



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: IA/17058/2013

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 25 November 2013**

**Prepared 25 November 2013**

**Determination**

**Promulgated**

**On 28 November 2013**

**Before**

**UPPER TRIBUNAL JUDGE MCGEACHY**

**Between**

**MOHAMED JAMAL**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr M Ahmed, Counsel

For the Respondent: Miss A Everett, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The appellant, a citizen of Bangladesh, born on 10 April 1974, appeals, with permission, against a decision of Judge of the First-tier Tribunal Eldridge who, in a determination promulgated on 30 August 2013, dismissed the appellant's appeal against a decision of the Secretary of

State to refuse him indefinite leave to remain on the basis of long residence here.

2. It was the appellant's claim that he entered Britain with the help of an agent on 14 January 1997 using a Bangladeshi passport which had been organised by the agent and which contained a visa for Britain. He asserted that he had lived and worked in Britain since that date.
3. In refusing the application the Secretary of State stated that there was no record of the appellant having entered Britain legally and it was concluded that he had therefore entered illegally and had remained here without leave to remain and as such was liable for removal. It was stated that the evidence submitted by the appellant - personal references from friends and an NHS card dated November 2001 - could not be accepted as it was not independent and that the NHS card did not show fourteen years' continuous residence.
4. The grounds of appeal lodged by the appellant asserted that he had lived in Britain for over fifteen years and also that when he had left Bangladesh he had been an active member of the Jamat-e-Islami party which is now targeted by the present government, and that therefore his life would be at risk if he had to return.
5. The appellant's appeal was heard by Judge Eldridge on 16 August 2013. He noted that the grounds of appeal made reference to what he referred to as a ground engaging the Refugee Convention but stated that at the appeal no reference was made to an asylum claim, that he had never been addressed on the Refugee Convention and that it had not been mentioned in the skeleton argument put forward on behalf of the appellant.
6. The judge noted the appellant's evidence that he had worked in Britain at a number of places and that he had been a member of Jamat-e-Islami between 1995 and 1997 when the authorities had targeted active members and his father had decided that he should go to Britain as he would be safe here. The judge heard evidence from five witnesses who submitted that they had known the appellant for some time.
7. Those witnesses included a Luftur Rahman who said that he had known the appellant for almost fifteen years and Luftur Rahman's wife, Mrs Nandaben Rahman, who said that she known the appellant for fourteen years.
8. Having been addressed by both representatives the judge set out his findings of fact and conclusions in paragraphs 53 onwards of the determination. The judge dealt first with the issue of the Refugee Convention and the Article 3 rights of the appellant. He noted that the appellant had not claimed asylum in his notice of appeal and said that none of the issues raised had arisen since he had been in Britain and therefore he found that the Refugee Convention was not engaged in the

appeal although he went on to state that he was aware that in the notice of appeal the appellant had stated that he had been an active member of Jamat-e-Islami and his life would be at risk on return to Bangladesh.

9. He then considered the terms of the appellant's application which stated that his father had told him to come to Britain to save his life. He placed weight on the fact that the appellant had not made a prompt application for asylum when he had arrived in Britain and that none of his witnesses had said that he had any fears of persecution on return to Bangladesh. He noted that the appellant's parents were still living in Bangladesh and stated that if he had been politically active he would have some documentary evidence of his membership of the party or similar, or at least the ability to obtain some confirmation of the party as to his previous involvement. He emphasised that he was applying a low standard of proof and found that the appellant had not begin to demonstrate even to that low standard that there was any real risk of ill-treatment upon return to Bangladesh for the reasons he had claimed.
10. The judge then went on to consider the appellant's rights under paragraph 276B of HC 395 – his claim that he had lived in Britain illegally for fourteen years continuously.
11. He referred to the medical card issued in November 2001 and to a Tenancy agreement, noting that the tenancy agreement had been dated 1 February 1998 but that the appellant in his oral evidence had said that he had not arrived in Britain until 14 February 1998. He contrasted this with the appellant's statement in which he had said he had entered Britain on 14 January 1998.
12. When it had been put to the appellant that he had changed his account the appellant had said that he had signed the agreement on 1 February and that he had got into a muddle when he said that he had arrived on 14 February.
13. The judge's comment in paragraph 65 was:

“65. I was of the opinion that the appellant was not telling a consistent story about when he arrived because he had forgotten the account that he was to give. I am strengthened in this conclusion by his comments in the foot [*sic*] is witness statement concerning his NHS card. The document (see page 61) is dated 2 November 2001. In his statement he said that he had registered with his GP in that year but he went on to say ‘I did not register with my GP until two years after my arrival’. Even if I accepted the NHS card was genuine, that would have placed his arrival in late 1999 or early 1998.”
14. The judge then went on to comment on the evidence of the appellant's friends. He stated:

“66. I have no doubt that the appellant's friends who gave evidence and wished to do their best by him. That is only natural. I do find, however, that there are very considerable discrepancies that cannot easily be explained in the account that he gives and that which many of them give. He says, for instance, that he has known Mr Choudhury for nine or ten years, whereas Mr Choudhury believes it was during his GCSE year, which he says was 1998. These two statements cannot easily be reconciled.”

