



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

Appeal Number: IA/01170/2014

**THE IMMIGRATION ACTS**

**Heard at Field House**

**Decision and Reasons  
Promulgated**

**On 17 March 2015**

**On 21 April 2015**

**Before**

**UPPER TRIBUNAL JUDGE GOLDSTEIN**

**Between**

**MR NAHEED KAMRAN  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr M Malik of M Q Hassan Solicitors

For the Respondent: Mr C Avery, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. This is an appeal by the Appellant, a citizen of Bangladesh born on 9 October 1982, against the decision of First-tier Tribunal Judge Kimnell, who sitting at Hatton Cross on 13 August 2014 and in a determination subsequently promulgated on 20 August 2014 dismissed the appeal of the Appellant against the decision of the Respondent dated 19 November 2013 refusing the grant of leave to enter under paragraph 276CE with reference to paragraph 276ADE(iii) and (iv) of the Immigration Rules. The Appellant had applied for leave to remain in the UK on compassionate

grounds and under Articles 3 and 8 of the ECHR. The grounds contend that the Judge was simply wrong to consider that the Appellant's removal to Bangladesh was proportionate bearing in mind his family relationships in the United Kingdom and that it was wrong to find that there were no exceptional circumstances under Article 8 of the ECHR and that the Secretary of State should have exercised "appropriate discretion on compassionate grounds".

2. I pause there because, as properly drawn to my attention by Mr Avery, this was a case where at the time of the application for permission to appeal, the application itself was lodged some four months out of time, yet the First-tier Judge who granted permission to appeal, appeared to have failed to consider whether or not in such circumstances the application should be admitted. In that regard I gave Mr Malik an opportunity to explain why the application was lodged so late and he referred me to the explanation provided in the grounds and repeated that the Appellant had been suffering from depression and grief following the death of his mother. I do not intend to express any view on whether in such circumstances there was sufficient information provided that would necessarily have persuaded a First-tier Judge to extend time, but upon a careful consideration of the First-tier Judge's reasoning for granting permission, it is right to say that were he to have considered whether or not to extend time, he would also have had to take into account whether or not the grounds in support of the application were arguable. Clearly he did consider them arguable for the reasons he gave in the grant of permission. I have therefore been just persuaded, that although the First-tier Judge made no specific reference to the lateness of the application, that it was implicit by virtue of his grant of permission that he had decided to extend time. However, for the avoidance of any doubt, I now extend time.
3. The submissions raised in support of those grounds in substance and upon analysis, amounted to no more than a repeat of the evidence that was in my view carefully considered by the First-tier Judge and that failed before him.
4. Whilst it is submitted in substance, that the First-tier Judge failed to adequately consider the present circumstances, I find contrary to that assertion that this is not borne out upon my reading of the determination as a whole. The Judge records that the Appellant was at the time of his application 29 years old. He had spent 26 years in Bangladesh, his country of origin. It was noted that, as the Respondent had pointed out in her refusal letter, in the absence of evidence to the contrary there was no reason to believe that the Appellant had in the five years that he had since been in the United Kingdom as opposed to the 26 preceding years which he had spent in Bangladesh lost ties to his home country. Indeed the Judge noted that this was particularly borne out by the fact that in the course of the Appellant's oral evidence before him and in particular during cross-examination the Appellant

"... acknowledged that he has parents, a brother and a sister living in Bangladesh to whom he speaks by telephone approximately monthly. His

sister is married and lives separately from other family members who continue to reside in the same home the Appellant occupied when he was residing in Bangladesh prior to coming to the UK as a student.”

5. It was also noted that the Appellant’s leave to remain had been curtailed on 26 March 2012 and thus when he made his application some six months later on 28 September 2012, he was without leave. It was because the Appellant had made an Article 8 ECHR application prior to the serving upon him of form IS.151A that he was thus afforded an in-country right of appeal.
6. It was apparent to the Judge, having heard evidence from the Appellant’s younger sister and his brother-in-law, that there was no evidence before him to suggest that the Appellant had established elements of dependency going beyond the normal emotional ties as between adults. As was pointed out in JB (India) & Ors v Entry Clearance Officer Bombay [2009] EWCA Civ 234, if such dependency was not found then an interference with family life could not be established. In that regard and in the present case, the Appellant’s younger sister in evidence indeed confirmed the Appellant’s account on his family situation in Bangladesh. The Judge accepted the evidence that the Appellant saw his sister and her husband and her children weekly and that they maintained contact by telephone and that he had lived with an aunt and subsequently with an uncle, but found that such evidence did not suggest the existence of a relationship going beyond the normal emotional ties as between adults.
7. I pause there, because Mr Malik in his submissions before me, maintained that the Judge in his determination had failed to consider the best interests of his sister’s children. They were not the Appellant’s children, they were his nephews and it had already been determined that the Appellant had failed to establish ties with his adult siblings above and beyond the norm such as to establish family life and that the Appellant’s nephews lived in the family home of his sister and her husband as a family unit.
8. As Mr Avery rightly submitted, the Article 8 argument was “hopeless” and the sum total of the case based on weekly visits by the Appellant to his nephews in seeking to establish a “strong” Article 8 claim, reinforced his view.
9. In any event it is right to say (and in fairness Mr Malik accepted that to be so) that in the drafting of the grounds in support of the application for permission to appeal, there was no specific challenge based on the premise that the Judge had failed to consider the best interests of the children other than at paragraph 7 in which there was reference to the fact that the Appellant had treated his nephews as his own children since their birth. To that I would observe that no doubt the Appellant’s parents treated their children as their own. The relationship of the Appellant with the children was that of uncle and nephews, not father and sons. In addition it was said at paragraph 7 of the grounds that the children had

been greatly attached to the Appellant. Whilst that is perfectly understandable it is hard to see how it can be maintained that the removal of the Appellant would, as was put in the grounds, “interfere with the status quo of the children and would not be in the best interests of the children”.

