



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

Appeal Number: HU/04690/2016

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 15 February 2018**

**Determination  
Promulgated  
On 12 April 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE MURRAY**

**Between**

**REDWAN KHAN  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr R Khan, Counsel for Sony Sadaf Haroon Solicitors, St Albans

For the Respondent: Mr Tufan, Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant is a citizen of Bangladesh born on 15 March 1998. He appeals against the decision of the respondent dated 6 February 2016 refusing his application to remain in the United Kingdom under the Immigration Rules and Article 8 of ECHR. The appeal was heard by Judge of the First-Tier Tribunal Parkes on 15 February 2017. The appeal was dismissed in a decision promulgated on 17 February 2017.

2. An application for permission to appeal was lodged. Permission was granted by Upper Tribunal Judge Bruce on 20 December 2017. The appellant is now an adult overstayer and permission was granted so that this can be considered in the light of the appellant facing material prejudice because of the delay in consideration of the application by the respondent. The application was submitted before the appellant was aged 18. The Judge has accepted this and the grounds for permission state that an application where the legal position changes prejudicially and less advantageously upon a trigger date, should be considered as at the date of the application to avoid such prejudice. The grounds state that in this case material prejudice has been caused and the Judge has failed to identify this so the decision must be materially erroneous. The grounds go on to state that at the date of application the appellant was under the age of 18 and therefore the rules applicable should have been those relevant to minors.
3. There is a Rule 24 response on file dated 16 January 2018 which states that the Judge had full regard to the fact that the appellant was under 18 at the date of application and the date of the decision but that he correctly identifies the relevant date for considering this human rights appeal as being the date of the hearing. The response goes on to state that the Judge gave full consideration to the appellant's circumstances and gave adequate reasons for finding there were no compelling circumstances which would justify a grant of leave to remain outside the Rules.
4. The grant of permission states that what has to be looked at is what advantage the appellant will gain if he succeeds in getting the First-Tier decision set aside as he is now an adult overstayer. This is what has to be argued.

### **The Hearing**

5. Counsel submitted that he is relying on the grounds of application. The appellant was under 18 at the date of application and the date of the refusal. I put to Counsel that surely the relevant date here is the date of the hearing. Counsel referred to the delay in the respondent considering the application and the fact that the Judge has not referred to this in his decision. Counsel submitted that the claim should be looked at, at the date of application to avoid prejudice. I asked Counsel what the appellant would gain by doing this and he submitted that different rules apply for paragraph 276ADE(1) of the Immigration Rules and had the application been considered based on the appellant being a minor, it might well have succeeded. He submitted that the appellant should have been given that opportunity.
6. The Presenting Officer made submissions referring to paragraph 276ADE(1) of the Immigration Rules and submitting that the Judge's findings not only refer to this, they also refer to Article 8 outside the Rules.

7. I was referred to paragraph 12 of the decision in which the Judge states that the appellant's parents brought the appellant to the United Kingdom and left him here with relatives. The Judge finds that they did not abandon him in the usual meaning of the word. The Judge refers to the appellant obtaining benefits from living in the United Kingdom. At paragraph 13 he refers to the appellant growing up in households that have strong Bangladeshi cultural connections. He has a Grade B, GCSE, in Bengali and speaks more than a bit of that language, in contrast to what he states in his witness statement. He speaks Bengali to his sister with whom he stays.
8. The Presenting Officer referred me to paragraph 18 of the decision which states that the appellant will be returning to where he was brought up, into a culture he retains links with. He is not being returned to a new country and he submitted that he will be able to adapt.
9. The Presenting Officer submitted that at the date of the hearing the terms of paragraph 276ADE(1) could not be satisfied and what has to be considered is whether it would be reasonable for this appellant to return to Bangladesh and the Judge has found that it would be reasonable. He submitted that there are no material errors of law in the Judge's decision.

### **Decision and Reasons**

10. This is an appellant who was refused entry clearance as a visitor to the United Kingdom on 21 January 2008 but entered the United Kingdom on 4 October 2008 with a child visa valid until 4 March 2009. On 3 March 2009 he applied for indefinite leave to remain as the child of settled parents. This was refused on 3 February 2011. On 27 October 2015 he applied for leave to remain in the United Kingdom on a further leave to remain application form on the basis of his private life. The respondent found that the family life he claimed to have with relatives in the United Kingdom did not constitute family life in accordance with Appendix FM of the Immigration Rules, so the application was considered under the private life route contained within paragraph 276ADE(1) to CE of the Immigration Rules and outside the Rules on the basis of exceptional circumstances.
11. When the ten year private life route was considered the appellant was found to meet the suitability requirements of Appendix FM and the requirements of paragraph 276ADE(1)(i) of the Immigration Rules, but paragraph 276ADE(1)(iii) of the Immigration Rules could not be satisfied. Although he has been in the United Kingdom for seven years it was found that it would be reasonable for him to leave the United Kingdom. When he came he was aged 10 years and although he came with his parents, who are not British or settled in the United Kingdom, they returned to Bangladesh. His claim is that he was abandoned by his parents however that is not what the Judge finds (paragraph 10 of the decision). His parents are still in Bangladesh so he has family to go back to therefore it would not be unreasonable to expect him to leave the United Kingdom to continue his private life in Bangladesh and reconnect with his family there.

12. It is clear that even if the application had been considered while the appellant was under 18 years of age the terms of the Rules could not have been satisfied. Paragraph 276ADE(1)(v) and (iv) could not be satisfied before he was aged 18 years. At paragraph 6 of the decision the Judge states there are no compelling circumstances that would justify a grant of leave outside the Rules under Article 8 while the appellant was under 18 years of age.
13. The Judge then correctly goes on to consider the claim at the date of the hearing which is correct and at paragraph 9 refers to the appellant not having spent more than half his life in the UK. The Judge makes reference to the appellant's family in Bangladesh at paragraphs 11 and 12 and refers to the benefits the appellant has had from living in the United Kingdom.
14. The Judge therefore finds that whether the appellant is aged 18 or over his claim cannot succeed under the Rules, and at paragraph 16 the Judge finds that as the appellant is now an adult he could live in Dhaka and support himself as he speaks Bengali and English and he would not have to return to his parents. At paragraph 17 the Judge refers to there being no compelling circumstances which would justify a grant under Article 8 outside the Rules now that the appellant is over 18 but this is no different from his situation when he was under 18. The Judge's findings still apply and have been properly explained in the decision.
15. At paragraph 18 the Judge refers to the appellant returning to where he was brought up and to a culture with which he retains links. He speaks the language and he can readapt to Bangladesh. The Judge goes on to state that there is no obvious need for him to have any contact with his family in Bangladesh if he does not want this.
16. Although there are differences in paragraph 276ADE(1) for people under 18 and people over 18 this appellant's claim cannot succeed under the Immigration Rules in either case. The Judge has made it clear that there are no compelling circumstances which would mean that the claim could succeed outside the Rules. This applies at the appellant's date of application and at the date of the hearing.
17. The permission states that it was granted so that any advantage the appellant will gain can be considered if the First-Tier decision is set aside as the appellant is now an adult overstayer. I find that the Judge's decision would have been the same whether the appellant was a 17 year old or an 18 year old. No argument has been put to me showing that the appellant will gain anything if the First-Tier decision is set aside. There is no material error of law in the Judge's decision.

### **Notice of Decision**

18. As there is no material error of law in the Judge's decision, his decision promulgated on 17 February 2017 must stand.

Signed

Date 09 April 2018

Deputy Upper Tribunal Judge Murray