



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2024-005632
First-tier Tribunal No:
HU/56819/2022
IA/09736/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 07 October 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE KELLY

Between

IFAJ HUSSAIN
(ANONYMITY NOT ORDERED)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr B Ahmed, Counsel instructed by Saint Martin Solicitors
For the Respondent: Mr Parvar, Senior Home Office Presenting Officer

Heard at Field House on the 19th September 2024

DECISION AND REASONS

Introduction

1. The appellant is a citizen of Bangladesh, who was born on the 31st August 1997. His application for leave to remain in the UK on human rights grounds was refused by the respondent on the 26th September 2022. His appeal against that decision was dismissed by First-tier Tribunal Judge Dieu on the 28th June 2023. He was granted permission to appeal against the decision of Judge Dieu, and hence the matter came before me for hearing on the 19th September 2024.

The appellant's case before the First-tier Tribunal

2. The essential facts were not in contention and can be summarized as follows.
3. The appellant first came to the UK on the 9th February 2001 as a young child to join his father, who is a British citizen by descent. He was subsequently granted indefinite leave to remain in the UK. He however returned to Bangladesh with his family on 14th July 2002 so that his father could care for his elderly parents. The consequence of this for the appellant was that his leave to remain in the UK lapsed due to him being absent for a continuous period exceeding two years. He studied in Malaysia from 2015 before returning to the UK as a Tier 4 Student on the 28th September 2019. He completed his degree course in the UK since when he has remained here with his parents upon whom he is financially dependent. The appellant previously also shared the family home in the UK with his younger brother. However, the younger brother left the family home shortly before the hearing due to a disagreement with his parents.
4. The appellant's case was that, whilst now aged 25, he nevertheless enjoyed a close family relationship with his parents as well as with extended family members living in the UK. His parents had been badly affected by the rupture in their relationship with their younger son, which had only served to strengthen their relationship with the appellant. Moreover, but for his father's decision to return with the family to Bangladesh to care for his elderly parents, the appellant would by now have achieved settled status in the UK. The interference with his private and family life by his removal to Bangladesh would thus be disproportionate to the legitimate public interest in maintaining the economic wellbeing of the country through the consistent application of immigration controls.

The decision of the First-tier Tribunal

5. The First-tier Tribunal Judge accepted that the appellant had established family life with his parents, made friendships in the UK, and that he was financially independent of the state. On the other side of the scales, however, was the fact that the appellant had only been in the UK for a short time, his leave to remain in the UK had "always been precarious", he spoke the principal language of Bangladesh where some of his extended family members (including grandparents) continued to reside, and he had proved himself capable of establishing himself in Malaysia at a time when he was younger than he is now. Whilst it may have been "regrettable" that the appellant had lost the opportunity of achieving settlement in the UK, he had been able to continue to enjoy family life with his parents and

brother during his minority [19]. The respondent's decision was accordingly proportionate in seeking to maintain the public interest.

The grounds of appeal.

6. The grounds of appeal can be conveniently summarized as follows:

- (1) The judge failed to attach sufficient weight to (i) the fact that the appellant had only failed to achieve settled status in the UK due to circumstances beyond his control, (ii) the benefit to the UK economy of his educational qualifications, and (iii) "various letters of support from family members and friends".
- (2) It was irrational for the judge to find that (i) the appellant's continued presence in the UK would not significantly mitigate the upset to his parents caused by the rupture of their relationship with their younger son, (ii) the appellant had established himself whilst studying in Malaysia, and (iii) the appellant could not have had any expectation of settlement.

Permission to appeal was granted on both grounds.

Analysis

7. I take the grounds in turn.
8. The first ground is simply an attempt to re-argue the appeal, by suggesting that the judge ought to have attached more weight than they did to three specific factors.
9. The first factor - the fact that the appellant had formerly enjoyed indefinite leave to remain, which had lapsed - was one that in my judgement the judge was entitled to treat as an historical detail that had little bearing upon the appellant's current situation. The judge was right in my judgement to focus upon the appellant's immigration status following his return to the UK, and to characterise it as "precarious". This was especially the case given that the appellant had most recently been granted leave to enter the UK as an adult student rather than, as on the previous occasion, on family life grounds. In support of the contrary proposition, paragraph 13 of the Appeal Skeleton Argument that was before the First-tier Tribunal referred to an observation in **CI (Nigeria)** [2019] EWCA Civ 2027 that, "a child must not be blamed for matters for which he or she is not responsible, such as the conduct of a parent". However, that was reference to children not being held accountable for reprehensible conduct on the part of their parents. The situation here was however quite different. There was no question of 'blaming' the appellant for supposedly reprehensible conduct by his parents. To the contrary, the decision of the appellant's father to return to Bangladesh to care for his elderly parents was entirely laudable.

10. The question of whether the granting of leave to enter and/or to remain in the United Kingdom benefits the UK economy is a matter that in my judgement falls for the Secretary of State to determine through the vehicle of immigration rules, rather than for a judge when conducting a balancing exercise within the context of Article 8 of the European Convention of Human Rights and Fundamental Freedoms. Given that it was accepted on the appellant's behalf that he could not bring himself within the immigration rules (paragraph 8 of the Appeal Skeleton Argument) the judge was in my judgement right not to consider the appellant's educational qualifications as a factor capable of diminishing the public interest in maintaining the economic wellbeing of the country.
11. The judge clearly indicated that they had taken account of, "the number of support letters from extended family members and friends" [15]. They are nevertheless criticised for supposedly 'brushing them aside' in observing that their authors would be able to maintain contact with the appellant by modern means of communication. Again, this amounts to no more than a quarrel with the weight that the judge attached to this evidence when conducting the balancing exercise under Article 8. It does not therefore identify any error of law.
12. So far as the second ground is concerned, I am bound to say that I have had difficulty in understanding the reasons for the line drawn between those matters where it is said that the judge attached 'insufficient' weight in conducting the balancing exercise, as claimed in the first ground, and those where it is said that the findings were 'irrational', as claimed in the second. Both seem to me be nothing more than simple disagreement with conclusions that were reasonably open to the judge on the evidence. I have already explained why I consider that the judge was rationally able to conclude that the appellant did not have any legitimate expectation that he would be able to settle in the UK when I was considering the first ground of appeal (the fact that he had entered with limited leave to remain for the purpose of study). So far as the rupture in the relationship between the appellant's parents and his younger brother is concerned, the judge acknowledged the distress that this would inevitably have caused them, and that the appellant's departure would doubtless only add to that distress. I am nevertheless satisfied that it was reasonably open to the judge to conclude that the appellant being allowed to remain in the UK was incapable of significantly mitigating the former distress given that its cause was entirely discrete from that caused by the possibility of the appellant's removal. It was also reasonably open, in my judgement, for the judge to find that the appellant had previously lived a life in which he was emotionally (if not financially) independent of his parents whilst studying in Malaysia. The fact that his mother resided with him for one year during the four-year period of that study does not render the finding irrational.
13. I am thus satisfied that the First-tier Tribunal did not make an error of law, whether material to the outcome of the appeal or otherwise.

Notice of Decision

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The appeal is dismissed, and the decision of the First-tier Tribunal therefore stands

Judge Kelly: David Kelly
Deputy Judge of the Upper Tribunal

Date: 6th October 2024