15. Having commented that the appellant had told him that he had been unable to hold down any job for more than a few weeks the judge stated that that was in sharp contrast with evidence of the witness, Mr Uddin who said he had worked with the appellant for about a year in 2004 in Cambridge and then for about two years between 2005 and 2007 in Bath, and for a period of about eight months with him in Bristol in 2009. The judge pointed out that the account given by Mr Uddin differed from that of the appellant in that:-

“The appellant gave the evidence he was living and working in Cambridge between 1999 and 2006, whereas Mr Uddin says that he was in Bath in 2005 and 2006 (as well as 2007).”

16. The judge stated that there were discrepancies in the accounts given by the appellant and some of the witnesses about when they had become aware of his illegal status. He concluded in paragraph 71 that:-

“71. I have no doubt that the appellant has lived for a number of years in this country. The medical card produced is in his name. Even if I accept that document, it does not support residence for as long as twelve years. I do not find that the oral evidence given to me by the appellant and his witnesses is consistent or reliable and I am not satisfied that he has shown residence in this country since early 1998 or, on any basis, for fourteen years. He cannot succeed under paragraph 276B.”

17. The judge then went on to consider the issue of the appellant's private life under the Immigration Rules finding that the appellant could not qualify under the Rules, not only because he had not been in Britain for twenty years but, when considering the appellant's private life under Article 8 of the ECHR separately the appellant's removal would not be disproportionate.

18. In reaching that conclusion the judge set out in paragraphs 76 onwards the relevant five stage test in Lord Bingham's judgment in **Razgar [2004] UKHL** in the House of Lords finding firstly, that the appellant had established private life, secondly, that there would be an interference with that private life so that the Article was potentially engaged, thirdly that the decision was lawful, fourthly, that it was justified and, having applied the terms of the judgment in **Huang [2007] UKHL 11** that he considered that the removal of the appellant would be proportionate. In this regard he wrote:-

“83. This test [*the test set out in Huang*] remains apposite. In this case it must be noted that the appellant has no family life here. Indeed, his family - in the form of his parents - is in Bangladesh. He lived in that country for the first two-thirds of his life or longer. Living in a Bangladeshi community here he has no culture issues to face on return. I have found he has no political problems or other reasons to fear ill-treatment upon return. His stay here has been characterised by illegal work and little contribution to the wider community. He has been content to draw upon public services - such as the NHS - without making a contribution through direct taxation or national insurance. He has been an economic migrant.

84. I accept he has friends here and some of them will be close friends. He may not find it easy to readjust to life in Bangladesh. It may be harder for him. I do not find the limited private interests he has begun [*sic*], however, to outweigh the interests of the State in his removal. The decision is entirely proportionate.”

19. The judge therefore dismissed the appeal on asylum, immigration and human rights grounds.
20. The grounds of appeal refer to the apparent contradiction between the comment by the judge that the Refugee Convention was not engaged and his reference to what was stated in the grounds of appeal where the appellant had said that he would be at risk on return to Bangladesh.
21. The grounds then went on to state that the judge’s comments on the tenancy agreement were flawed before making references to what appears to be the case law relating to how a Tribunal should assess credibility in asylum claims. The grounds then asserted that “on the lower balance of probability” there were reasonable grounds to believe that the appellant would be ill-treated on return to Bangladesh. It was then asserted that it would be a disproportionate interference with the rights of the appellant under Article 8 for him to be removed.
22. In his submissions Mr Ahmed referred to the issue of the appellant's claim to asylum. He accepted that the issue of asylum had not been raised in the skeleton argument but nevertheless stressed that it had been raised before the judge. He also went on to claim that the rights of the appellant under Article 8 of the ECHR had not been correctly considered by the judge referring to a “Nigerian case” which he did not submit but said in any event related to criminal offences. It appeared that he was asserting that in considering the Article 8 rights of the appellant the judge had been applying a proportionality test which would have been more suitable in a deportation appeal.
23. With regard to the length of time which the appellant had been in Britain he referred to the appellant's NHS card before stating that the judge had not stated whether the tenancy document was not genuine. He emphasised that the appellant was suffering from depression and he stated that that was the cause of his mistakes regarding when he had

arrived and the date of the document. He asserted that the tenancy agreement was genuine. He further argued that the judge should not have referred to the fact that the application had been submitted only a few days before the Rules changed as it was , in any event , made in time.

