



**Upper Tribunal  
(Immigration and Asylum Chamber)      Appeal Number: IA/39241/2014**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 6 August 2015**

**Decision & Reasons Promulgated  
On 20 August 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE RAMSHAW**

**Between**

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

Appellant

**and**

**MR FOYSAL AHMED  
(ANONYMITY DIRECTION NOT MADE)**

Respondent

**Representation:**

For the Appellant: Ms Pal, a Home Office Presenting Officer

For the Respondent: Mr Shah, Solicitor

**DETERMINATION AND REASONS**

**Introduction**

1. This is an appeal by the Secretary of State for the Home Department. For convenience, and to avoid confusion, I will refer to the parties as they were before the First-tier Tribunal.
2. In this appeal, the respondent appeals against a decision of the First-tier Tribunal (Judge Sweet) allowing the appellant's appeal against a re-considered decision, made on 16 September 2014, to refuse the appellant's application for further leave to remain in the United Kingdom

under paragraph 276ADE of the Immigration Rules HC 395 (as amended) ('the Immigration Rules'). The reasons for refusal were that the respondent did not accept that there very significant obstacles to the appellant's integration in Bangladesh. The respondent did not accept that there were any exceptional circumstances to warrant consideration of a grant of leave to remain outside of the Immigration Rules. The appellant was also served with a Notice of a decision to remove him under s 10 of the Immigration and Asylum Act 1999.

3. The respondent originally refused the application on 7 January 2014 with no right of appeal. Subsequently, the appellant made a claim for judicial review of the respondent's decision. Pursuant to a consent order dated 18 June 2014 the respondent re-considered the application. The revised decision was issued on 16 September 2014 and it is this decision that was the subject of the appeal to First-tier Tribunal Judge Sweet.

### **Background Facts**

4. The appellant is a citizen of Bangladesh who was born on 31 December 1995. He came to the UK, at the age of 10, with his parents on 12 September 2006 with leave to remain until 20 February 2007. The appellant's parents returned to Bangladesh leaving the appellant in the care of his older brother. On 8 January 2007 the appellant applied for leave to remain as a child of a settled parent/relative. This application was refused on 14 May 2007. The appellant appealed to the First-tier Tribunal against that decision. His appeal was dismissed in a decision promulgated on 11 July 2007. He did not seek permission to appeal that decision.

### **The Appeal to the First-tier Tribunal**

5. The appellant appealed against the 16 December 2014 decision to the First-tier Tribunal. In a determination promulgated on 2 April 2014, First-tier Tribunal Judge Sweet allowed the appellant's appeal under the Immigration Rules.

### **The Appeal to the Upper Tribunal**

6. The respondent sought permission to appeal to the Upper Tribunal. On 9 June 2015 First-tier Tribunal (Judge Cruthers) granted the respondent permission to appeal. Thus, the appeal came before me.

### **Summary of the Submissions**

7. There are 3 grounds of appeal set out in the application for permission to appeal. The grounds can be summarised as follows:
  - 1) the judge made no overall assessment of the credibility of the witness, in particular the judge failed to make a proper assessment of the evidence;

- 2) the judge's finding on paragraph 276ADE is in error by finding that he could apply the appellant's age at the date of the application rather than the date of the decision. Further, the judge failed to set out any reasoning as to what were the very significant obstacles to the appellant's integration in Bangladesh;
- 3) the judge erred in finding that the appellant had retained a right to stay in the UK.

### **Error of Law**

8. The jurisdiction of this tribunal on an appeal from the First-tier Tribunal is limited to points of law (s 11 of the Tribunals, Courts and Enforcement Act 2007). Generally the Upper Tribunal will not interfere with the decision of the First-tier Tribunal, if an error of law is found, unless that decision is material to the outcome of the appeal.

#### Ground 1 - no proper assessment of the evidence

9. There is an overlap between ground 1 and 2 with regard to the arguments advanced in relation to ground 2 concerning the judge's findings on whether it is reasonable to expect the appellant to leave the UK and whether there are very significant obstacles to his integration in Bangladesh. I consider that these arguments are best considered together with the complaint regarding the judge's assessment of the evidence.
10. Ms Pal adopted and amplified the reasons set out in the grounds. Her submissions were that Bengali was spoken at home, the appellant's brother had given his evidence through a Bengali interpreter, and the appellant lived in Bangladesh until he was 10.
11. Mr Shah submitted that the judge did not have to give every detail of the evidence that was considered. The judge recorded in paragraphs 10-22 the evidence that was taken into account. Regarding language skills the appellant did not assert that he could not speak Bengali, rather he is not fluent and certainly not proficient enough to pursue higher education in Bangladesh. The judge in this case did not need to make a finding of credibility, the judge set out what evidence was accepted - this was sufficient. The judge made findings about the appellant's parents' ill health, evidence in the form of medical records had been provided. The judge found that there was not sufficient accommodation at the appellant's parent's house in Bangladesh. The determination was well-reasoned.
12. The decision of Judge Sweet is very brief. However, various factors are identified that led the judge to conclude that it would not be reasonable to expect the appellant to leave the United Kingdom. These factors are set out in paragraphs 31 and 32. They build to some extent on the evidence that Judge Sweet set out earlier in the decision including the oral evidence at the hearing and the documentary evidence. The judge accepted that

