



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/15445/2019**

THE IMMIGRATION ACTS

**Heard at Field House
by Skype for Business
On 24 February 2021**

**Decision & Reasons Promulgated:
On 04 March 2021**

Before

UPPER TRIBUNAL JUDGE GLEESON

Between

**SYED ALAUDDIN RIPON
[NO ANONYMITY ORDER]**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS

Representation:

For the appellant: Mr Taj Uddin Shah, solicitor with Taj Solicitors

For the respondent: Mr Tony Melvin, a Senior Home Office Presenting Officer

1. The appellant appeals with permission from the decision of the First-tier Tribunal dismissing his appeal against the respondent's decision on 3 September 2019 to refuse him leave to remain on private and family life grounds pursuant to Article 8 ECHR and paragraph 276ADE of the Immigration Rules HC 395 (as amended). The appellant is a citizen of Bangladesh.

Background

2. The appellant was born in Bangladesh on 16 December 1976 and is now 44 years old. He has four sisters, all living in London, but two of them have been estranged from him for years. He is close to the other two sisters and their children. He has a brother in Dubai, and another who still lives in Bangladesh. The appellant has two ex-partners in the United Kingdom, both British citizens.
3. In 2004, the appellant married his first wife in Bangladesh, and on 6 January 2006, he entered the United Kingdom with leave to remain as her spouse, valid from 28 September 2005 to 28 September 2007. Allowing for the delay in his arrival, he was in the United Kingdom with valid leave for 21 months, ending on 28 September 2007.
4. The first marriage failed before the expiry of that period of leave, but the appellant did not embark for Bangladesh, as he should have done. The couple continued to live together, with the first wife performing household duties such as cooking and ironing for the appellant, while he continued to support her financially, hoping that it would be possible to reconcile over time. In 2012, the appellant accepted that the marriage had irretrievably broken down, and the couple divorced.
5. The appellant went to live with one of his sisters, and visited the other sister with whom he is in contact, about twice a week. He got to know his nephews and nieces well and they are fond of him, as he is of them.
6. On 28 December 2014, the appellant and his second partner went through an Islamic marriage in the United Kingdom. He had no leave to remain at the time. His second partner had children by her previous marriage, and her ex-husband visited their home regularly to see the children. It was around this time that his relationship with two of his London-based sisters broke down. The appellant's case is that his relationship with his mother in Bangladesh is also strained.
7. On 6 February 2015, the appellant applied for leave to remain in the United Kingdom on the basis of that relationship. On 5 October 2016, the respondent granted him 30 months' leave to remain, expiring on 5 April 2019. On 28 March 2019, before his leave expired, the appellant made an application for further leave to remain.
8. Unfortunately, the appellant's second partner resumed her relationship with her former husband and on 17 July 2019, the marriage broke down and he was ejected from the matrimonial home, returning to live with his sister and her family. The appellant's second partner and her children returned to live with her first husband and there is no contact or relationship now. Again, the appellant did not return to Bangladesh when his second relationship failed.

9. The appellant is supported financially in the United Kingdom by friends and family. He remains close to his two sisters, and to his nephews and nieces in both their families.
10. On 3 September 2019, the respondent refused the application for leave to remain. She had made an enquiry of the appellant about whether his second relationship subsisted.
11. The bundle of evidence for the First-tier Tribunal included letters from the appellant's nephews and nieces, in which they say what a good uncle he is, and how much they will miss him if he returns to Bangladesh. There are letters from his two sisters, his brothers-in-law and from friends, to similar effect.

First-tier Tribunal decision

12. The First-tier Judge dismissed the appeal. She summarised the appellant's circumstances at [3] and in relation to the present application, she said this:

"4. On 28 March 2019, he applied for leave to remain on the basis of family life with his partner, Mrs Sayeda Shanzida and her children. In a letter dated 5 August 2019, responding to an enquiry of the respondent about the current residence of one of [Mrs Shanzida's] children, the appellant said his circumstances had changed and he now lived with his sister. The named child lived in Newcastle at his University hostel."

