Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/10642/2018

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 8th March 2019	**On 29th March 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE PEART

Between

JUBAIR [A]
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Khan of Universal Solicitors
For the Respondent: Mr Lindsay, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Bangladesh. He was born on 10 June 1973. He appealed against the respondent's decision dated 17 August 2018 to refuse to grant him asylum, humanitarian protection and on human rights grounds.

2. Judge Abebrese (the judge) dismissed the appeal in a decision promulgated on 31 December 2018. He said that he was only concerned with human rights, the asylum claim no longer being pursued. The judge found the respondent's decision to be proportionate.

3. The grounds claim the judge made material errors of law. In particular:

(a) Failure to have regard to material evidence. See the decision at [21]. The judge made incorrect findings on matters that were material to the outcome. In particular with regard to the medical evidence. The evidence from Burnham Health Centre (see P11-14 of the appellant's bundle) confirmed the appellant registered with a medical practitioner on 14 August 2000. The Burnham Health Centre report at P11 confirmed the health status of the appellant on 14 August 2000 and that he was seen by the GP on 17 August 2000 when he was diagnosed with back pain. The registration form (P12 of the appellant's bundle) confirmed the appellant registered with the Burnham Health Centre on 14 August 2000 and that is confirmed at P13 of the appellant's bundle by Burnham Health Centre's status history "notice of registration" received on 14 August 2000. Milcroft Medical Centre medical records (P19-24 of the appellant's bundle) showed the appellant visited the GP on various occasions from 25 September 2001 to 31 May 2005. Diabetics' appointment letters dated 16 January 2003, 21 August 2003, 25 May 2004 and 25 April 2005 (P25-28 of the appellant's bundle) confirmed the appellant was truthful in his claim that he was registered with the medical practitioner on 14 August 2000;

(b) The medical evidence set out in ground (a) above, established that the appellant and his witness were reliable and credible. The appellant's first formal record of presence in the UK was on 14 August 2000 such that the judge made a material error by concluding the appellant could not establish his presence here prior to 2005. The judge at [22] erred by making perverse or irrational findings which were material to the outcome of the appeal. The grounds claimed that being absent for almost 30 years from the appellant's country was significant. He spent his formative years in Qatar and in the UK. He would have significant obstacles in starting a new life in Bangladesh at the age of 46. The judge's view that the appellant was not credible in his claim of failing to keep contact with his siblings in Bangladesh was mere assumption without any adequate evidence;

(c) The judge failed to give any adequate reasons for findings on material matters. In particular at [24] in failing to give adequate reasons for his conclusions. The appellant was 16 when he arrived in Qatar and 26 when he arrived in the UK. It was easy to adapt to a new environment in his youth. The appellant would have significant obstacles adapting to another environment at the age of 46;

(d) The judge failed to consider the strong feature of the appellant's private life claim as per **Rhuppiah [2018] UKSC 58**:

> *"49. … the provisions of Section 117B cannot put decision makers in a straightjacket which constrains them to determine claims under Article 8 inconsistently with the Article itself. Inbuilt into the concept of 'little weight' itself is a small degree of flexibility; but it is in particular Section 117A(2)(a) which provides the limited degree of flexibility recognised to be necessary in para 36 above. Although this court today defines a precarious immigration status for the purpose of Section 117B(5) with a width from which most applicants who rely on*

> *their private life under Article 8 will be unable to escape, Section 117A(2)(a) necessarily enables their applications occasionally to succeed. It is impossible to improve on how, in inevitably general terms, Sales LJ in his judgment described the effect of Section 117A(2)(a) as follows:*
>
> *53. Although a court or Tribunal should have regard to the consideration that little weight should be given to private life established in [the specified] circumstances, it is possible without violence to the language to say that such generalised normative guidance may be overridden in an exceptional case by particularly strong features of the private life in question …".*

4. Judge O'Keeffe granted permission on 28 January 2019. She said inter alia as follows:

> *"1. … the grounds of appeal assert that the judge failed to have regard to material evidence, made perverse or irrational findings, failed to give adequate reasons and failed to give effect to a binding decision.*
>
> *2. The judge refers to the medical evidence and states that it shows the appellant was registered with a medical practitioner in 2005 and not before. The appellant's bundle contains evidence to show that the appellant registered with a GP in 2000 and made visits to the GP thereafter. It is arguable therefore that the judge has made an error in the consideration of the evidence before the Tribunal which is material to the proportionality assessment under Article 8.*
>
> *3. The grounds disclose an arguable material error of law and permission to appeal is granted on all grounds."*

5. There was no Rule 24 response.

Submissions on Error of Law

6. Mr Khan relied upon the grounds. He submitted that the judge's starting point was that the appellant was not telling the truth. See [21] of the decision. Further, as regards [23] the judge was incorrect in what he said. There was cogent evidence from the appellant's medical records that he was here in August 2000.

7. Mr Khan submitted that the judge's incorrect findings contaminated his decision on proportionality because he thought the appellant had been here much less than was the case. Those incorrect findings had hindered the judge's view on the appellant's credibility.

8. Mr Lindsay accepted that the judge had erred but that such error was not material. The case had been put forward on the basis that the extra time the appellant had spent here in some way assisted him. The contrary was in fact the case. If the appellant had been here since 2000 illegally, it strengthened, rather than diminished the public interest in his removal. He had received extensive healthcare without making any contributions. If the judge had not erred, his decision would arguably have been the same.

Conclusion on Error of Law

9. The judge erred because the appellant did provide evidence to show that he had been here since 1999, not 2005 which is what the judge thought.

10. The appellant did not pursue his asylum claim. The only issue before the judge was with regard to human rights which he considered at [21]-[30]. There was no issue that the appellant did not meet the requirements of the Immigration Rules. Whether based upon arriving and staying here unlawfully from either 1999/2000 or 2005 made no difference to the judge's analysis which he comprehensively carried out at [22]-[29]. The judge acknowledged that the appellant had been here unlawfully for a long time. In fact, the appellant had been here for 5 years longer than the judge thought but I do not accept that if the judge had not erred, that his decision would have been any different. The appellant failed to satisfy paragraph 276ADE(1)(iii) as of the date of his application because he had not lived here for at least 20 years; the judge's error was irrelevant in that analysis and Mr Khan did not suggest otherwise.

11. The judge took into account the appellant's medical conditions. He took into account he had received treatment here for various conditions and was not entitled to such treatment. He took into account that the appellant had worked here unlawfully and made no contributions.

12. The judge also considered the appellant's claimed family life here, his resilience and his family in Bangladesh. He correctly considered the appellant's circumstances in terms of s.117B.

13. The judge was entitled to reach the conclusion that the respondent's decision was proportionate.

Decision

14. The judge erred but not materially. His decision shall stand.

Anonymity direction not made.

Signed Date 27 March 2019

Deputy Upper Tribunal Judge Peart