Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: HU/17597/2018**

THE IMMIGRATION ACTS

Heard at Manchester CJC	**Decision & Reasons Promulgated**
On 16 December 2019	**On 20 December 2019**

Before

UPPER TRIBUNAL JUDGE PICKUP

Between

SHAH MAHFUJUR RAHMAN
[ANONYMITY DIRECTION NOT MADE]

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Mr K Wadup, instructed by Taj Solicitors
For the respondent: Mr A Tan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is the appellant's appeal against the decision of Designated First-tier Tribunal Judge McClure promulgated 4.3.19, dismissing on all grounds his appeal against the decision of the Secretary of State, dated 9.8.18 to refuse his application made on 15.1.18 for leave to remain on private life human right grounds.

2. Designated First-tier Tribunal Judge Macdonald granted permission to appeal to the Upper Tribunal on 3.4.19.

3. Thus the matter came before me sitting in the Upper Tribunal at Manchester Civil Justice Centre on 16.12.19.

4. At the outset of the hearing, I was handed Mr Widup's written submissions, undated.

Error of Law

5. For the reasons set out below, after carefully considering and taking into account the written and oral submissions, I find no material error of law in the decision of the First-tier Tribunal.

6. In summary, the grounds of application contend that Judge McClure failed to take account of relevant case law and made a material error of fact when stating that the appellant had only been living with his uncle until he was 18 for a period of about 4 years, when in fact he had been living with his uncle and family for some 11 years and continued to do so.

7. In granting permission to appeal to the Upper Tribunal, Judge Macdonald observed that at [63] of the decision the judge stated that the appellant had been living with his uncle for a period of about 4 years and went on to find that family life did not exist between the appellant and his uncle's family. It was considered arguable that the finding was in error of fact and one material to the outcome of the appeal. It was on that basis that permission was granted.

8. There are a number of errors of chronology in the First-tier Tribunal decision. The appellant first came to the UK on 14.5.08, aged 12 years and 11 months. It is alleged that his mother left him behind and returned to Bangladesh in August 2008, when he was aged 13. He was taken in by his uncle and has lived with him ever since. His discretionary leave expired on 15.12.14, when he was 19 years of age. At the date of the application to which this appeal relates he was 22 and by the date of the hearing before the First-tier Tribunal on 29.1.19 he was 23.

9. The judge was in error in stating at [56] that by the time his discretionary leave had expired, the appellant had only been in the UK for 4 or 5 years. In fact, he had by then been in the UK for some 6 ½ years. Similarly, the judge erred in stating at [57] that the appellant had been in the UK for a "little short of 10 years." In fact, by the date of the First-tier Tribunal appeal hearing in January 2019, he had been in the UK for a little short of 11 years.

10. At [63] of the decision, the judge stated that the appellant "was only living with the uncle until he was 18 for a period of about four years." That was inaccurate. By the time of reaching adulthood at 18 years of age in 2013, he had lived five years as a child with his uncle. He had lived a little short of a further 6 years with his uncle by the date of the First-tier Tribunal appeal hearing.

11. It appears to me that, despite errors in computations of age or periods of time, the grounds and the grant of permission may both have misunderstood what the judge meant to convey at [63] of the decision. The judge certainly did not state that the appellant had only lived with his uncle until he reached 18 years of age, which appears to be the basis of the argument at [6] of the grounds. What the judge clearly meant to indicate was the period living with the uncle until the age of 18; the length

of time of living with the uncle as a child being highly relevant to the question of family life between them continuing thereafter into the appellant's adulthood.

12. Whilst there was an error of computation, the difference was in effect slight, that between "about four years" and the just over 5 years in actuality. The error is not material as the judge fully accepted that the appellant has continued to live with his uncle. The point being made by the First-tier Tribunal at [63] is that the family life with the uncle as a child was over a rather short period, did not exist before the appellant came to the UK, and was not the same as family life with a parent. At the date of the appeal hearing the appellant was not only an adult but was 22 years of age. He is now 23. As the judge pointed out, even in respect of natural parents, something more than mere financial support is required when dealing with a relationship between adult relatives. Further, the relationship came about whilst the appellant's immigration status was always precarious and latterly has been unlawful.

13. It is clear that the judge made an anxious scrutiny of all the evidence and took into account all relevant factors. It is implicit in the decision that the judge accepted that in principle there could be family life between adults in such a relationship, even after the appellant reached the age of majority. The judge did not impose a rigid test but considered all the relevant circumstances. I find that the conclusion reached, that the nature of the relationship between the appellant and his uncle at the date of the hearing was not one to engage article 8 ECHR in terms of either family or private life was one to which the judge was entitled to come and for which cogent reasons have been provided.

14. In the alternative, the judge went on to consider article 8 ECHR private and family life outside the Rules and took into account the statutory considerations under s117B of the 2002 Act, as he was required to do when assessing the human rights claim outside the Rules and in conducting the proportionality balance between the public interest in enforcing immigration control and the right to respect for private and family life. At [65] the judge set out the considerations that had been taken into account and went on at [67] to conclude that even if the private or family life was sufficient to engage article 8 ECHR, on the facts of the case the decision to refuse leave was entirely proportionate. That conclusion is sustained by cogent reasoning and is unimpeachable.

15. The remaining grounds are in reality little more than a disagreement with the decision and an attempt to reargue the appeal. Mr Wadup argued that there were significant obstacles to the appellant's integration in Bangladesh pursuant to paragraph 276ADE of the Immigration Rules. However, it is clear from [42] to [45] of the decision the judge took into account the circumstances the appellant would face on return to Bangladesh. The judge noted that it appeared that both parents were alive in Bangladesh. In addition, his grandmother was living there with the appellant's brother. It is difficult to see on what basis there are very significant obstacles to integration on return. At [57] of the decision the judge pointed out that the appellant is now an adult of 23 years and has taken advantage of education in the UK, which will stand him in good stead on return. The only other potential obstacle

related to the alleged risk on return because of his father's political activities. However, the judge explained that there was very limited evidence to support that particular claim and there was insufficient substance for the claim to be made out.

16. In all the circumstances, it is clear that this was from the outset a very weak claim for leave to remain on the basis of private or family life outside the Rules. The decision of the First-tier Tribunal was inevitable and the errors in computation of ages or periods was not material to the outcome of the appeal.

Decision

17. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law such that the decision should be set aside.

I do not set aside the decision.

The decision of the First-tier Tribunal stands and the appeal remains dismissed on all grounds.

I make no order for costs.

Signed 

Upper Tribunal Judge Pickup

Dated 16 December 2019