



**Upper Tribunal
(Immigration and Asylum Chamber)
VA/00016/2016**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On 19 February 2018**

**Decision & Reasons
Promulgated
On 20 March 2018**

Before

UPPER TRIBUNAL JUDGE McWILLIAM

Between

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

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr E Tufan, Home Office Presenting Officer
For the Respondent: Mr Haque (the Sponsor)

DECISION AND REASONS

1. The Appellant is a citizen of Bangladesh. His date of birth is 15 December 1976. Mr Ahmed made an application on 19 June 2013 for a visit visa to visit his cousin ("the Sponsor") here in the UK. The application was refused on 11 July 2013. He appealed against this decision and his appeal was allowed under the Rules in a decision of the First-tier Tribunal on 10 September 2015. Judge Andonian allowed the appeal, finding the Sponsor to be a credible witness.
2. However, entry clearance was refused on dated 26 January 2016 notwithstanding Judge Andonian's decision following, according to the ECO, new information having come to light concerning the Sponsor. The

Appellant appealed. His appeal was allowed by First-tier Tribunal Judge Robertson in a decision that was promulgated on 16 May 2017 following a hearing on 24 March 2017. At that hearing Judge Robertson engaged with the jurisdiction issue and noted, at paragraph 8 of the decision that the Home Office Presenting Officer, Ms Rands, conceded that the Tribunal had jurisdiction to, given the date of the application on 19 June 2013. Judge Robertson made findings and the salient paragraphs are 14, 15, 16, 17 and 18:

- “14. This application was considered by Judge Andonian on 10th September 2015. I am bound by the case of **Devaseelan** to treat the Judge’s findings as the starting point for my decision. Judge Andonian found Mr Haque to be a credible witness with funds to support the Appellant during their visit. The Judge accepted his evidence that previous visitors had all returned within the time limit and that he was aware of the potential consequences of helping them remain illegally in the UK.
 15. In reaching their decision the ECO refers to ‘new information’ which cast doubt on the Sponsor’s credibility. That information was not available to the Sponsor or myself until the day of the hearing. Mr Haque did not require time to consider the evidence but was prepared to proceed.
 16. The ‘new information’ was a list of applicants for whom Mr Haque had been a Sponsor. I noted that a similar point had been raised before Judge Andonian who had been satisfied with Mr Haque’s evidence.
 17. I found Mr Haque to be a credible witness. He was able to explain that the discrepancy in dates was due to the delay in issuing some of the visas due to the appeal process. I found no evidence to justify going behind Judge Andonian’s findings.
 18. In considering proportionality I have to balance the Appellant’s right to family life with the public interest. The fact that the Immigration Rules have been met is a weighty factor and following Judge Andonian’s findings the Appellant could reasonably have expected admission to the UK. I do not consider the decision to be necessary or proportionate.”
3. The grounds seeking permission to appeal assert that the judge failed to give adequate reasons for allowing the appeal under Article 8. Permission was granted to the Secretary of State by Judge of the First-tier Tribunal Foudy on 17 November 2017 and thus the matter came before me on 19 February 2018.
 4. At the hearing the Sponsor was in attendance. Mr Tufan conceded at the hearing before me that the grounds are misconceived insofar as the Appellant had a statutory right of appeal against the decision under the

Immigratio1n Rules (the date of the application having been made on 19 June 2013). I agree. Properly read, this is a decision allowing the appeal under the Rules and under Article 8. There is no properly articulated challenge to the substance of the decision to allow the appeal under the Rules. I accept that there is merit in the grounds insofar as Article 8 is concerned, particularly with reference to the recent cases of Kopoi [2017] EWCA Civ 1511 and Onuorah v Secretary of State for the Home Department [2017] EWCA Civ 1757. It was entirely open to the First-tier Tribunal to allow the appeal under the Immigration Rules and that part of the decision is maintained. I accept that the judge materially erred in allowing the appeal under Article 8. That decision is set aside. The appeal is dismissed under Article 8. The decision to allow the appeal under the Rules is maintained.

Notice of Decision

The appeal is allowed under the Rules.
The appeal is dismissed under Article 8.

No anonymity direction is made.

Signed

Joanna McWilliam

Date 16 March 2018

Upper Tribunal Judge McWilliam