Upper Tribunal
(Immigration and Asylum Chamber) Case No: UI-2023-003785

First-tier Tribunal No: HU/50216/2023

THE IMMIGRATION ACTS

Decisions and Reasons Issued

8th February 2024

Before

Upper Tribunal Judge KEBEDE
Deputy Upper Tribunal Judge MANUELL

Between

Mr MD JEWEL MIAH
(NO ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr M West, Counsel
(instructed by Lawmatic Solicitors)
For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

Heard at Field House on 2 February 2024

DECISION AND REASONS

Introduction

1. The Appellant appealed with permission granted by First-tier Tribunal Judge Karbani on 7 September 2023, against the decision of First-tier Tribunal Judge Gribble who had dismissed the appeal of the Appellant against the refusal of his Article 8 ECHR claim. The decision and reasons was promulgated on 4 August 2023.

2. The Appellant is a national of Bangladesh, born on 17 October 1990. He entered the United Kingdom on 6 March 2011 as a Tier 4 (General) Student. Each of the four colleges at which he chose to study lost its licence. On 23 March 2015 the Respondent refused his application for further leave to remain. The Appellant's appeal against the refusal decision was dismissed by the First-tier Tribunal on 25 May 2016. His appeal rights were exhausted as of 9 June 2016. Thereafter he remained as an overstayer.

3. On 5 February 2022 the Appellant applied for leave to remain in the United Kingdom on Article 8 ECHR private life grounds. He stated that he did not wish to apply for leave to remain on family life grounds because his partner did not wish to acknowledge their relationship publicly. It was unfair that he had been unable to obtain a further CAS to continue his studies.

4. The Appellant failed to attend his appeal hearing on 2 August 2023. An adjournment application on ill health grounds had been refused the previous day as no supporting medical evidence had been produced. No medical evidence was produced on the day of the hearing, despite the terms of the refusal. Judge Gribble's decision to proceed in the Appellant's absence has not been challenged.

5. Judge Gribble found that the Appellant could reintegrate into Bangladesh without facing very significant obstacles. He had been born and brought up there. He had left as an adult. He had family there. He had retained his cultural and religious ties. He was not in poor health. He had obtained a United Kingdom education qualification, if not at the level to which he had aspired. His claim that he might struggle to find work was not a very significant obstacle. Paragraph 276ADE(1)(vi) of the Immigration Rules was not met. That part of Judge Gribble's decision has not been challenged.

6. Judge Gribble then considered the Appellant's Article 8 ECHR private life claim outside the Immigration Rules, with reference to sections 117A-B of the Nationality, Immigration and Asylum Act 2002. The judge conducted a balancing exercise and found that the Appellant's private life interests to which some weight should be given were outweighed by the public interest. There was no evidence from the Appellant's alleged partner and the Appellant was not relying on a family life claim. There was no evidence of any exceptional circumstances or other compelling factors. The Appellant was unlucky in four of his colleges losing their licences but that would have been considered in his 2016 appeal and was obviously not found to be exceptional. It was not exceptional now. There was no disproportionate interference with the Appellant's private life. Hence the appeal was dismissed.

7. The Appellant then applied for permission to appeal that decision. First-tier Tribunal Judge Karbani considered that it was arguable that Judge Gribble had erred by failing to consider adequately the Appellant's relationship with his girlfriend and "any impact of the refusal on that relationship on their private life." There was arguably no supporting evidence that the previous determination had already considered the Appellant's leave being curtailed after closure of his colleges, and that in any event Judge Gribble ought to have considered that as a potential "historic injustice" in the proportionality assessment.

8. Notice under rule 24 dated 19 September 2023 had been served by the Respondent, indicating that the onwards appeal was opposed.

Submissions

9. Mr West for the Appellant relied on the grounds of onwards appeal and the grant of permission to appeal. Counsel accepted that Judge Gribble's findings with reference to paragraph 276ADE of the Immigration Rules were sustainable and were not challenged. Nor was there any challenge to the judge's decision to proceed in the absence of the Appellant, having refused an adjournment. The judge's Article 8 ECHR findings were, however, not accepted. The judge had failed to address key elements of

the Appellant's case, as it had been outlined in the Appellant's skeleton argument. The Appellant's relationship with his partner had not been addressed, although it went back to 2016. Nor had the past unfair treatment of the Appellant by the Secretary of State been adequately considered, if at all.

10. The judge had stated that the Appellant was not relying on family life when in fact that was part of the Appellant's case. The relationship relied on had been conducted in secret for the reasons which the Appellant had explained. The judge had not dealt with that, which was an error of law.

