



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

Appeal Number: AA/01843/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 17 November 2015**

**Decision & Reasons Promulgated
On 8 February 2016**

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

SHAH AHMED

(anonymity direction not made)

Respondent

Representation:

For the Appellant: Ms E Savage, Home Office Presenting Officer

For the Respondent: Mr A Sesay, Solicitor, Duncan Lewis & Co Solicitors

DECISION AND REASONS

1. I see no need for, and do not make, an order restricting publicity about this appeal.
2. This is an appeal by the Secretary of State against a decision of the First-tier Tribunal allowing the appeal of the respondent, hereinafter “the claimant”, against a decision of the Secretary of State to refuse to vary his leave to enter or remain in the United Kingdom and to remove him. It was his case that he was a refugee, that he was entitled to humanitarian protection and that removing him would be contrary to his human rights.

3. The appeal was dismissed on asylum grounds and humanitarian protection grounds but it was allowed on human rights grounds with reference to Article 3. There is no cross-appeal from the claimant. The Secretary of State was given permission to appeal, mainly because it was considered to be arguable that the First-tier Tribunal Judge had misdirected himself.
4. The claimant has lived in the United Kingdom since he was 13 years old. He is now 18 years old. Put simply, he wants to stay.
5. The First-tier Tribunal Judge recognised that he had made in the United Kingdom and wrote respectfully of him. Paragraphs 42, 43 and 44 of the Decision are particularly material although they are not the only paragraphs that touch on his conduct and links in the United Kingdom. The First-tier Tribunal found that the claimant came to the United Kingdom expecting to return to Bangladesh with his father but his father returned to Bangladesh without him and effectively abandoned him.
6. The claimant had been looked after by his paternal uncle, who attended the hearing before me. Attempts have been made to find the rest of the family but they been unsuccessful. The claimant's uncle has visited Bangladesh on several occasions, most recently in 2013 but he not been able to make any contact with the rest of the family. It was accepted that the claimant has no meaningful family links in Bangladesh. He has an aunt but there has been a dispute over family properties and she is not someone who would be interested in supporting the claimant now.
7. Paragraph 44 is particularly apt and I set it out. The judge said:

"The [claimant] has spent the last six years in education in the United Kingdom and has built up a circle of friends and I have seen a number of letters of support from those friends. I am aware also that the [claimant] will have met friends through his interest in cricket which he plays. The [claimant] gave his evidence to me in fluent English and clearly has become immersed in English solely within the United Kingdom both in his education, working as a carer, and in his sporting activities."
8. This appears to be a case of a young man who was brought to the United Kingdom when he was a young teenager and who seems to have taken advantage of the opportunities of living in the United Kingdom and has behaved in a way that is wholly to his credit.
9. The structure of the First-tier Tribunal's determination is not unimpeachable but it is reasonably clear that the judge, having rejected the claims on asylum and humanitarian grounds, considered particularly paragraph 276ADE(1)(vi) which applies in cases such as this one of a person aged over 18 years who has lived continuously in the United Kingdom for less than twenty years, but where "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 United Kingdom". Clearly in this case the relevant country is Bangladesh. Before me the

parties agreed that this Rule offered the claimant his best chance of success.


10. The difficulty is that although the judge has identified the Rule by name he has not applied the right test. He refers on two occasions in paragraphs 46 and 47 to there being “significant obstacles with integration in Bangladesh”. That is not the test. The test requires “very significant obstacles”. The Secretary of State’s grounds say correctly that the word “very” is not mere surplusage but emphasises that the Rules is one that is hard to satisfy and is only satisfied by something that can truly be described as very significant.
11. Mr Sesay, correctly, has emphasised that the judge did identify the correct Rule but he cannot get around the plain fact that there is nothing on the face of the Decision which shows that the judge appreciated the strict test under the Rules. He twice erred by referring only to “significant obstacles”. I have not been able to find anything, and Mr Sesay did not draw to my attention, anything that would enable me to say that although the judge had used the wrong formula he had in fact applied the right test. He did not and I have to say that he erred and I have to set aside the decision. The reasons for allowing it were not sound in law. The wrong test had been applied.
12. I must now decide what to do. I see no purpose in a further hearing. It is perfectly plain what this claimant has been believed. The facts are not in issue. I have reminded myself of the positive aspects of the case and the time that the claimant has spent in the United Kingdom but I cannot say that the things drawn to my attention can be described properly as “very significant obstacles”. The fact is that the claimant would be returning to the country of nationality, the country he lived in until he was 13 years old, and as a young man with the advantages of an education in the United Kingdom and considerable fluency in English that would put him at some advantage in the labour market. I do not suggest it would be an easy transition for him but there are not very significant obstacles.
13. I also sit back and ask myself if this is a case where there is proper reason to allow the claimant’s appeal outside the Rules and I can find none.
14. I have been reminded about Section 117B of the Nationality, Immigration and Asylum Act 2002. This sets out the public interest considerations. It is plainly applicable. It reminds me that the maintenance of effective immigration control is in the public interest. There are aspects that assist the claimant to a small extent, for example his ability to speak English and his integration in British society but it is not a case where he relies on a life partner or being a father. This is to his personal credit. He is a very young man and I would be concerned if he had made such commitments. He has not but these are not positive reasons for saying that he should be allowed to remain. It is just that some of likely negative reasons are not relevant or do not feature in his case.

15. Section 117 also instructs me that little weight should be given to a private life established at a time when the person's immigration status is precarious, and this person's immigration status has been precarious throughout. He has never had indefinite leave to remain.
16. It follows therefore that I have the unhappy task of saying that, in my judgment, the First-tier Tribunal was wrong and the only proper outcome on the facts as found is a decision to dismiss the appeal on human rights grounds.

Notice of Decision

17. I allow the Secretary of State's appeal. I set aside the decision of the First-tier Tribunal. I substitute a decision dismissing the claimant's appeal against the Secretary of State's decision.

Signed
Jonathan Perkins
Judge of the Upper Tribunal



Dated 2 February 2016