IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-004307

First-tier Tribunal No: PA/53841/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 06 February 2025

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

PA
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr S Karim, instructed by Lawmatics Solicitors
For the Respondent: Ms S Cunha, Senior Home Office Presenting Officer

Heard at Field House on 24 January 2025

DECISION AND REASONS

1. This is the re-making of the decision in the appellant's appeal, following the setting aside, in a decision promulgated on 2 December 2024, of the decision of the First-tier Tribunal.

2. The appellant is a citizen of Bangladesh born on 8 August 1976. He claims to have entered the UK in December 1996 by a direct flight from Bangladesh. Alternative dates are also given for his arrival, however, and the earliest date accepted by the respondent is 19 November 2004, when he made an Article 8 human rights application which was refused on 11 December 2008. Prior to that, in 2005, the appellant was encountered working illegally and was put on reporting restrictions but failed to report and was considered to have absconded. He was encountered working illegally again

© CROWN COPYRIGHT 2025

on 7 November 2008 and gave a false name, but after being fingerprinted his true identity was found. He was put on reporting restrictions again but absconded after 17 February 2009, following the dismissal of his appeal against the respondent's decision of 11 December 2008. He did not appear at the appeal hearing on 30 January 2009 and the appeal was dismissed on 9 February 2009. He became appeal rights exhausted on 17 February 2009. On 16 April 2015 the appellant made an application for leave to remain on family/ private life grounds which was rejected on 15 July 2015. He failed to report on 17 August 2015 and was noted as an absconder on 10 October 2016. He made another application for leave to remain on 24 May 2018 which was rejected without a right of appeal on 7 December 2018.

3. The appellant then claimed asylum on 12 December 2019. On 19 December 2019 a referral was made through the National Referral Mechanism (NRM) and a positive reasonable grounds decision was made on 20 December 2019 by the Single Competent Authority (SCA), on the basis of the appellant being a victim of modern slavery.

4. The appellant's claim was made on the basis of his political opinion and on the basis of his fear of the Alom family. With regard to the former, the appellant claimed to have been a member of the Bangladesh Nationalist Party (BNP) and to be at risk from the Awami League who had arrested and persecuted his brother, also a BNP activist. With regard to the latter, the appellant claimed to have worked for the Alom family in Bangladesh from the age of 10 or 11 and to have come with them to the UK in 1996 and continued working for them here, but claimed that he fled their home when they mistreated and threatened him, and when they accused him of theft which he did not commit, and threatened to file a legal case against him.

5. The respondent, in refusing the appellant's claim on 2 September 2022, did not accept that he was an activist in the BNP owing to his lack of knowledge of the party and did not accept that his brother suffered persecution for being a BNP activist. The respondent found there to be serious credibility issues with the appellant's claim and gave little weight to the supporting documentary evidence upon which he relied. In addition the respondent noted that the appellant had a Bangladeshi passport issued in 2015 by the Bangladeshi Embassy and found that his actions in approaching the Embassy for a new passport did not reflect those of someone in fear of the state. With regard to the appellant's claim to have been mistreated by the Alom family, the respondent found the claim to be lacking in credibility owing to significant discrepancies and inconsistencies in his evidence as to his experiences with the family and the length of time for which he worked for them. The respondent also found that the appellant was unable give a consistent and satisfactory account of his delay in claiming asylum and concluded that he lacked credibility overall and that he was at no risk on return to Bangladesh. As for Article 8, the respondent noted that the appellant had not mentioned any family in the UK and considered that he could not, therefore, meet the requirements of Appendix FM of the immigration rules. With regard to his private life, the respondent considered that the appellant could not meet the requirements of paragraph 276ADE(1). Although he claimed to have lived in the UK for 23 years prior to claiming asylum, the respondent noted that there was no evidence of that, and the first encounter he had with the Home Office was 15 years prior to his asylum claim, when he made a human rights claim on 19 November 2004. The respondent considered that there were no very significant obstacles to the appellant's integration in Bangladesh and no compelling or exceptional circumstances justifying a grant of leave outside the immigration rules. The respondent accordingly concluded that the appellant's removal from the UK would not breach his human rights.

