IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-005488

First-tier Tribunal Nos: HU/51729/2022
IA/02724/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 3 August 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

Mr Najibur Rahman
(NO ANONYMITY ORDER MADE)

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:
For the Appellant: Mr M Hussain (Legal Representative)
For the Respondent: Mr C Bates, Senior Home Office Presenting Officer

Heard at Birmingham Civil Justice Centre on 6 July 2023

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Howorth, promulgated on 24th September 2022, following a hearing at Birmingham on 21st September 2022. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Hearing

© CROWN COPYRIGHT 2023

2. The Appellant is a male, a citizen of Bangladesh, and was born on 11th September 1979. He appealed against the refusal of his application for leave to remain in the UK on the basis of his private life under paragraph 276ADE(vi) of the Immigration Rules, and Article 8 ECHR outside of those Rules.

The Appellant's Claim

3. The Appellant's claim is that he arrived in the UK on 15th April 2004, on an SBS work permit visa, and then overstayed his leave and applied for further leave to remain on 27th February 2021, which was rejected. The Respondent states that the Appellant did not attend his asylum interview on 18th February 2022, that he does not meet the requirements of the Immigration Rules, and that there are no further exceptional circumstances.

The Judge's Findings

4. At the hearing, the judge heard that the Appellant was in contact with his mother in Bangladesh, though not with his brother "at all as he cannot financially support him" (paragraph 8). The Appellant maintained that he could not re-establish himself in Bangladesh. In cross-examination, he also confirmed that he had extended family in Bangladesh but he does not have any contact with them. In the UK he had not worked after his one year work visa expired and is dependent upon the generosity of his friends who gave him some money (paragraph 9).

5. On the Respondent's behalf, it was argued that there were no very significant obstacles to the Appellant's reintegration, given his social, cultural and linguistic ties, and he had claimed to be in contact with his mother, but also has a sister and a brother there. There was nothing exceptional about his situation (paragraph 10). The Appellant's representative had argued that the Appellant has been continuously resident in the UK since 2004 and that, "the Appellant's long residence of 18.5 years means he would have difficulty integrating" and that "the Appellant's brother would not assist the Appellant to reintegrate …" (paragraph 11).

6. In his determination, the judge referred to how the Appellant had relied on significant obstacles to his integration in Bangladesh, but that he had a mother and other family members (including a brother and a sister) in Bangladesh. He had given his evidence before the Tribunal in Bengali "and therefore is still most confident in his mother tongue". The reality was that, "the Appellant is unable to put forward any really significant obstacles to his reintegration, the Appellant has both a family and a family home he could return to, and therefore 276ADE(1)(vi) is not met" (at paragraph 12).

7. As far as Article 8 considerations were concerned outside the Immigration Rules, "the Appellant's length of residence in the UK is his heaviest factor in the balancing between the rights of the Appellant and the Respondent", but that "there is insufficient evidence before me of continuous residence within the UK but even with 18.5 years of residence, the Appellant falls short of the twenty years required …" (paragraph 13). The appeal was dismissed.

Grounds of Application

8. The grounds of application state that the judge failed to give any consideration or weight to the fact that the Appellant had lived in the UK for 18.5 years in assessing the difficulties that he would face on return to Bangladesh. The judge had also failed to properly consider his claim under Article 8 ECHR. On 15th November 2022 permission to appeal was granted by the First-tier Tribunal.

Submissions

9. At the hearing before me on 6th July 2023, Mr Hussain, appearing on behalf of the Respondent submitted that the refusal letter did not dispute the fact that the Appellant had been in the UK for 18½ years but the judge had nevertheless stated that "there is insufficient evidence before me of continuous residence within the UK …" (paragraph 13). This was unwarranted, submitted Mr Hussain. Secondly the Appellant would not be assisted by his family members in Bangladesh because they had all moved on and would not be able to provide him with the accommodation that he would need upon return after 18½ years in the UK. The fact was that the determination was very short and the judge did not really go into the issues at hand in the necessary detail.

10. For his part, Mr Bates submitted that the suggestion that the judge did not accept that the Appellant had been continuously resident in the UK was misconceived. This was a submission of the Home Office Presenting Officer (see paragraph 11) in the Respondent's closing submission, but the judge had gone on to consider the Appellant's situation even if he had been in the UK for the claimed 18½ years. Mr Bates submitted before me that "the 18½ years residence is the only card the Appellant has", and the judge had been aware of the considerations of proportionality and the balancing exercise that had to be undertaken. When the Appellant gave evidence that his brother in the UK was on benefits and his nephew in the UK was on benefits and that "the Appellant has the leftovers", he had not produced any documents in relation to his nephew, brother, or friends, claiming that they would not produce any documents (at paragraph 9). Therefore, the suggestion that he was reliant upon funds from friends and relatives in the UK had not been substantiated by the Appellant. There were no documents produced. The judge's decision was sustainable.

11. In reply, Mr Hussain submitted that the fact that the Appellant's brother, nephew, and friends are unwilling to give statements in support of the Appellant should not be held against him. He was only in contact with his mother during festivals, such as EID.

No Error of Law

12. I am satisfied that the making of the decision by the judge did not involve the making of an error on a point of law (see paragraph 12(2) of TCEA 2007) such that I should set aside the decision. My reasons are as follows.

13. First, in what is a concise and clear determination, the judge does explain why there are no significant obstacles to the Appellant's integration in Bangladesh. In the very first paragraph of the findings (at paragraph 12), the judge is clear that the Appellant has a mother in Bangladesh with whom he is in contact, a brother and a sister, and has given evidence in Bengali, and "is unable to put forward any really significant obstacles to his reintegration" (paragraph 12).

14. Second, the judge gives an equally succinct and clear answer to the Article 8 claim, recognising that “the Appellant’s length of residence in the UK is his heaviest factor in the balancing between the rights of the Appellant and the Respondent”, but then properly concludes that “it is outweighed by the Respondent’s need for effective immigration control” (paragraph 13). The fact that the Appellant has been in the UK for such a long period of time is considered in the context of Section 117B of the Nationality, Immigration and Asylum Act 2002 which requires that “little weight” be attached to a private life formed whilst a person is unlawfully in the UK (at paragraph 14).

15. Finally, it is simply not the case that the judge disbelieved the Appellant’s account that he had been in the UK for 18.5 years. Although there was “insufficient evidence” with respect to that claim, what the judge held was that “but even with 18.5 years of residence the Appellant falls short of the 20 years required for a grant under 276ADE(1)(iii)” before stating that these considerations are “outweighed by the Respondent’s need for effective immigration control” (paragraph 13).

Notice of Decision

16. There is no material error of law in the original judge’s decision. The determination shall stand.

17. No anonymity order is made.

Satvinder. S. Juss

Judge of the Upper Tribunal
Immigration and Asylum Chamber

24th July 2023