



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-002367

First-tier Tribunal Nos: HU/50605/2020
IA/00774/2021

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
8th of November 2023**

Before

DEPUTY UPPER TRIBUNAL JUDGE ZUCKER

Between

**MIRZA IMTIAZ AHMED
(NO ANONYMITY ORDER MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Walsh of Counsel, instructed by Universe Solicitors Ltd
For the Respondent: Ms A Ahmed, Senior Home Office Presenting Officer

Heard at Field House on 27 October 2023

DECISION AND REASONS

1. The Appellant is a citizen of Bangladesh whose date of birth is recorded as 30th March 1976. On 11th January 2017 he entered the United Kingdom with entry clearance as a Tier 4 (General) Student, and on 15th April 2019 made application for leave to remain on the basis of familial relationship with his aunt and on human rights grounds more generally.
2. On 17th June 2020 a decision was made to refuse the application. The Appellant appealed and his appeal was heard in the First-tier Tribunal on 15th February 2023 by Judge Abdar who in a decision dated 9th May 2023 dismissed the appeal.
3. Not content with that decision by notice dated 3rd July 2023 the Appellant made application for permission to appeal to the Upper Tribunal. The grounds take issue with the judge's finding that there was no protected family life between the Appellant and his aunt but even if there were, the question of proportionality fell to be determined in the Respondent's favour.

4. Although permission to appeal was initially refused, a renewed application to the Upper Tribunal led on 26th July 2023 to a grant of permission by Upper Tribunal Judge Pitt on the basis that it was arguable that the First-tier Tribunal did not provide reasons for finding that the Appellant did not have a family life with his aunt or for finding that the Appellant's aunt could pay for the additional support that would be needed if the Appellant was not present to care for her. Thus the matter comes before me.
5. At the commencement of the hearing, I indicated to Ms Ahmed that my preliminary view, subject to any submissions that I might hear, was that there was an error of law in the determination because at paragraph 28 in which the judge had said that he was not satisfied that the Appellant's case engaged Article 8 appeared to be devoid of reasons.
6. Although Ms Ahmed invited me to retain this case in the Upper Tribunal and re-make the case, she did accept that it did appear that there was a material error of law such that the decision should be set aside. She was right to make that concession and it was not necessary for me to call on Mr Walsh and so the decision is set aside.
7. I have considered whether it is appropriate to retain this matter in the Upper Tribunal but in determining the issue of proportionality there have to be some findings in my view in order to weigh what those factors are that, if any, are favourable to the Appellant's case and those which go to the public interest more widely; that requires in my judgment a better analysis of the Appellant's case than that which was undertaken.
8. I make this observation more generally. It is of note that this appeal was heard on 15th February 2023, yet the decision does not appear to have been written until 9th May 2023. There may have been good reason for that. I do not know. However, more generally I would observe that when there is a significant period of time allowed to elapse between the hearing of the case and the writing of the decision the possibility of error becomes all the greater.

Decision

9. The appeal to the Upper Tribunal is allowed. The decision of the First-tier Tribunal is set aside to be re-made in the First-tier Tribunal and the matter is remitted accordingly.



Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

1 November 2023