the appellant had been supported in the UK by his brother and sister-in-law since his arrival as a 10 year old child, that his parents were seriously ill and unable to provide support to him because of their ill-health, reduced means and modest accommodation (para 31 and 32). The appellant has 2 other brothers who reside in Dhaka and Dubai, they are not able to provide any support, the appellant has little or no contact with them. The judge found that the appellant's knowledge of Bengali was limited. It is likely that the judge did underestimate the appellant's ability, however, as submitted by Mr Shah it was not the appellant's case that he could not speak and write in Bengali but was that he was not fluent.

13. I have found (see below) that the relevant paragraph of the Immigration Rules is 276ADE (1)(iv). The relevant requirement is, therefore, that it would not be reasonable to expect the appellant to leave the UK. I have considered the arguments advanced on this basis. I do not need to consider the judge's findings in respect of whether there are very significant obstacles to the appellant's integration in Bangladesh.
14. The Grounds of Compatibility with Article 8 of the ECHR: Statement by the Home Office (13 June 2012) which accompanied the introduction of paragraph 276ADE (1) (iv) set out, at 27: *'a period of 7 continuous years spent in the UK as a child will generally establish a sufficient level of integration for family and private life to exist such that removal would normally not be in the best interests of the child'*.
15. The Immigration Directorate Instruction 'Family Migration: Appendix FM Section 1.0b Family Life (as a Partner or Parent) and Private Life: 10-Year Routes' ("the IDI") gives the following guidance:
 

11.2.4. Would it be unreasonable to expect a non-British Citizen child to leave the UK?

The requirement that a non-British Citizen child has lived in the UK for a continuous period of at least the 7 years immediately preceding the date of application, recognises that over time children start to put down roots and integrate into life in the UK, to the extent that being required to leave the UK may be unreasonable. The longer the child has resided in the UK, the more the balance will begin to swing in terms of it being unreasonable to expect the child to leave the UK, and **strong reasons** will be required in order to refuse a case with continuous UK residence of more than 7 years. The decision maker must consider whether, in the specific circumstances of the case, it would be reasonable to expect the child to live in another country. The decision maker must consider the facts relating to each child in the UK in the family individually, and also consider all the facts relating to the family as a whole. The decision maker should also engage with any specific issues explicitly raised by the family, by each child or on behalf of each child (my emphasis).
16. As the guidance identifies, in the case of a minor 'strong reasons' will be required to refuse a claim for leave to remain where there has been continuous UK residence of more than 7 years. The judge acknowledged that the appellant is now over 18 and is therefore an adult not needing parental support. This does not detract from the need for there to be

strong reasons to refuse the claim. The fact that the appellant might be able to adapt to life elsewhere is a relevant factor (his ability to communicate in Bengali would be significant to such a finding) but it cannot be determinative. Although the judge's findings were brief, given the very young age of the appellant when he came to the UK, that his brother and sister-in-law have effectively had parental responsibility for him since the age of 10, he still lives with them and relies on them for support, that his formative teenage years have been spent in the UK, he has friends in the UK, has built a significant private life and has spent 6/7 years in school, that he has had little contact with his parents (all factors from the evidence before the judge) the judge came to a reasonable conclusion in finding that it would be not be reasonable to expect the appellant to leave the UK and therefore there was no material error of law.

Ground 2 – the relevant date to consider the appellant's age

17. Ms Pal submitted that the judge erred in finding that the relevant date for consideration of the appellant's age was the date of application, if the Secretary of State is making a re-assessment some years on she cannot consider that the appellant is under 18 when he is not, it cannot be retrospective. Ms Pal drew a distinction between entry clearance cases where the Entry Clearance Officer considers an application, in those cases the fact that an applicant has reached the age of 18 by the time of the decision is not relevant and an applicant should be treated as still under 18. Applications for leave to remain were different, the facts at the time of the decision were to be taken into account.
18. Mr Shah submitted that it was correct for the judge to take the appellant's age as at the date of application. However even if this was not correct the judge had also considered that if he was to be considered as over 18 there were very significant obstacles to the appellant integrating in Bangladesh.
19. Neither representative was able to provide any authority for their position.
20. The relevant provisions in Paragraph 276ADE are:
  - Private life Requirements to be met by an applicant for leave to remain on the grounds of private life
  - 276ADE (1). The requirements to be met by an applicant for leave to remain on the grounds of private life in the UK are that at the date of application, the applicant:
    - (i) does not fall for refusal under any of the grounds in Section S-LTR 1.2 to S-LTR 2.3. and S-LTR.3.1. in Appendix FM; and
    - (ii) has made a valid application for leave to remain on the grounds of private life in the UK; and
  - ...