11. Nor had the judge addressed the fairness issue which surrounded the Appellant's studies in the United Kingdom and the curtailment of his leave. It was not clear whether the First-tier Tribunal decision dismissing the Appellant's appeal in 2016 was before the judge, but the likelihood was that it had not been. This was the "60 day" question: see Patel (Tier 4 – no '60 day' extension India [2011] UKUT 000187 (IAC). The judge had made an assumption about what had been considered at that appeal which was incorrect and procedurally unfair. That might have made a difference in a case where the margins were finely balanced. It was another error of law. The decision should be set aside.

12. Mr Clarke for the Respondent submitted that the Appellant's grounds had not been made out and no error of law had been shown. It was incorrect for the Appellant's counsel to claim that family life had been relied on by the Appellant. The Appellant's skeleton argument in the First-tier Tribunal stated that the (alleged) partner had not been willing for evidence of the relationship to be disclosed. That was reiterated in the Appellant's witness statement. Paragraph 9 of the Appellant's skeleton argument made no mention of the Appellant's girlfriend. The Appellant had described himself as "single" in his application to the Secretary of State for leave to remain outside the Immigration Rules. Five photographs had been produced. That was the extent of the evidence of the claimed relationship.

13. The submission about past unfair treatment of the Appellant in relation to his student leave by the Secretary

of State was similarly misconceived. The appeal should be dismissed.

14. In reply, Mr West submitted that the Respondent should have provided a copy of the First-tier Tribunal's decision made in 2016 if the Respondent wished to rely on it. Counsel resisted the suggestion that in fact it was the Appellant who relied on the 2016 decision. The judge had not dealt with the point and should have done. Counsel accepted that paragraph 9 of the Appellant's skeleton argument made no mention of the Appellant's girlfriend.

No material error of law finding

15. The tribunal reserved its decision, which now follows. The tribunal must reject the submissions as to material error of law made on behalf of the Appellant. In the tribunal's view, the errors asserted to exist in the decision are based on a misreading of the determination and on demonstrably incorrect submissions as to the substance of the evidence before the judge. Indeed, it is not easy to see why permission to appeal was granted on such an obviously weak case.

17. It was accepted by Mr West that the judge's consideration of Article 8 ECHR within the Immigration Rules, i.e., by reference to paragraph 276ADE could not be faulted. The submission that the judge failed to deal with the family life element of the Appellant's Article 8 ECHR appeal outside the Immigration Rules was misconceived. As Mr Clarke pointed out, there was little evidence of the relationship relied on. The Appellant described himself as "single" in his application for leave to remain. There was no claim that the Appellant and his alleged partner were living together. Neither the Appellant nor his alleged partner attended the appeal hearing and it was rightly conceded that it had been open to the judge to hear the appeal in their absence.

18. At best, accepting for Article 8 ECHR purposes that some form of relationship existed or might exist, it fell within the scope of the Appellant's private life. That private life was thoroughly considered by the judge, who recognised that the 12 year duration of the Appellant's presence in the United Kingdom meant that a private life was likely to

exist. The judge examined the various relationships, friendships and connections relied on by the Appellant with care and in detail. The judge gave some weight to the Appellant's private life. There was no error of law in the judge's approach or in her findings.

19. As to the submission that the judge had erred by failing to address the so-called "fairness" or "historic injustice" point concerning the curtailment of the Appellant's student leave to remain, i.e., giving him a sufficient opportunity to find an accredited college after the closure of his four previous colleges, no copy of the First-tier Tribunal's dismissal of the Appellant's appeal in 2016 was provided. Mr West submitted no copy to the tribunal nor sought leave to adduce further evidence. The Appellant made no claim that he had somehow lost his copy of the document. It was open to the judge to infer that the Appellant had had the chance to raise any relevant fairness issues in 2016. Patel (above) was established law. If the Appellant's contention was that he had been unfairly denied that chance by the Respondent it was plainly for him to produce a copy of the 2016 decision (which he had not appealed successfully) to demonstrate that the point had not been considered previously. The inference the judge drew was open to her.

20. Despite what might reasonably be thought to be the obvious weakness of the Appellant's claim, and his failure to attend his appeal hearing without good cause, the judge conducted a full and careful review of his case, in a logical, structured manner, correctly applying the law. In the tribunal's view, the submissions advanced on the Appellant's behalf were not supported by any relevant evidence. Indeed, they were contradicted, as Mr Clarke showed. The tribunal finds that there was no material error of law in the decision challenged. The onwards appeal is dismissed.

Notice of Decision

The appeal is dismissed_

The making of the previous decision did not involve the making of a material error on a point of law. The decision stands unchanged.

Signed R J Manuell **Dated** 6 February 2024
Deputy Upper Tribunal Judge Manuell