



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

Appeal Number: IA/47552/2013

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 29 July 2014**

**Determination**

**Promulgated**

**On 5 August 2014**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE J M LEWIS**

**Between**

**MR RASAL MIAH**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr A Miah, Counsel instructed by Sony Sadaf Haroon Solicitors

For the Respondent: Mr I Jarvis, Home Office Presenting Officer

**DETERMINATION AND REASONS**

**The History of the Appeal**

1. The Appellant, Mr Rasal Miah, is a citizen of Bangladesh. His evidence is that he has lived continuously in the UK since 1997. On 26 September

2007 he applied for leave to remain in the UK outside the Immigration Rules and by reference to Article 8 of the 1950 Convention. His application was refused in a decision of 10 December 2009, which was followed by removal directions on 22 January 2010. By that stage the Appellant would have been in the UK, on his own evidence, for thirteen or fourteen years. The Appellant's solicitors wrote again to the Respondent on 9 September 2013, prompting a refusal letter of 14 October 2013.

2. On 7 November 2013 the Appellant gave Notice of Appeal, relying essentially on Article 8. His appeal was heard on 29 April 2014 by Judge Symes sitting at Richmond. Both parties were represented, the Appellant by Mr Miah of Counsel (who appeared before me at the error of law hearing).
3. The correspondence between the parties in 2013 which is before me is not complete. It seems to have invoked paragraph 276B of the Immigration Rules, setting out the requirements for indefinite leave to remain in the UK on the ground of, in this instance, at least fourteen years' continuous residence there. The appeal was argued by reference to paragraph 276B and to Article 8 based upon private life. In a determination promulgated on 19 May 2014 the appeal was dismissed on both grounds.
4. On 28 May 2014 the Appellant sought permission to appeal. As subsequently expanded by standard procedural directions, this was granted on 11 June 2014 by Judge Kelly in the following terms:
  - "1. The appellant seeks permission to appeal, in time, against a decision of the First-tier Tribunal (Judge Symes) who, in a determination promulgated on the 19<sup>th</sup> May 2014, dismissed his appeal against refusal of his application to remain on the basis of his long residence in the United Kingdom.
  2. The Tribunal found that whilst the appellant may have resided in the United Kingdom for up to a decade, it was not satisfied that he had resided here for a period of 14 years for the purposes of paragraph 276B of the Immigration Rules [paragraphs 20 and 21]. In failing to particularise the inconsistencies that it found between the testimony given by the Appellant and that given by Nural Haque (other than to record that they in some way related to the gaps between their meetings and the appellant's work patterns) it is arguable that the Tribunal failed to give adequate reasons for finding that their testimony was unreliable concerning the Appellant's claimed residence for a period of 14 years [paragraph 21], and that this was especially so in view of the fact that the appellant's representative had made submissions as to how their testimony might be reconciled [paragraph 13]. Because proof of the Appellant's claimed residence for a period of 14 years lay at the crux of his appeal,

any error of law that may be found in this regard is obviously material to the outcome of the appeal.”

5. On 24 June 2014 the Respondent submitted a response to the grounds of appeal under Rule 24 of the Upper Tribunal Procedure Rules.
6. The Appellant attended the error of law hearing before me, which took the form of submissions. I reserved my determination. I have taken these submissions into account, together with the permission application and the Rule 24 response.

## **Determination**

7. As Mr Miah explained, in response to submissions from Mr Jarvis which he submitted went beyond the issues in the permission application, the application was based upon the failure to particularise inconsistencies found by the judge between the evidence of the Appellant and that of his witness, Mr Nural Haque, and thus upon inadequate findings. I have analysed the determination in this light.
8. The Refusal Letter of 14 October 2013 seemingly (because only its first page is before me) stated that on his evidence the Appellant has been in the UK for twelve years and eleven months (paragraph 3 of the determination). The Appellant’s evidence is that he lived continuously in the UK since 1997 (Appellant’s statement at page 1 of Appellant’s bundle, paragraph 1, and determination paragraph 6). I note that on that basis he would have been in the UK for some sixteen years at the date of the Refusal Letter of 14 October 2013 and some sixteen or seventeen years at the date of the hearing on 29 April 2014.
9. Nural Haque wrote in his letter of 1 April 2014 at page 7 of the Appellant’s bundle that he had known the Appellant for around thirteen years (determination paragraph 7). The Appellant said in evidence that he had known Nural Haque for some thirteen years (paragraph 10). Nural Haque said in evidence that he had known the Appellant for thirteen years (paragraph 11). I note that the Appellant and Nural Haque are consistent in stating that they had known each other for, or for around thirteen years.
10. The Appellant wrote in paragraph 3 of his statement that he had worked in restaurants. In oral evidence he said that following his arrival in the UK he had gone to an Indian restaurant in Chiswick where he had worked for a few days. Mr Haque’s letter does not refer to his having employed the Appellant. In his oral evidence Mr Haque said that the Appellant would come to the place where Mr Haque worked in Hounslow, and that years ago Mr Haque used to own a chicken shop where the Appellant had worked with him for perhaps five or six months (paragraph 11). If Mr Haque gave any evidence about the Appellant’s pattern of working, this is not recorded.