6. The appellant's appeal against that decision was heard in the First-tier Tribunal on 22 April 2024, by which time there had still been no conclusive grounds decision in relation to the modern slavery claim. The judge refused to adjourn the hearing to await the conclusive grounds decision, but agreed to admit the issue despite the respondent's objection and considered that it did not assist the appellant's claim in any event. With regard to the appellant's claim based on his political activities for the BNP, the judge did not accept that he would be at risk on return to Bangladesh on such a basis. He considered the evidence relied upon by the appellant of *sur place* activities in the UK, and accepted that he had undertaken some activities for the BNP, but found his claim to be purely opportunistic with the intention of frustrating attempts to remove him. He found that, in any event, the appellant's activities would not be such as to give rise to any adverse interest in him in Bangladesh. The judge found the appellant's claim to fear the Alom family was also a "fanciful invention" and was riddled with inconsistencies, and he did not accept that he would be at risk on that basis. The judge found the strongest aspect of the appellant's claim was his private life claim. He considered that the appellant must have been in the UK prior to November 2004 if he made an application at that time, but found no evidence supporting his residence in the UK prior to 2004 and in any event did not accept that he had been here for 20 years. The judge found that the appellant could integrate into life in Bangladesh and that he could not meet the requirements of the immigration rules on private life grounds. He did not accept that the appellant's removal would breach his human rights and he accordingly dismissed the appeal on all grounds, in a decision promulgated on 16 June 2024.

7. The appellant sought permission to appeal against the judge's decision on the grounds that he had failed to give adequate reasons for concluding that he would not be at risk on return to Bangladesh, that he had erred by failing to consider the issue of modern slavery, and that he had misdirected himself in making his findings on the appellant's private life and length of time in the UK.

8. Permission was granted in the First-tier Tribunal on a limited basis, in relation to the challenge to the judge's findings on Article 8. There was no renewed challenge to the first ground.

9. The respondent filed a Rule 24 response on 25 September 2024, opposing the appeal and raising a cross-challenge to the judge's decision to admit the issue of modern slavery. The respondent also made a Rule 15(2A) application, to admit a Home Office digital record from 5.5.2005 (CID Record, input by Mid-Kent Enforcement Unit) which referred to the appellant having been fingerprinted in France in July 2003 after having made an asylum application there, which was contrary to his claim to have entered the UK in 1996. It was stated that that information had been replicated in the refusal decision of 11.12.2008 which was attached.

10.The matter then came before myself and Deputy Upper Tribunal Judge Gibbs on 2 December 2024. In a decision promulgated on 2 December 2024, we set aside the First-tier Tribunal's decision on the following basis:

> "11. We are satisfied that the fact that the appellant had been recognised (in a reasonable grounds decision) as a victim of trafficking was a matter known to the respondent, and was admitted into evidence quite properly by the judge. We find that the judge did not however make any reference to this fact in their assessment of very significant obstacles to integration or the balancing exercise required under Article 8 ECHR.
>
> 12. We also find that the judge failed to make findings with regards to the appellant's length of residence in the UK and/or the continuity of this residence,

> despite this being a live issue before them. Further, we find that despite it being accepted by the respondent that the appellant had been resident in the UK since 19 November 2004 the judge did not set out what weight that they attached to this in either their decision under the Immigration Rules or Article 8 ECHR.
>
> Notice of Decision
>
> 13. The decision of the First-Tier Tribunal involved the making of an error of law and that decision is set aside to the extent set out above.
>
> 14. The appeal is retained in the Upper Tribunal for a resumed hearing in due course. Following this the appellant's appeal will be re-made in regard to paragraph 276ADE(1)(vi) of the Immigration Rules and the Article 8 proportionality assessment, with a full consideration of the length of the appellant's residence and private life in the UK and a proper balancing of all relevant factors."

11.The matter was listed for a resumed hearing on 24 January 2025 and came before myself.

Hearing for the Re-making of the Decision

12.The appellant produced some additional evidence for the hearing, which included supporting letters from various people confirming their knowledge of him, an English language certificate, utility bills and other evidence of his address, as well as medical records and photographs.

