



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

Appeal Number PA/11752/2018

**THE IMMIGRATION ACTS**

Heard at Field House  
On 29<sup>th</sup> January 2019

Decision and Reasons Promulgated  
On 13<sup>th</sup> February 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE PARKES

Between

MD HASAN MAHMUD  
(ANONYMITY DIRECTION NOT MADE)

**Appellant**

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

**Respondent**

For the Appellant: Mr Ume-Ezeoke (Counsel, instructed by Pillai & Jones Solicitors)  
For the Respondent: Mr D Clarke (Home Office Presenting Officer)

**DETERMINATION AND REASONS**

1. The Appellant's claim for asylum was rejected and his appeal dismissed for the reasons given in the decision of Judge Mailer promulgated on the 29<sup>th</sup> of November 2018. The Appellant sought permission to appeal to the Upper Tribunal in grounds of the 10<sup>th</sup> of December 2018 asserting that there were various errors with the substantive decision and that the Judge had not considered article 8. Permission was refused with respect to the asylum aspect of the Appellant's case but it was noted that Judge Mailer had not considered article 8 and permission to appeal to the Upper Tribunal was granted on that basis alone. There was no renewed application for permission to appeal on the asylum grounds.

2. The Appellant had raised article 8 in the Grounds of Appeal albeit incorrectly. Having recited article 8 it was stated in paragraph 15 of the Grounds of Appeal to the First-tier Tribunal that the Secretary of State had no right to interfere in an individual's private life.
3. In the Appellant's witness statement prepared for the First-tier Tribunal hearing the Appellant stated at paragraph 29 that he was now suffering from depression. In paragraph 30 the Appellant stated that since coming to the UK he had treated the UK as his home and had set up a life here, having spent considerable amount of time here he was adapted to the English system and could not see himself moving back to Bangladesh. In paragraph 40 the Appellant referred to having engaged in many social activities regularly attending the mosque and similar places. It does not appear that the Appellant gave further evidence and it does not appear that the article 8 aspect was developed before Judge Maller in argument.
4. For the Appellant it was argued that the appeal should be remitted. The Appellant was not at the Upper Tribunal hearing and Mr Ume-Ezeoke had not had the opportunity to ask him about the case. It was possible that evidence had not been provided on the advice of his solicitors. It was observed that the Appellant had been interviewed in English and did have a level of education.
5. I refused the application for the Appellant to be given more time. The Appellant did not submit any evidence for the appeal before Judge Maller and there was no application to submit additional evidence before the Upper Tribunal. Fairness is obtained by giving a party to the proceedings the opportunity to prepare their case and in this appeal the Appellant had had more than sufficient opportunity to prepare and present evidence both before the First-tier Tribunal and the Upper Tribunal. That he did not take that opportunity does not make the proceedings unfair. In the circumstances I have decided the case on the evidence that was presented to the First-tier Tribunal.
6. The starting point for the consideration of the Appellant's article 8 claim is the decision of First-tier Tribunal Judge Keane of the 27<sup>th</sup> of September 2016. I can depart from that decision if there is evidence that was not available to Judge Keane that would justify taking a different approach. In brief the Appellant did not attend that appeal and his appeal was decided on the papers. Judge Keane found that the Appellant did not meet the Immigration Rules and there were no exceptional circumstances that would justify a grant of leave outside the rules, the full reasons are given in paragraph 7 of his determination. There was no challenge to that decision.
7. The Appellant's Notice and Grounds of Appeal are dated the 4<sup>th</sup> of October 2018 and he had had since the application was made to prepare his case. In addition to that the Appellant had had the benefit of the decision of Judge Keane which indicated why his human rights application had previously failed. The Appellant has had the benefit of legal advice and the absence of evidence to justify departing from Judge Keane's decision has to be seen in that light.
8. There is no evidence that would justify finding that the Appellant meets the Immigration Rules or that there are circumstances not addressed by the rules that would justify a grant of leave outside the rules. There is no evidence that would justify revisiting the earlier decision of Judge Keane and I decline to do so.
9. Technically there was an error in the decision of Judge Maller in the absence of any consideration of article 8 but in the circumstances it is not material. There was nothing in the

evidence that would have availed the Appellant and in the circumstances the decision of Judge Mailer stands as the disposal of this appeal. His decision can be read along with these reasons which suffice to explain why the gap is not material to the outcome as it is inevitable that the appeal would have been dismissed on article 8 grounds.

## **CONCLUSIONS**

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision.

### **Anonymity**

The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and I make no order.  
(Upper Tribunal) Rules 2008)

### **Fee Award**

In dismissing this appeal I make no fee award.

Signed: 

Deputy Judge of the Upper Tribunal (IAC)

Dated: 1<sup>st</sup> February 2019

(c) Crown copyright 2019