10. The Judge proceeded to acknowledge that the Immigration Rules

“... now specifically cater for Article 8 and following the decision in Gulshan, which drew on other authorities, it is clear that it is only if there is some compelling reason justifying consideration of Article 8 outside the Rules that the Tribunal should go on to do so. I find nothing compelling about this case even on the basis of the facts that I have accepted.”

11. The Judge continued over paragraphs 31 to 34 of his determination, to set out his reasoning as to why he had concluded that Article 8 was not engaged at all, and it would be as well to set out that reasoning below:

“31. The Immigration Rules now specifically cater for Article 8 ECHR and following the decision in Gulshan, which drew on other authorities, it is clear that it is only if there is some compelling reason justifying consideration of Article 8 outside the Rules that the Tribunal should go on to do so. I find nothing compelling about this case even on the basis of the facts I have accepted. The Appellant’s parents may have had high aspirations for him but he is not going to achieve those aspirations even if he remains in the United Kingdom. The Appellant says in his witness statement he has been in the UK for five years now and established a life in the UK to which he has become accustomed and that he has formed relationships here which are closer than he could expect in Bangladesh. I do not accept that because the Appellant has siblings and his parents residing in Bangladesh. The Appellant came to the United Kingdom as a student and he has had the opportunity to study. The fact that he was unable to complete his studies is frustrating for him and disappointing but Article 8 ECHR is not going to change that position.

32. The Appellant has close family in Bangladesh and speaks the language prevailing in that country. He gave his evidence in Bengali Sylheti at the hearing. The Appellant spent the major part of his life in Bangladesh before coming to the United Kingdom, has been in the UK for a specific purpose for a relatively short time and whilst that may form part of his private life it does not amount to family life given that he is himself over the age of 18 and there is no special degree of dependency.

33. My primary conclusion therefore is that Article 8 is not engaged outside the Immigration Rules but, if it is, the interference caused by the decision to remove him is minimal. There is no employment or education that would be interrupted, the Appellant owns no property in the United Kingdom and whilst he has ties developed with adult relatives **and with his sister’s children** whilst he has been in the United Kingdom, he has other close family members to return to in Bangladesh. Assuming that removal amounts to interference the decision is undoubtedly in accordance with the law and in pursuit of a legitimate aim and considerable weight is to be attached to public

interest in maintaining immigration controls. That is now a matter of primary legislation in Section 19 of the Immigration Act 2014 but it was always so even before that legislation was enacted.

34. If it were to come to a Razgar balancing exercise, weighing the Appellant's private life rights and those of others affected, his uncle (who did not give evidence), his sister, his brother-in-law and his sister's children and even acknowledging that his parents in Bangladesh may be shocked to find that their aspirations for their son have not been met, weighing those considerations against the national interest in maintaining immigration controls the balance falls very firmly on the public interest side.
  35. My conclusion therefore is that Article 8 ECHR is not engaged at all, but that even if it is, the decision to remove the Appellant is not disproportionate." (Emphasis added).
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12. One can see from the above reasoning that at all times the situation as it related to the Appellant's nephews was fully taken into account by the First-tier Judge.
  13. Mindful of the guidance of the Court of Appeal in R (Iran) [2005] EWCA Civ 982 I find that it cannot be said that the First-tier Tribunal Judge's findings were irrational and/or Wednesbury unreasonable such as to amount to perversity. It cannot be said that they were inadequate. This is not a case where the First-tier Judge's reasoning was such that the Tribunal was unable to understand the thought processes that he employed in reaching his decision.
  14. In making that observation and finding, I bear in mind that it was a submission of Mr Malik that he appeared to derive from the reasoning of the First-tier Judge who granted permission, that the reasoning of the First-tier Judge was somehow or other out of chronology. It is of course, as I am reminded, a case of looking at the reasoning of the Judge as a whole within his determination, and whilst it may not be to the liking of the losing party, so long as it adequately tells him why the appeal has been lost then it cannot be criticised.
  15. I find that the Judge properly identified and recorded the matters that he considered to be critical to his decision on the material issues raised before him in this appeal. The findings that he made were clearly open to him on the evidence and thus sustainable in law. I find that the Appellant's challenge to his decision is both upon analysis and substance no more than an attempt to re-open the Judge's sustainable findings of fact in an attempt to reargue them before the Tribunal, and as such they fail to disclose even an arguable error of law.

## **Decision**

16. The making of the previous decision involved the making of no error on a point of law and I order that it shall stand.

No anonymity direction is made.

Signed

Date 9 April 2015

Upper Tribunal Judge Goldstein