11. The Respondent submitted that the Appellant and Mr Haque had given inconsistent evidence about the Appellant's work in a takeaway restaurant (paragraph 12). For the Appellant Mr Miah responded that the evidence about the terms of the Appellant's work was not necessarily inconsistent because the Appellant might have worked for six months covering periods of one or two days at a time (paragraph 13). I note that it is not clear whether the Appellant's evidence of having worked initially at an Indian restaurant in Chiswick for a few days (paragraph 8) refers to the chicken shop which Mr Haque used to own. In the light of the Appellant's evidence in paragraph 3 of his statement that he worked in restaurants, this may or may not have been the same restaurant.
12. The judge found that the evidence of the Appellant and Mr Haque was inconsistent about the Appellant's former pattern of working (paragraph 19) and about how long they sometimes went without seeing one another and the circumstances in which the Appellant worked in the takeaway restaurant (paragraph 21). As to the circumstances of the Appellant's work, the recorded evidence is only that which I have summarised. As to how long they sometimes went without seeing one another, the determination does not summarise any evidence, and none appears in the Appellant's statement nor in Mr Haque's letter.
13. I accept the submission of Mr Miah that the determination does not explain the basis for the finding of inconsistency. This was an error of law, because the Appellant was entitled to know the basis upon which this finding had been reached. The issue of the Appellant's pattern of working was significant, because it was described as the peg on which so much of the case hangs (paragraph 21).
14. The judge considered the evidence holistically. Although there were letters of support from several people, only Mr Haque attended the hearing to give evidence (paragraphs 7, 11). The Respondent submitted that witness statements and letters should be afforded reduced weight in the absence of their authors (paragraph 12). An advised decision had been made not to call the Appellant's wife (paragraph 19). Mr Haque and the Appellant both said that they had known each other for or for around thirteen years (paragraphs 7, 10, 11). The judge found on balance that the Appellant had established that he had lived in the UK for a significant period; this may have been for as long as a decade, although there was insufficient reliable material before him to come a firm conclusion beyond this (paragraph 20). He did not accept that the Appellant had lived in the UK for fourteen years. Because of the inconsistency in the evidence between the Appellant and Mr Haque he did not think that their recollection of the Appellant's precise period of residence was reliable; the writers of the letters of support were unable to confirm this length of residence; and having heard the Appellant's evidence, the judge was not satisfied that it could establish that he has truly lived in the UK for such a long period (paragraph 21).

15. The inconsistency between the evidence of the Appellant and that of Mr Haque was a factor which the judge took into account. As stated, I have found it to be an unreliable finding. However it is severable from the other factors in the judicial chain of reasoning which led to the conclusions in paragraphs 20 and 21. Severing it, those conclusions are grounded in the evidence and justifiable.
16. The onus was upon the Appellant to establish fourteen years' continuous residence. Mr Haque's evidence, taken at its highest and even had it been accepted without qualification, was that at the date of the hearing, when he gave evidence, he had known the Appellant for or for around thirteen years. The totality of the evidence before the judge was insufficiently reliable to enable him to come to a firm conclusion that the Appellant had lived in the UK for as long as a decade, and still less for fourteen years. So the error of law in relying on insufficiently reasoned findings was not material to the conclusion, which is consistent with the evidence of Mr Haque had it been unreservedly accepted, that the Appellant had not established fourteen years' continuous residence in the UK.
17. The permission application does not challenge the Article 8 findings. I have nevertheless considered whether the error of law may have influenced them. The judge concluded that the Appellant had made an application based on exaggeration as to his length of residence (paragraph 24). He considered the position on unlawful working (paragraph 24). In the light of his holistic findings, I find that the specific error of law did not undermine his findings on Article 8.
18. I conclude that, whilst the determination reflected an error of law in the form of insufficiently reasoned findings upon a significant matter, this was not material to the outcome of the appeal. The determination is accordingly upheld.

## **Decision**

19. The original determination does not contain a material error of law, and is upheld.

Signed  
August 2014

Dated: 5

Deputy Upper Tribunal Judge J M Lewis