13. In relation to private life, which is all that is now in issue in this appeal, the judge said this:

"18. The starting point in a human rights appeal is compliance with the Immigration Rules. The appellant does not meet the requirements for leave to remain on family life grounds under the Immigration Rules. ...

19. As regards private life under paragraph 276ADE(1), I find that there are no very significant obstacles to the appellant...returning to Bangladesh. He has lived there the majority of his life. He has family there. It is reasonable to expect that he has retained good knowledge of the culture and lifestyle. He is familiar with the language and gave evidence in Bengali. ... I am satisfied that on the balance of probabilities, there are no obstacles to his return and the appellant being able to readjust and reintegrate in his home country. ... "

14. Those elements of the First-tier Judge's reasoning are now undisputed, as Mr Shah confirmed at today's hearing. It is the judge's consideration of proportionality overall which he challenges. At [20]-[22], the First-tier Judge said this:

"20. The Article 8 submission did not rely on any additional factors. I have regard to the Article 8 public interest considerations set out in section 117 of the Nationality, Immigration and Asylum Act 2002 (as amended) ('the 2002 Act') that immigration control is in the public interest. I accept that the appellant entered the United Kingdom lawfully, however, his leave expired 18 months later. As his relationship [had] broken down by then, he would have had an

expectation that he could not remain permanently in the United Kingdom. His subsequent relationship was formed at a time when he did not have leave, and his immigration status was always precarious. He has been without leave for the majority of his time in the United Kingdom.

21. I do not find any compelling circumstances in the appellant's case. He has no partner or qualifying children in the United Kingdom. The issue of the appellant's nephews and nieces has been raised. However, there is nothing in the evidence to suggest that there would be any negative impact on their welfare if the uncle returns to Bangladesh. Their best interests are to be with their parents. The appellant is not the primary carer. There would be no change in their circumstances.

22. Much of the appellant's private life in the United Kingdom has been established while his status has been unlawful. The absence of [a] criminal conviction is a neutral factor. The appellant is able to make new friendships in Bangladesh, renew old ones including with his siblings, and retain contact with family and friends in the United Kingdom through the modern means of communication and visits. I find that in the circumstances the decision is proportionate and does not violate Article 8 ECHR."

15. The First-tier Judge dismissed the appeal and the appellant appealed to the Upper Tribunal.

Permission to appeal

16. Permission to appeal was granted by Upper Tribunal Judge Grubb on the following basis:

"1. The First-tier Judge (Judge Bart-Stewart) dismissed the appellant's appeal against a decision to refuse his Article 8 claim based upon his private and family life in the United Kingdom.

2. It is arguable that the judge misunderstood the appellant's immigration status between October 2016 and April 2019 when the appellant had been granted a second period of leave as a spouse. Although the judge states this at [3], in [16] when reaching her findings, she states contradictorily that he did not have leave between September 2007 (when his first spousal leave expired) and April 2019. That may have affected the weight she gave the appellant's private life in the United Kingdom as she states at [20], he only had leave for 18 months and he has been in the United Kingdom without leave for the majority of his time. She also adds that much of his private life was established whilst he was in the United Kingdom unlawfully ([22]). That is inconsistent with the facts, including as set out by the judge at [3]. It will need to be established that any error was material.

3. The other grounds are less meritorious, but I would not exclude consideration of them. For these reasons, permission to appeal is granted on all grounds."

Rule 24 Reply

17. Ms Rhona Petterson for the respondent filed a Rule 24 Reply. She contended that any error as to the period the appellant spent in the United Kingdom without leave was immaterial, as the correct period was 9 years which was still a substantial period. The case was to be considered at the date of hearing and there was a three year gap between the appellant's divorce from his first wife, and the application for leave to remain based on his relationship with his second partner in 2015.
18. The rest of the Reply responds point by point to the grounds of appeal, explaining why each point is not material to the outcome. The respondent submitted that the First-tier Tribunal decision should be upheld.

Triage directions

19. On 28 August 2020, Upper Tribunal Judge Norton-Taylor made a provisional order for hearing by Skype for Business and gave a number of other directions.
20. That is the basis on which this appeal comes before the Upper Tribunal today.

