and decided to substitute its own wording in the refusal letter such that it altered the respondent's decision and reasons. I am satisfied that in proceeding on that false basis the FtT's approach in effect infected the ultimate consideration under Article 8. In addition the circumstances were such that the respondent's representative had given consent to a new matter being raised in SAG in which it was

evidenced that the appellant had met the financial requirements of the Rules at the time of the hearing. It was specifically submitted by the respondent's representative that there were no public interest factors having regard to immigration control [22]. Accordingly I am satisfied that the FtT erred in the assessment of Article 8 and proportionality having pursued an erroneous approach to the Immigration Rules.

15. Taking in to account the concession made by Mr Tarlow as to the error of law and his submission for the decision to be remade in the UT, it was not necessary for me to hear further submissions.
16. There is a material error of law disclosed in the decision which shall be set aside.
17. I find that the appellant has met the requirements of the immigration Rules under Appendix FM. Article 8 is engaged and the stages in **Razgar** are met. There is no public interest in the removal of the appellant and or requiring him to make an out of country application.

Decision

18. The appeal is allowed on human rights grounds.

Signed

Date 17.6.2019

GA Black
Deputy Judge of the Upper Tribunal

NO ANONYMITY ORDER

NO FEE AWARD

Signed

Date 17.6.2019

GA Black
Deputy Judge of the Upper Tribunal