13.Mr Karim asked that the appellant be treated as a vulnerable witness as he suffered from depression and was taking medication for his condition. I agreed to that and ensured that the proceedings were conducted accordingly. Ms Cunha also assured the Tribunal that she would keep that in mind during her cross-examination. Mr Karim confirmed that there remained no conclusive grounds decision in regard to the modern slavery issue.

14.The appellant gave oral evidence before me, with the assistance of an interpreter. He adopted his previous witness statement of 29 December 2022 as his evidence in chief. When cross-examined, he said that he had been in the UK since 1996 and had never left to go to Bangladesh. Ms Cunha referred to the appellant's NHS records which commenced in January 2013 and showed registration at his GP practice from December 2012, and asked why there was no earlier evidence. The appellant said that he did not need to see a GP when he first came to the UK as he was young. He joined his GP practice in 2005 or 2006 but the surgery closed down and he was transferred to another surgery and had not been able to obtain his earlier records. When asked why he had obtained an ESOL certificate, the appellant said that his solicitor had advised him that he would need such a document for his application which was then made in 2012 or 2013. Ms Cunha asked the appellant about the TV licences in his appeal bundle, the first of which, dated 8 December 2010, was in the name of Mr S Hydar. The appellant said that Mr Hydar was his brother-in-law, who had since passed away. He had then given his own name and address instead of Mr Hydar, but the account details remained those of Mr Hydar as he did not have a bank account and so could not make payments himself. Ms Cunha referred to the poll card in the appeal bundle and asked the appellant how he was able to register to vote. He replied that he filled out a form which was sent to him and they gave him the card without having to provide any supporting evidence of residence and work in the UK. When asked why the NHS records were in the name of Md Ali Mohammed, the appellant said that that was an error which he had tried to have corrected. When asked about his passport, the appellant confirmed that he had applied to the Bangladesh Embassy in 2015 to renew it because he needed to send it to the Home Office, but he had no intention to

travel to Bangladesh. He did not have his previous passport as that was retained by the Bangladeshi Embassy. The appellant said that he had lived with his sister and brother-in-law since 2003. Mr Hydar passed away in 2014. He still lived with his sister and her children. She was not at the hearing as no one had told him that she should come. The same for Dr Ahmad who had provided a letter of support. His solicitors had told him that it was sufficient for his witnesses to provide letters.

15.Ms Cunha referred to the Rule 24 letter from the respondent which mentioned the appellant having claimed asylum in France in July 2003. It was apparent that Mr Karim was unaware of the Rule 24 letter, although it had been produced at the previous, error of law, hearing, where the appellant was represented by a different counsel, and indeed was referred to at [6] and [9] of the Upper Tribunal's decision. I permitted Mr Karim to step outside the courtroom to take instructions on the matter. Mr Karim objected to the admission of the issue of the appellant being fingerprinted in France in July 2003, since no evidence had been submitted to support the reference in the Rule 24 letter and he did not accept that the Rule 24 letter itself constituted evidence. Ms Cunha asked the appellant if he was in France in July 2003 to which he replied that he was not and that he had never left the UK since 1996.

16.Mr Karim did not re-examine the appellant and both parties then made submissions before me.

17.Ms Cunha submitted that there was no evidence to show that the appellant had been in the UK continuously since 2004. She submitted that the appellant had been untruthful in his evidence. She relied on the Home Office case notes confirming that he had been in France in July 2023, which he had denied, and the evidence showing that he absconded in 2009 which had not been challenged. She submitted that the appellant had been untruthful about his passport and that the reason that there was no passport prior to 2015 was because it may have shown him travelling to Bangladesh. The letters of support were all vague and did not mention his continuous residence in the UK. There was a lack of evidence from live witnesses and no evidence of bank accounts. It was not credible that the appellant would be on the electoral register if he was not eligible to be. Ms Cunha submitted that the indication was that the appellant was using other identities and that he had provided evidence which was not his. She asked me to find that he had not been in the UK continuously for 20 years and that he had no private life claim that could outweigh the public interest.