(iv) is under the age of 18 years and has lived continuously in the UK for at least 7 years (discounting any period of imprisonment) and it would not be reasonable to expect the applicant to leave the UK; or

...

(vi) subject to sub-paragraph (2), is aged 18 years or above, has lived continuously in the UK for less than 20 years (discounting any period of imprisonment) but there would be very significant obstacles to the applicant's integration into the country to which he would have to go if required to leave the UK.

21. The Immigration Rules are very clear in that the requirements are that, **at the date of application**, the applicant must be under the age of 18 and have lived continuously in the UK for at least 7 years. The phrase 'at the date of the application' is all important and directly links to each of the requirements in that paragraph. It would be surprising if such clear words are to be displaced. There are certain requirements that are to be assessed against a background of current circumstances that involve a subjective and objective analysis such as the requirement in this rule of the reasonableness of expecting an applicant to leave the UK. This should be assessed at the time of the decision (or in some circumstances at the time of an appeal). The age at the date of an application is a purely objective factor as is the 7 year continuous residence. It cannot be correct to say that the date for assessing the applicant's age or 7 year period is the date of decision rather than the date of the application as this would result in an absurdity. Applicants would be treated differently/unfairly depending on how long it took the Secretary of State to make a decision.
22. I accept that where the Immigration Rules require a subjective and factual analysis, such as the extent of dependency or the reasonableness of re-locating, the date of the decision will be the relevant date to undertake an assessment otherwise the subjective and factual evidence and analysis could bear little or no relevance to the actual circumstances of the case. An example was given in the case of SO (Nigeria) v Secretary of State for the Home Department [2007] EWCA Civ 76 at paragraph 15:
- '...Paragraph 298 is directed at dependent children. On his analysis a tribunal faced with an applicant who by the time of the appeal was married, with children of their own and living an independent life, would have to ignore reality and treat the appellant as if he or she was leading the life of a dependent child. That cannot have been and, in my view, was not Parliament's intention. The age, growing maturity and independence of an applicant must be relevant to the substance of a decision concerned with "serious and compelling reasons" as to whether the applicant should be allowed to stay as a dependent relative,...'
23. The wording of paragraph 298 does not contain any clear wording as to the relevant time that the age is to be considered. In the instant case, as set out above, the judge did acknowledge that the appellant was over 18 and no longer in need of parental support. This was relevant to the assessment of the reasonableness of expecting the appellant to leave the UK which should be assessed by the Secretary of State at the time of the

decision and the Tribunal at the time of appeal. In this case the fact that the appellant was now over 18 was not sufficiently weighty to require the appellant to leave the UK when balanced against all the other factors.

24. The judge was correct in applying Paragraph 276ADE (1)(iv) – the correct date is the date of application for determining the correct part of Paragraph 276ADE that applies. There was no material error of law.

Ground 3 – the appellant’s retained right to remain

25. With regard to the judge’s finding on the retained right to remain in the UK Ms Pal submitted that the appeal rights were exhausted 5 days after 11 July 2007. The appellant did not apply for permission to appeal so he became an over-stayer on 16 July 2007. Ms Pal acknowledged that this issue was only relevant if the appellant did not succeed under the Immigration Rules.
26. Mr Shah submitted that the appellant was not an over-stayer. He had entered at the age of 11 (*sic*) on a visit visa. From the outset he has been in touch with the Secretary of State. It is not unknown for a case to be re-considered and that is what happened. The Secretary of State had not taken any steps to remove him, presumably because they were aware that the case was in progress. The appellant’s solicitor had written on 11 August 2008 and further letters were written on 28 June 2010 to which the UKBA replied indicating that the case was being re-considered. He suggested that a legitimate expectation had arisen. I asked Mr Shah if this was argued before the First-tier Tribunal judge. In answer Mr Shah indicated that although it does not appear in the determination it did come up at the hearing. He submitted that the appellant was constantly in touch with the Home Office between 2010 and 2013.
27. The appellant was did not have leave to remain. The judge erred in finding that the appellant had retained a right to remain in the UK. On the date his appeal rights were exhausted (16 July 2007) the appellant became an over-stayer with no right to remain. The fact that the appellant’s solicitors wrote to the Home Office in August 2008 is irrelevant. No further leave was granted. However, given my findings on Grounds 1 and 2 this error of law is not material.

**Conclusions**

28. There was no material error of law such as to require the First-tier Tribunal decision to be set aside.
29. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.

**Decision**

30. The appeal is dismissed. The decision of the First-tier Tribunal stands.

Signed P M Ramshaw

Date 17 August 2015

Deputy Upper Tribunal Judge Ramshaw