



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

HU/15892/2019 (V)

THE IMMIGRATION ACTS

Heard on 10 March 2021
(by *Skype for Business*)
and on 16 June 2021
(by *Microsoft Teams*)

Decision & Reasons Promulgated
On 28 June 2021

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

NIZAMUR RAHMAN

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: *Mr A Caskie, Advocate, instructed by A J Bradley & Co, Solicitors*
For the Respondent: *on 10 March, Mr D Clarke, and*
on 16 June, Ms A Everett, Senior Home Office Presenting Officers

DETERMINATION AND REASONS

1. The appellant is a citizen of Bangladesh, born on 15 May 1978. On 19 May 2019 he applied for leave to remain on private life grounds. The respondent initially refused that by a decision which was not appealable, but later substituted a decision dated 13 September 2019, which gives rise to these proceedings.

2. The respondent held that the appellant did not meet the terms of the immigration rules on private life (which he does not dispute).
3. "Beyond the rules", the appellant relied upon his successful food business, to the benefit of the community; inability to operate the business from outside the UK; the effect of redundancy on his employees and their children; and on having many friends here.
4. The respondent considered that while some of the appellant's actions were "commendable", there was nothing to prevent the running of the business from abroad, and he could keep in touch with friends. Consideration was given to the best interests of children, but he had no parental responsibility; they lived in the UK with their parents; and "As stated ... you have the option to continue to run your business from abroad ... to keep their parents in employment".
5. The appellant appealed to the FtT. His case focused on the respondent's declared duty of operating so as to contribute to economic growth and benefit the country, and the risk of closure of a successful business, with consequent unemployment being contrary to the best interests of the children.
6. FtT Judge Agnew dismissed the appeal by a decision promulgated on 24 January 2020.
7. The appellant appeals to the UT on the grounds set out in the attachment to his application dated 3 February 2020. The grounds are multiple and rather discursive, running to 14 paragraphs over 3 ½ pages.
8. FtT Judge Keane granted permission on 10 June 2020, not restricting the grounds, but identifying arguable points as:
 - (1) unfairness in asking a question during cross-examination (on which point the appellant was expected to provide evidence);
 - (2) unfairness in not giving enough time to provide evidence from HMRC; and
 - (3) inadequacy of the proportionality balancing exercise.
9. In a written submission dated 1 September 2020 the respondent contended on those issues:
 - (1) there was nothing to substantiate any allegation of apparent bias;
 - (2) the time granted to produce evidence was as requested, and there was no application for further time; and
 - (3) the FtT considered everything relevant to proportionality, and the grounds in that respect were only disagreement.
10. Having received further detailed submissions, both written and oral, from both sides, I reserved my decision.

11. Mr Caskie advanced the main point in the grounds as apparent bias. He submitted that on that point, a rehearing was required; and, additionally or alternatively, the decision also erred on other points which, while relatively minor, cumulatively required the same outcome.
12. Apart from narrative in the grounds, and despite the observation in the grant of permission, the appellant has not tendered any record or evidence of the questioning by the judge which is challenged.
13. The grounds say:

During cross-examination ... the judge interjected and asked the appellant why he did not "employ Scottish people". That is reflected in the [decision] at ... [30 - 31] ... Simply by asking that question the judge would raise in the mind of the impartial informed observer the real possibility that ... interference in the lives of "native Scots" was more weighty than ... interference in the lives of persons not holding that status but lawfully present in the UK. The question would not have been posed and the decision would not have contained [30 - 31] had the judge not considered the appellant's position employing only "non-native Scots" ... material ...

14. The FtT's decision at [9 - 10] clearly sets out the issues raised in the refusal decision and in the grounds of appeal. At [5] it refers to authorities on private life and value to the community, which were not cited by either side but were drawn to attention by the judge. It has not been suggested that she made any error in identifying the correct principles.
15. The judge kept a typed contemporaneous record. Under the heading "preliminary matters", this says:

HOPO – agreed he runs a business and has 8 employees

Ar [= appellant's representative] – they would have difficulty in getting employment elsewhere

HOPO – that is what we disagree on

[judge] What about contribution to the community?

HOPO – we say interest in removing him. We do not accept making a significant contribution.