18.Mr Karim submitted that the appellant had given credible evidence and had produced a plethora of supporting documentary evidence. The claims made about him using another identity were not substantiated, as the respondent had not relied upon the suitability provisions in the immigration rules. With regard to the claim that the appellant had been in France in July 2003, Mr Karim relied upon the decision of the First-tier Tribunal of 9 February 2009 where the judge referred to the absence of any supporting evidence from the respondent in that regard. He submitted that there remained no evidence to support that claim and that it should be disregarded. He submitted that, in any event, it was not relevant to the appellant's claim. In order to break his continuous residence for the purposes of the immigration rules, the appellant would have had to be outside the UK for more than six months which had not been shown by the respondent to be the case. There was no evidence that he had left the UK and returned. Mr Karim referred to the supporting letters from various professional and other people which he submitted provided weighty evidence of continuous residence in the UK. Mr Karim submitted that even if the 20 years of continuous residence was not accepted, the evidence showed that there were very serious obstacles to the appellant's integration in Bangladesh, considering his strong

ties to the UK, the delay in the respondent's decision-making, his mental health concerns and the fact that he was a victim of modern slavery. His removal would be unjustifiably harsh and disproportionate, particularly given the current precarious situation in Bangladesh.

Analysis

19.I do not accept the appellant's claim to have been in the UK since 1996. There is no evidence at all to support such a claim, aside from his own evidence which, for the reasons I shall give, is not reliable. His account of the circumstances of him coming to the UK at that time, with the Alom family, has been found to be lacking in credibility. He claimed to have worked in a restaurant after escaping from the Alom family, but there is no evidence of that. The letters of support from friends and relatives do not pre-date 2003. The appellant is adamant that he has not left the UK since coming in 1996, but the evidence of him having been fingerprinted in France in July 2003 says otherwise. Mr Karim objected to the matter being admitted since there was no evidence other than what was stated in the Rule 24 response, which was not in itself evidence. However the Rule 24 includes an extract from the Home Office notes confirming the matter and there was no objection at the error of law hearing to the matter being relied upon by the Home Office Presenting Officer. Furthermore, and most significantly, the Positive Reasonable Grounds Minute, which specifically refers to the appellant being fingerprinted in France on 23 July 2003 and claiming asylum there, was included in the appellant's own bundle of evidence before the First-tier Tribunal, at page 143. That was evidence upon which the appellant himself relied in his appeal before the First-tier Tribunal, and he cannot therefore now seek to distant himself from that evidence. I note, from page 146 of the appeal bundle before the FTT, that the appellant was asked to explain how he was fingerprinted and claimed asylum in France if he had not left the UK since 1996, and that that was noted as a credibility concern, but there is no evidence that any explanation was offered.

20.In the circumstances there is no merit to Mr Karim's objection and I accept that there is evidence of the appellant being in France in July 2003. That evidence is clearly irrelevant in so far as the appellant has only to show 20 years of residence in the UK since 2004, but it is relevant to the question of whether that residence has been continuous. That is because it shows that the appellant is not a reliable witness in general and has clearly lied about never leaving the UK since 1996, and also because it shows that the appellant has travelled outside the UK on at least one occasion (if indeed he was in the UK prior to 2003), which in turn suggests that there may have been other occasions on which he left the UK for periods of time.

21.For the purposes of this appeal I accept, as did the respondent, that the appellant has been in the UK since 19 November 2004, given that he made an application for leave to remain on that date. Indeed it would seem that he first entered the UK after being in France in July 2003 and therefore his entry would be at some time between July 2003 and November 2004. There is evidence indicating that he had lived with his sister since 2003 (or at least with the Hydar family – see [23] below). I do not, however, accept that he has been residing in the UK continuously since that time.

22.The evidence of residence in the UK is limited. The appellant's own evidence is unreliable. He has been found lacking in credibility by the First-tier Tribunal in his asylum appeal and those adverse findings have been upheld. The Single Competent Authority had several credibility concerns which appear in the Positive Reasonable Grounds Minute, at page 146 of the appeal bundle in the First-tier Tribunal, including the record of him being in France in 2003. There is no conclusive grounds decision so it may be that the questions have simply not been answered. There is certainly no

evidence to show that they have. The appellant has also been found to have lied about his identity and used a false identity, as is apparent from the decision of 11 December 2008 refusing his application for leave to remain (page 237 of the Home Office bundle). According to the respondent in that letter the appellant claimed to have travelled to Italy in that false identity. Little weight can therefore be given to the appellant's own claim as to the length of his residence in the UK and to any breaks in that residence.