Submissions

21. At the hearing, Mr Shah confirmed that appellant does not now contend that he can show *Kugathas* family life with his London-based sisters and their children. His appeal succeeds, if at all, on the basis of private life in the United Kingdom. Mr Shah also accepted that there would be no very significant obstacles for the appellant in reintegration in Bangladesh if he were to return there.
22. Mr Shah's oral argument focused on the weight given to the relationship between the appellant and his nephews and nieces. He took me to the letters from the children, which emphasise what a good uncle and good man the appellant is and how fond they are of him. The copies of passports supplied were all expired, suggesting that they would not travel to Bangladesh if the appellant were removed.
23. Mr Shah said that the appellant had come to the United Kingdom lawfully to live with his British citizen first wife. He had remained in the United Kingdom after his first marriage failed, in the hope that she would change her mind and take him back. Although he had entered into his relationship with his second partner while here unlawfully, he had regularised his situation and it was unfortunate that the second marriage had also failed. A man really could not be expected to continue a relationship with a woman who had resumed her relationship with her former husband while living in the matrimonial home with him.
24. Mr Shah asked me to set the decision aside and allow the appeal.
25. For the respondent, Mr Melvin said the decision should be maintained. There was nothing in the appellant's arguments and he relied on Ms

Petterson's written argument. The evidence from the sisters' children was not material to the outcome of the appeal.

26. Despite the appellant's matrimonial difficulties, the arguments advanced did not come close to Article 8 outside the Rules. There were no compelling or compassionate circumstances and the appeal should be dismissed.

Analysis

27. The First-tier Judge did not err in finding that the majority of the appellant's time in the United Kingdom was when he was here unlawfully. He had valid leave from 6 January 2006 until 28 September 2007, and then again from 6 October 2016 until 5 April 2019, a total of 4 years and 3 months, but by the time his appeal was heard on 12 March 2020 in the First-tier Tribunal, he had been here for 14 years, of which 9 years and 9 months were unlawful residence.
28. The judge was required to give little weight to the private life which the appellant formed during his two periods of unlawful residence: see section 117B(4)(a) of the 2002 Act. His initial residence until 28 September 2007 was precarious and again, applying section 117B(5), the judge was required to give that little weight.
29. The appellant's relationship with his second partner, with whom he has not undergone a civil marriage ceremony, was formed at a time when he was here unlawfully applying section 117B(4)(b), it can be given little weight. Alternatively, for the 30 months when the appellant had leave by reason of his relationship akin to marriage with his second partner, he was in the United Kingdom precariously and the relationship can be given little weight by reason of section 117B(5).
30. As regards Article 8 outside the Rules, the section 55 duty and the appellant's closeness to his nephews and nieces, it is not argued now that the appellant has *Kugathas* family life with them. There are no compelling compassionate or exceptional circumstances, although the judge acknowledged the warmth and strength of these family relationships.
31. As Mr Shah recognised, there was no *Kugathas*-level dependency, despite his close relationship with his sisters and their children. I have considered the contents of the letters from the sisters and their children and I am satisfied that there is nothing in those letters which indicates that the children's best interests do not lie in remaining with their parents. The First-tier Judge's assessment of the children's ties to the appellant was fair and was accurately set out in the decision.
32. I remind myself of the narrow circumstances in which it is appropriate to interfere with a finding of fact by a First-tier Judge who has heard the parties give oral evidence: see *AA (Nigeria) v Secretary of State for the Home Department* [2020] EWCA Civ 1296 and *R (Iran) & Others v*

Secretary of State for the Home Department [2005] EWCA Civ 982 at [90] in the judgment of Lord Justice Brooke, with whom Lord Justice Chadwick and Lord Justice Maurice Kay agreed. The First-tier Judge's findings are properly, intelligibly and adequately reasoned and the standard for interference is not reached.

33. I uphold the decision of the First-tier Tribunal and dismiss the appeal.

DECISION

34. For the foregoing reasons, my decision is as follows:

The making of the previous decision involved the making of no error on a point of law.

I do not set aside the decision but order that it shall stand.

Signed [Judith AJC Gleeson](#)
Upper Tribunal Judge Gleeson

Date: 24 February 2021