16. In the appellant's evidence-in-chief, further to his statement, his representative asked him:

Q. Some of the employees indicate they had diff[iculty] in obtaining employment elsewhere how come you can?

A. I have to employ those who can speak English, one of the employees last 4 ½ years ... she has daughter also works, she can speak English so taught daughter, and she teaches newcomers

So if Romanians have language barrier this is easier

17. The judge asked the appellant's representative to clarify, and he asked this question:

Q. Do you have employees who do not speak English?

A. Yes, 3 do not, 2 speak English, another 2 is broken English, the daughter understands English better

So they are still able to work even though do not speak English

18. In cross-examination it was brought out from the appellant that all his employees had the right to reside and work in the UK; did not require specific skills to be employed by him; and would be free to find work elsewhere.

19. After the appellant had been examined, the judge records her questions "for clarification". This includes:

Q. Why not employing any Scots?

A. I did before as my job, it is very very clearn [sic], it [is] quite a hard job, they work and then phone and say sick and will not come in and I cannot have enough staff to cover this.

20. I identified the above passage in course of submissions and read it out. It was accepted as being the question from which the grounds arise.

21. The criticisms for the appellant were based on the decision at these two paragraphs:

[30] It is claimed that current staff will lose their jobs if the appellant has to leave All but one work part-time. 7 of them are European nationals from Romania and 1 is from Iraq. The appellant stated that 3 do not speak English at all, 2 speak "broken" English, and 2 speak English. Another, the daughter of one of the employees, understands English and has been able to explain things to her mother ...

[31] The appellant stated he employed those from other countries because although he had attempted to employ native Scots, they found the work too hard and were unreliable so would phone in sick and he did not have enough staff to cover their absence. He had not advertised in the job centre. He put a notice outside his premises. It appears that the Romanian employees have been introduced by other Romanians and the Iraqi employee by a mutual friend.

22. The decision goes on at [32 – 37] to record the evidence led from various employees, including their evidence that lack of ability in English prevented them from finding employment elsewhere.

23. Mr Caskie submitted that the judge gave the wrong impression by focusing on whether the appellant employed "native Scots"; should not have probed into whether persons who were legally in the UK could speak English; and there was nothing relevant in [30- 31].

24. The respondent counters that any discriminatory element in the case arose from the appellant, who avoids employing "Scottish people" because he considers them lazy, and instead "utilizes a system of nepotism", which is unlawful.

25. The retort for the appellant is that criticism of the appellant's employment practices is "an entirely new issue" which comes too late, and the submission on discrimination is "a primary school approach to equalities law".

26. These are not proceedings to decide whether the appellant engaged in unlawful discrimination. Such a finding would not be apt, and in so far as the respondent's submissions seek one, they go too far.
27. However, those submissions do go to the heart of the main ground. The issue is not new.
28. The judge's question, if it came out of the blue, might appear odd. But the respondent is correct that the question went to the centre of the case as the appellant chose to put it, namely that his removal would cause job losses, to the detriment of his employees' children, those employees being unable to find other work due to inability to speak English. The grounds and submissions wrench the question out of context. It did not arise from a caprice of the judge. There was nothing in it to cause a fair-minded observer, having followed the proceedings to that stage, to suspect that the tribunal was biased.
29. Mr Caskie was at pains throughout to emphasise that there was no contention of actual bias. However, claims even of apparent bias in a judge's question should be advanced within a fair representation of how it arose. The submissions suggested that the judge embarked on her own exploration of language and ethnicity, but the matter arose precisely from the appellant's case.
30. Mr Caskie spent little time on the rest of the grounds. They complain that the appellant was not given longer to produce further evidence from HMRC, but he was given the time for which he asked, and even if that was inadvisably short, he did not come back for an extension. He has also failed to show that further time might have improved his case. At [77], in particular, the FtT identified commendable aspects of the appellant's circumstances. It is readily understandable that he is disappointed by his eventual lack of status to remain in the UK, but he has not shown that any more favourable findings might reasonably have been achieved. The evidence that any child might be adversely affected was tenuous. The grounds disagree on proportionality, but they do not show that the judge erred by giving the appellant's contribution to the community and the best interests of the children such weight as she did.
31. The appellant has not established the main issue of apparent bias. The rest of the grounds disclose no error by the judge on any point of law. The decision of the FtT shall stand.
32. No anonymity direction has been requested or made.

Hugh Macleman

17 June 2021
UT Judge Macleman

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days** (**10 working days**, if the **notice of decision** is sent electronically).
3. Where the person making the application is **in detention** under the Immigration Acts, the appropriate period is **7 working days** (**5 working days**, if the **notice of decision** is sent electronically).
4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days** (**10 working days**, if the **notice of decision** is sent electronically).
5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.
6. The date when the decision is "sent" is that appearing on the covering letter or covering email.