23.The continuity of the appellant's residence is also undermined by the gaps in his immigration history, which show that he has breached reporting restrictions and has been treated as an absconder on several occasions, in 2005, 2009 and 2015/16. He did not attend his human rights appeal on 30 January 2009, as is evident from the decision of Judge Baldwin promulgated on 9 February 2009 (page 246 of the Home Office bundle). Judge Baldwin rejected the appellant's claim to have lived in the UK for anything more than four years at that time. Of note too is the reference in his decision to the appellant living with a distant cousin and his wife and four children at that time which is, of course, inconsistent with the evidence he has now given of living with his sister since 2003.

24.There are several letters from family and friends confirming that they have known the appellant for many years, the earliest point of time mentioned being 2003 (page 184 of the Home Office bundle before the First-tier Tribunal and pages 9 and 17 of the bundle of new evidence), which is the year that the appellant said he started living with his sister. The Positive Reasonable Grounds Minute refers to the appellant's sister stating that he had arrived in the UK in 2001, but that is not supported by any further evidence and is of course inconsistent with the appellant's own account. As Ms Cunha pointed out, whilst the letters attest to having known the appellant for various lengths of time, they are all written in rather vague terms and none of them provide evidence of continuous residence. Mr Karim relied in particular on a letter in the bundle of new evidence from a senior Imam at the appellant's local mosque which referred to his attendance at daily and weekly prayers, and which he said suggested continuity of residence. However the letter does not comment on the frequency of the appellant's attendance other than it being 'regular' and, in my view, carries little weight as support for a claim of constant, continuous residence. The same can be said of the appellant's sister's letter, at page 4 of the new bundle of evidence, as well as letters from medical professionals, a legal counsel and his local MP. Likewise, the photographs produced by the appellant, show him and other people at certain points in time but do not provide evidence of continuous residence over a period of time.

25.Aside from the letters and photographs, the appellant relies upon his medical records and TV licence payments. However, the medical records commence only in 2013. The reason the appellant has given for that is that he did not visit a GP from his claimed entry in 1996 to 2006 and that the GP surgery with which he had registered in 2006 had closed down, with its patients transferred to his current GP practice which registered him in January 2013 (page 19 of the bundle of new evidence). However I do not accept that he would not have been able to obtain any records prior to 2013 if he had indeed had medical appointments and received medical advice and treatment. It is simply not credible that a GP surgery would close down without any medical records remaining available through the NHS. The TV licences which have been produced raise more questions than they answer. The earlier licences were in the name of Mr Hydar but then change to his own name. It is the appellant's evidence that the licence was put in his name but, because he did not have a bank account, the payments were made from Mr Hydar's account. However Mr Hydar is said to have passed away in July 2014, yet there are TV licences post-dating that, from page 36 of the bundle of new

evidence, and confirming the direct debit payments continuing from that account until 2024. It is not clear how Mr Hydar's account could have been used for ten years after his death. Ms Cunha suggested that the appellant was using the bank account himself and that the absence of bank statements for the account also raised credibility issues. Indeed, the absence of evidence which could reasonably have been produced with no credible explanation for its absence certainly suggests that the appellant has been lying, that he does indeed have use of a bank account and that he has reasons for not having produced those bank statements.

26.The same can be said of the absence of the appellant's passports. By his own evidence he renewed his passport in 2015. He claims that his previous passport was retained by the Bangladesh High Commission but there is no evidence before me to show that that is the usual practice. As Ms Cunha submitted, the fact that the appellant has not produced his passports suggests that he may be concealing a previous travel history.

27.Taking all of the evidence together, I do not accept that it adequately demonstrates a period of 20 years continuous residence. It is clear that the appellant has spent extended periods in the UK over a total period of 20 years but there are large gaps in the evidence and his immigration history which suggest that he has not been here continuously. That is in particular when having regard to the periods of time when he failed to report to the immigration services and was recorded as an absconder and when he failed to respond to the notice of hearing for his appeal and did not attend the hearing. The appellant is not a reliable witness himself. He has been found to have lied about various matters, including his experiences in Bangladesh, the circumstances of his entry to the UK, and time spent in other countries aside from the UK. He did not present any witnesses at the hearing and the evidence in the letters of support upon which he relies could not be tested through cross-examination at the hearing. None of the documents produced amount to reliable evidence of continuing residence. In the circumstances I do not accept that the appellant has been living in the UK for 20 years continuously.

