



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-002182

First-tier Tribunal No: HU/51866/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 22

August 2023

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

MD SHAHIDUL ISLAM
(no anonymity order made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr H Malik, instructed by Lexwin Solicitors
For the Respondent: Mr E Terrell, Senior Home Office Presenting Officer

Heard at Field House on 16 August 2023

DECISION AND REASONS

1. The appellant is a citizen of Bangladesh born on 1 February 1989. He appeals, with permission, against the decision of the First-tier Tribunal dismissing his appeal against the respondent's decision to refuse his human rights application for leave to remain on the basis of his private life in the UK.
2. The appellant entered the UK on 28 January 2010 with entry clearance as a Tier 4 student, with leave to enter until 31 July 2013. He was subsequently granted leave to remain until 30 May 2015 but that was curtailed to expire on 10 May 2015 and a further application for leave was refused. Thereafter the appellant overstayed. He made several unsuccessful applications for leave to remain on family/ private life

grounds in 2016 to 2018 and then made his most recent application on 16 July 2019. That application was a human rights claim for leave to remain on private life grounds which was refused on 21 July 2020, giving rise to these proceedings.

3. In the decision refusing the application, the respondent noted that the appellant's claim was based only on private life grounds. The respondent considered that there were no very significant obstacles to the appellant's integration in Bangladesh and that he could not meet the requirements of paragraph 276ADE(1) of the immigration rules. The respondent considered further that there were no exceptional or compelling circumstances rendering refusal a breach of Article 8. The respondent rejected the appellant's claim that he would be destitute on return to Bangladesh, finding there to be no reason why the friends and family who supported him in the UK could not continue to support him in his own country and no reason why he could not find employment in Bangladesh. The respondent noted that the appellant had made an asylum claim on the basis of being unsafe in Bangladesh owing to the political unrest in that country, but his representatives had informed the Home Office that he did not wish to proceed with his claim.

4. The appellant appealed against that decision to the First-tier Tribunal and his appeal was heard by First-tier Tribunal Judge Lucas on 10 May 2023. The judge heard oral evidence from the appellant who confirmed that his mother, sister, two brothers and maternal uncle lived in Bangladesh but claimed that they could not support him and that he would have difficulty in finding employment there. Judge Lucas considered that the appellant could not meet the requirements of the immigration rules and that, whilst he had established a private life in the UK, there was nothing exceptional about his circumstances. He concluded that the respondent's decision was not in breach of the appellant's Article 8 rights and he accordingly dismissed the appeal.

5. The appellant sought permission to appeal against the judge's decision on the grounds that the judge had failed to engage with the test for 'very significant obstacles'; that the judge made an irrational finding when relying upon the fact that the letters of support he had produced were from within the Asian community; and that the judge had failed to carry out a real-world assessment of his evidence and had failed to consider all aspects of his claim in the balancing exercise.

6. Permission was granted in the First-tier Tribunal with particular focus on the first ground although it was said that the other grounds were also arguable. The respondent filed a rule 24 response opposing the appeal.

7. The matter then came before me for a hearing. Both parties made submissions and those are addressed in the discussion below.

Discussion

8. The appellant's first ground asserts that the judge failed to give proper consideration to the question of 'very significant obstacles' in paragraph 276ADE(1) (vi) and failed to follow the broad evaluative approach as set out in Secretary of State for the Home Department v Kamara [2016] EWCA Civ 813. However, whilst it is the case that the judge did not specifically cite paragraph 276ADE(1)(vi) or the test in Kamara, he plainly considered the matter in substance, at [30] to [32], whereby he had regard to the appellant's family and other ties to Bangladesh and his ability to re-establish and support himself there. As Mr Terrell properly pointed out, it is apparent from [21] that the case was actually presented to the judge as one outside the immigration rules and it was therefore on that basis that the judge proceeded to

consider the evidence. Further, whilst reference was made to paragraph 276ADE(1)(vi) in the appellant's skeleton argument, at [22] and [23], it was in the briefest and most general of terms and relied upon matters which were in any event essentially considered by the judge at [31] and [32]. In the circumstances there is nothing of merit in this ground and I do not find it to be made out.

9. Mr Malik submitted, for the second ground, that the judge made an irrational finding at [29] whereby he found that there was nothing exceptional about the appellant's relationships formed in the UK since they were almost all within his own "Asian" community. Mr Malik submitted that it was not clear why the judge put emphasis upon this, particularly when the people in question were mostly British citizens, whether or not bearing Asian names. However, as Mr Terrell submitted, the judge's observations in that regard were simply a reflection of the appellant's own evidence, as recorded at [16]. Clearly the judge, at [29], was assessing the weight to be given the appellant's private life in the UK in the context of section 117B of the Nationality, Immigration and Asylum Act 2002. His finding was that the evidence relied upon by the appellant in the form of letters of support from friends and family did not show that there was anything exceptional about the relationships upon which he relied. That was a finding which the judge was fully and properly entitled to make. The second ground is also without merit.

10. Likewise, there is nothing of merit in the third ground which asserts that the judge failed to consider all aspects of the appellant's claim in the balancing exercise and failed to carry out a real-world assessment. In that regard Mr Malik relied in particular on two aspects of the appellant's evidence, namely his uncle's job offer in the UK and the difficulties the appellant experienced as a result of two of his sponsoring colleges having had their licences revoked. However I fail to see how either materially avails the appellant in the balancing exercise. The judge was perfectly aware of the job offer from the appellant's uncle, referring to it at [11], but properly concluded that the appellant's private life in the UK was of little weight in the proportionality assessment given the lack of any reasons why he could not re-establish himself in Bangladesh. The fact that the appellant's sponsors had their licences revoked was not a proper reason for the appellant to remain as an overstayer for several years rather than returning to Bangladesh. As Mr Terrell submitted, the grounds in that respect were simply seeking to re-argue the appellant's case and did not identify anything unlawful in the judge's approach.

11. In summary, the grounds are without any merit. The appellant's claim was a particularly weak one in any event and could not have succeeded on the evidence before the judge. The judge considered all relevant matters, had full regard to the evidence, applied the appropriate legal tests and reached a decision which was fully and properly open to him on the evidence before him. I uphold his decision.

Notice of Decision

12. The making of the decision of the First-tier Tribunal did not involve a material error on a point of law requiring it to be set aside. The decision to dismiss the appeal stands.

Signed: S Kebede
Upper Tribunal Judge Kebede

Judge of the Upper Tribunal
Immigration and Asylum Chamber

16 August 2023