



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/05003/2016

**THE IMMIGRATION ACTS**

Heard at Field House  
On 18 July 2018

Decision & Reasons Promulgated  
On 27 July 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE HILL QC

Between

AHNAF REMAN JOLLY  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr T Chowdhury, Solicitor instructed by Kingdom Solicitors

For the Respondent: Ms Everett, Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal from a decision of First-tier Tribunal Judge Beg promulgated on 19 June 2017.
2. The appellant claims to be a citizen of Bangladesh with a date of birth of 2 December 1965. The appeal concerns a decision of the Entry Clearance Officer in New Delhi refusing entry clearance under paragraph 18 of the Immigration Rules.

3. There were two substantive issues before the First-tier Tribunal, namely whether the appellant had indefinite leave to remain (ILR) and, if so, whether that may have been vitiated by undisclosed criminal conduct.
4. What has complicated this matter is the appellant's claim to have used two different names, namely Jahangir Choudhury and Ahnaf Reman Jolly. There was evidence before the First-tier Tribunal in the form of a deed poll although there was dubiety as to its probative value in relation to this particular appellant.
5. At paragraph 11 of the determination the judge says:

"I find that as there is no credible evidence before me that the appellant had indefinite leave to remain in the name of Jolly, when he last left the United Kingdom in November 2015, he cannot satisfy the requirements of paragraph 18".
6. With respect to the judge, this misstates the question to be determined. It was not whether there was evidence (credible or otherwise) that the appellant had ILR in the name of Jolly. It was simply whether the appellant had ILR. The actual name (Jolly or Choudhury) was irrelevant provided the appellant could demonstrate that it was he, in whatever guise, who had been the benefit of ILR.
7. I have some sympathy for the judge as the appellant's case does not appear to have been advanced with clarity, nor was the documentation presented in a sensible, coherent and cogent form. But as the judge posed the wrong question and did not in fact resolve what needed to be determined, there is an error of law and her decision must be set aside.
8. The error goes to the core of the decision and requires oral testimony and the assessment of credibility when it comes to be remade. The proper course is to remit the appeal to the First-tier Tribunal for it to be heard afresh.
9. I add for the avoidance of doubt that no findings of fact are preserved. It will be open to the Secretary of State, if so advised, to argue criminal activity as a further or alternative reason why entry clearance should be refused.

### **Notice of Decision**

- (1) The appeal is allowed and the decision of the First-tier Tribunal is set aside;
- (2) The matter is remitted to the First-tier Tribunal for a fresh decision to be made by a judge other than Judge Beg.
- (3) No findings of fact are preserved.
- (4) No anonymity direction is made.

Signed *Mark Hill*

Date 20 July 2018

Deputy Upper Tribunal Judge Hill QC