



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

Appeal Number: IA/23686/2013

THE IMMIGRATION ACTS

Heard at Manchester

On 13th December, 2013

Determination

Promulgated

On 30th January, 2014
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Before

Upper Tribunal Judge Chalkley

Between

IQBAL HUSSAIN

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Hashmi, Assistant Solicitors with Maya Solicitors

For the Respondent: Mr G Harrison, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Bangladesh, who was born on 27th January, 1981. In an application dated 4th October, 2012, the appellant applied for indefinite leave to remain in the United Kingdom on the basis of long residence. His application was refused under paragraph 322(1) of Statement of Changes in Immigration Rules HC 395, as amended, (“the Immigration Rules”), because it was for a variation of leave to enter or

remain for a purpose not covered by the Rules. The appellant appealed to the First Tier Tribunal. First Tier Tribunal Judge Holt heard the appeal and dismissed it in a determination promulgated on 11th October, 2013.

2. The appellant asserted that he had been in the United Kingdom for fifteen years and that, having been brought to the United Kingdom as a 15 year old child by adopted parents who subsequently abandoned him and then disappeared, his removal would breach his rights under Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.
3. The judge noted that since 9th July, 2013, provisions to grant indefinite leave to remain after a period of fourteen years' presence in the United Kingdom had been removed from the Immigration Rules and replaced by paragraph 276B, which she set out at length.
4. The judge did not find the appellant to be a credible witness. Indeed, she found him and his witness to be both wholly unreliable and dishonest witnesses.
5. The judge noted that the appellant had produced an NHS medical card dated 27th July, 2004 and that it contained his name and an address where he had lived. She believed that the card was issued on that day suggesting that he entered the United Kingdom on a date some time prior to 27th July, 2004. Other documents suggesting that he had been in the United Kingdom some time prior to 2001 were found not to be credible. The judge made a finding that the appellant had been in the United Kingdom for ten years at the most and did not therefore meet the requirements of the Immigration Rules. She found that he did not satisfy the requirements of private life within paragraph 276ADE of the Immigration Rules and that his removal would be proportionate. She dismissed his appeals.
6. The appellant sought to challenge the determination and gave the following grounds:-

“(1) In paragraph 42 it is indicated that the Respondent is not required to prove that the Appellant does have bonds and ties in Bangladesh. It is submitted that where she has accepted that the Appellant has remained in the United Kingdom for 10 years at most at paragraph 43, that findings should have been made as to what bonds and ties can be realistically referred to in Bangladesh. The Appellant confirmed that he has no family ties/social ties/cultural ties to Bangladesh and indeed, he indicated that he could not be sure of his background. It is conceded that the immigration judge throughout the determination criticises the Appellant as well as the witnesses and makes stark comments that she found them wholly incredible and wholly unreliable however, it is not clear upon what information she found the Appellant to have given inconsistent statements. She seems to have taken an initial approach that she simply was not prepared to accept that adoptive parents would have left him in the United Kingdom and as such, was not prepared to then accept the Appellant's version of events throughout his life.

- (2) It is submitted that the judge failed to consider paragraph 276(ADE) of the Immigration Rules. As such the Appellant is above the age of 18 years, has lived continuously for less than 20 years and has no ties including social, cultural or family to a country which he would have to go if he was required to leave the UK. The appellant confirmed that he has no family members and there is no suggestion that the UKBA have suggested that he has an elaborate circle of family relatives to return to in Bangladesh.
- (3) It is submitted that permission be sought to argue Article 8 Private and Family Life carefully."

7. That application was granted by First-tier Tribunal Judge Jeremy Gibb.
8. At the hearing before me, Ms Hashmi suggested to me that the Immigration Judge had failed to make clear findings as to the appellant's ties in Bangladesh; it was incumbent on her to make such findings. However, submitted Ms Hashmi, the judge seems to have simply taken the approach that the appellant was incredible and unreliable, but not given any reasons why he has given inconsistent statements, because she was not prepared to accept that adopted parents would have left him in the United Kingdom alone shortly after arrival and she seems to have then used that to disbelieve the appellant's version of events throughout his life.
9. Ms Hashmi submitted that the judge has given details of inconsistencies in the appellant's account in paragraph 36 of the determination, but she does not appear to have given any account to the evidence of the witness relied on by the appellant. Alternatively, the judge failed to consider paragraph 276 of the Immigration Rules and if the judge was not satisfied as to his ties including social, cultural or family ties, then she should have made it clear what ties she thought he did have. As far as Article 8 is concerned, the only issue is proportionality and she should have found that the respondent's decision was entirely disproportionate. She failed to consider that the appellant had been in the United Kingdom since the age of 15. She failed to consider his lack of education.
10. Mr Harrison submitted that the grounds amounted to a misrepresentation of the determination, that they disclosed no error of law on the part of the judge and urged me to uphold the determination. Ms Hashmi did not seek to make any further submissions.
11. I reserved my determination.
12. The judge pointed out in her determination that the burden of proof was on the appellant and the standard of proof was on a balance of probabilities. She correctly set out Paragraph 276B of the Immigration Rules in full and also set out the requirements of Paragraph 276ADE in paragraph 11 of her determination.
13. The judge's findings start at paragraph 12 and at paragraph 15 she said this:-