24. I told Miss Everett that for the reasons which I have set out below I did not wish her to address me on the issues of the rights of the appellant under Article 8 of the ECHR nor the Refugee Convention but I was concerned about the issues relating to the tenancy agreement and indeed the evidence of Mrs Nandaben Rahman who had said that she had known the appellant for at least fourteen years and she had seen him with her husband whom she had married in 1995. Miss Everett stated that while she accepted that the findings of the judge could have been more specific, he had given sufficient findings to show that he did not accept that the tenancy agreement showed that the appellant had been in Britain in February 1998 because of the discrepancies regarding the appellant's claim as to when he arrived here.
25. Looking at the determination as a whole, she argued, it was clear that the judge had not found the appellant to be credible. Moreover, with regard to the witnesses, it was clear that the judge had considered their evidence but found that that was not persuasive and that he could not accept their assertions of when they had first met the appellant.
26. In reply, Mr Ahmed referred to the evidence of Mr Choudhury, the witness who had said that he had met the appellant in 1998 when he was sitting his GCSEs and to the tenancy agreement, and repeated that the appellant had been confused in his evidence because he was unwell.
27. I find that there are no material errors of law in the determination.
28. I first consider the issue of the appellant's possible claim to asylum. The reality is that in his letter of application he merely stated that he had been involved with Jamat-e-Islami and could not stay in Bangladesh. He has never at any time amplified that assertion. There is nothing in his statement apart from a brief assertion that when he left Bangladesh he had been an active member of Jamat-e-Islami in Sylhet and that the party was targeted by the current ruling Awami League who are arresting and killing party members in Bangladesh. The appellant had an opportunity to give evidence stating what he had actually done in Jamat-e-Islami, whether or not he had been targeted and why he would now be in danger. His representatives put in no background documentation to indicate that the appellant might be in danger because he had been a supporter of Jamat-e-Islami over fifteen years ago and there was no evidence of any attempts being made to threaten the appellant or harm him should he return.
29. While the judge did state in paragraph 53 that he found the Refugee Convention was not engaged, he did properly go on to consider the way in which the appellant had put his claim that he might not be safe on return

to Bangladesh. He placed weight on the fact that none of the appellant's supporting witnesses said that he had ever mentioned being fearful of returning, moreover that he had never made a claim for asylum, and concluded that the appellant did not have a well-founded fear of persecution on return.

30. In reaching that conclusion he applied the correct lower standard of proof and his conclusions cannot be faulted. There is simply no merit in the claim that there is any material error of law in the way in which the judge approached the issue of the appellant's rights under the Refugee Convention.
31. With regard the appellant's rights under Article 8 of the European Convention on Human Rights, the reality is that the judge did approach those rights in a properly structured way, finding that Article 8 was engaged and then dealing properly with the issue of proportionality. His conclusions were entirely open to him. Nothing was been put forward to me to show that the judge had missed any aspect of the appellant's private life which would mean that it would be disproportionate for him to be removed. Mr Ahmed's reference to issues that might be relevant in a deportation appeal was completely irrelevant. The judge did not treat the issue of the appellant's Article 8 rights as if this was a deportation case.
32. Turning to the central issue in this appeal which is whether or not the judge was correct to find that the appellant did not meet the requirements of paragraph 276B(i)(b) of the Rules, it is the case, as Miss Everett accepted, that the judge could have been more specific. However, he did consider both the documentary evidence and the evidence of the appellant's supporting witnesses in some detail. He gave reasons as to why he did not accept that the tenancy agreement was genuine. Not only because he found that the date of the agreement did not coincide with the appellant's evidence as to when he arrived, but he was entitled to place weight, as he did, on the fact that the landlord who issued the agreement did not appear at the hearing and that there were various spelling mistakes in the agreement. It is indeed telling that the only tenancy agreement which the appellant produced was an agreement which appeared to relate to a period immediately after the appellant claimed to have arrived in Britain and that he had no further tenancy agreements for the rest of his stay here.
33. I also note that Mr Ahmed appeared to state that the judge was wrong to observe that the appellant's application was made only a few days before the Rules changed after which the appellant would have had to have shown that he had lived in Britain for twenty years.
34. It was Mr Ahmed's point that the fact that the application was made in time was all that was relevant. I consider that the judge was justified in pointing to the fact that the application was made only a few days before the qualifying period changed and that that should mean that particular

scrutiny should be given to evidence that the the appellant had arrived in Britain before July 1998 rather than, for example, in 1999.

35. In any event, I consider that the judge gave sufficient reasons for finding that the appellant was not entitled to rely on the Tenancy agreement.
36. Similarly, when considering the evidence of the witnesses, the judge gave sufficient and clear reasons for finding that their evidence could not be relied on. When he wrote in paragraph 66 that he accepted that the appellant's friends wished to do their best for him, that was, I consider, fair comment but it is equally relevant that the judge was entitled to state that there were very considerable discrepancies that could not easily be explained between the account that the appellant gave and the evidence of the other witnesses.
37. The judge referred in particular to the discrepancies between Mr Choudhury's claim that he had met the appellant during his GCSE year, 1998, when the appellant had said that he had met him only nine or ten years ago. Moreover, the evidence of Mr Uddin was in contrast to that of the appellant with regard to as to where the appellant was living at any particular time. While it is correct that the judge did not refer to the evidence of Mrs Nandaben Rahman that she had known the appellant for fourteen years, the reality is that she did not state anything specific about when she had met the appellant and it is certainly not the case that she was saying that she had known the appellant in 1995 - the year she had married her husband.
38. I consider that the judge was correct to weigh up their evidence together with the discrepancies which arose and was in effect looking at all the evidence in the round. His conclusions were, I find, entirely open to him.
39. I therefore find that the determination of the Immigration Judge dismissing this appeal on asylum, human rights and immigration grounds shall stand.

Signed

Date

Upper Tribunal Judge McGeachy