28.Turning to the other provisions of paragraph 276ADE(1), I do not accept that there would be any very significant obstacles to the appellant's integration in Bangladesh. He has his mother and siblings in that country, as he confirmed in his interview at question 63. Although he has been in the UK since at least 2004, I have given reasons for not accepting that he has been here continuously for those years and he may well have spent periods in Bangladesh. In any event he has spent the majority of his life in Bangladesh, or at the very least he spent his formative years there. He has worked there and has also worked in the UK. He speaks the language. He can read and write, as he confirmed in his interview at question 80. There is therefore no reason why he would not be able to find employment on return to Bangladesh and re-establish his private life in that country. The appellant is therefore unable to meet the requirements of the immigration rules on private life grounds. There is no family in the UK for the purposes of Appendix FM.

29.I therefore consider whether there are any exceptional circumstances justifying a grant of leave outside the immigration rules and whether the appellant's removal would result in unjustifiably harsh consequences. I accept that the appellant has established a private life here. He has lived here for a considerable period of time, from 2003/4, albeit with breaks in that residence, as I have found. He has his sister here – although as I mentioned above (at [24]), the evidence about the relationship is not consistent. There is no independent evidence about the strength of his ties to his sister and her children and certainly no live evidence to that effect. The appellant

appears to have many friends here, although none of those friends, or his sister, appeared at the hearing to support his appeal. There are various letters attesting to his friendships, as well as to his regular attendance at his local mosque and to his voluntary contributions to his community, all of which indicate close ties to the community and an established private life in the UK albeit, it seems, largely within the Bangladesh community. That said, none of the evidence has been tested through cross-examination and therefore the weight to be accorded to it is limited.

30.The appellant has been living in the UK unlawfully. There is no evidence of any lawful entry or lawful residence here. He has made many applications which have all been unsuccessful. Despite his applications being refused he has chosen to remain here without any leave. His private life therefore attracts little weight, in accordance with section 117B of the Nationality, Immigration and Asylum Act 2002. It is not apparent if the appellant is financially independent, nor what level of English he has. He has produced an English language certificate. In any event, those are only neutral factors and cannot act in his favour. There is no reason why the appellant cannot re-establish his life in Bangladesh. He has close family there and he grew up and spent his formative years there. Although it is said that he suffers from depression, there is limited evidence about any medical condition and in any event no evidence to show that he could not seek treatment in Bangladesh if he required it. There is no reason why he could not find employment and settle down in that country.

31.As for the reasonable grounds decision in relation to the appellant being a victim of modern slavery, I do not accept that that takes his case any further forward or can be accorded any weight in his favour. On the contrary, there has been no conclusive grounds decision and, as already stated above, the reasonable grounds minutes raise various credibility issues which do not appear to have been explained. The reasonable grounds decision has in any event been overtaken by detailed and cogent findings made by the First-tier Tribunal on the matter whereby significant inconsistencies were found in the appellant's account. Indeed, Judge Hussain at [62] found the appellant's account of his experiences with the Alom family to be "riddled with inconsistencies". That finding has not been overturned. There is therefore no credible basis to the appellant's claims about the Alom family. Neither is there any credible basis to his claim to be at risk on return to Bangladesh.

32.Taking all these matters together and having regard to the public interest factors in section 117B of the 2002 Act, I do not consider the respondent's decision to be disproportionate. The appellant cannot meet the requirements of the immigration rules and that is a weighty factor in the public interest. There are no exceptional or compelling factors which could outweigh the public interest in his removal. As such, the decision is not in breach of Article 8 and the appellant's appeal is dismissed on Article 8 grounds.

DECISION

33.The decision of the First-tier Tribunal having been set aside, the decision is re-made by dismissing the appellant's human rights appeal.

Signed: S Kebede
Upper Tribunal Judge Kebede

Judge of the Upper Tribunal
Immigration and Asylum Chamber

5 February 2025