“The critical finding is that I found the appellant, and indeed his witness, to be wholly unreliable and dishonest witnesses. I will set out below my findings on individual points and explain why I found them to be wholly unreliable. It should be noted that some of the individual points, on their own, would not necessarily undermine the appellant’s case. However, the examples of my lack of satisfaction are multiple and the adverse findings act in concert, as well as individually.”

14. At paragraph 16 she pointed out that she heard the appellant give oral evidence during which she found that,

“He constantly prevaricated and avoided answering the question. On a couple of occasions I had to intervene and point out that he had not answered the questions posed. Further, constantly during his evidence he gave one answer when he first answered the question and then immediately changed it to something significantly different. The situation was such that at least twice during the appellant’s evidence I intervened, stopped the hearing and encouraged him to use the services of the interpreter if he was not sure how to answer the questions clearly. I advised him, in terms, that his evidence would be more detailed and reliable if he used the interpreter. Nonetheless he was adamant that he understood the questions and said that he was confident answering in English.”

15. At paragraph 17 she noted that the appellant gave, *“inconsistent answers, not because he had failed to understand the answer, or that his English language skills were insufficiently sophisticated. I am quite satisfied that he gave inconsistent answers because he was lying.”*

16. At paragraph 18 of her determination, the judge noted that during the course of the hearing the appellant became increasingly nervous, particularly during cross-examination. The judge found herself satisfied that his nervousness was due to the fact that it became patently obvious to him during the course of his evidence that his answers were both illogical and inconsistent.

17. The judge makes it clear that her findings are based on the subject matter of the appellant’s answers given during his oral hearing, rather than his demeanour. In paragraph 20 the judge found it incredible that for the first time during the hearing before her the appellant claimed that he was unsure as to his country of birth. She noted that he had always represented himself as being from Bangladesh. At paragraph 1.7 of his application form he indicated that his nationality was Bangladeshi and that he was born in Bangladesh. In his statement he emphasised that he has no cultural ties with Bangladesh, as opposed to any other south Asian country. The judge noted that on 5th October, 2012 the appellant’s current solicitors sent the appellant’s application form to the UK Border Agency and that the top of their letter referred to the appellant’s nationality as being Bangladeshi. She noted also later in her determination that he had claimed to live with some people who were both Bangladeshi. The appellant indicated for the first time during the course of the hearing that he thought he probably was from Bangladesh, but could be from Burma or even India. The judge found that the appellant had recently decided to embellish his case for his own private reasons. She did not believe that he did not know what his country of origin was.

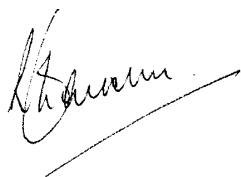
18. In paragraph 23 of her determination the judge noted that the court interpreter who had been booked was a Bangladeshi Sylheti speaker and from time to time when the appellant's evidence was inconsistent and confused he did use the interpreter. The judge noted that it was clear that they both understood each other.
19. At paragraph 25 the judge noted that the appellant claimed that he had been brought to the United Kingdom by adoptive parents, although he did not explain whether he had been formally or informally adopted. He claimed that having been brought to the United Kingdom, they remained for a few weeks and then took him to a takeaway restaurant where they left him. The judge noted that the implication was that he had been abandoned and not had any contact with them since. No attempt was made to explain why this had been done and the judge was not satisfied as to the credibility of his claim because no explanation had been offered as to why a couple would behave in this way. There was no explanation as to why a couple would bother to bring the appellant to the United Kingdom only to abandon him subsequently. She also noted in paragraph 26 that the appellant was completely vague about other elements of the relationship with his so-called adoptive parents. She believed that they were a figment of his imagination invented to explain why he claimed that he had no contacts in Bangladesh.
20. The judge noted that the appellant claimed that his adoptive parents had multiple visas and claimed that they could come and go to any country they liked. She found it inconceivable that as a 15 year old child he knew little about his adoptive parents but had actually knew details of their visas. This was another reason for not believing him.
21. The appellant relied on several documents to show that he had been in the United Kingdom since at least 2001. The first document was at page 16 of the appellant's bundle and was an envelope with a postal stamp from 2001, but as the judge pointed out to Counsel at the hearing, the envelope had been amended to change the name of the person to whom the letter was sent. It was clear that the appellant had originally been addressed to "Iqbil Hussin" but had been amended so it read Mr "Iqbal Hussain". The appellant also relied upon a letter at page 17 of his bundle dated 16th December, 2002 from British Telecom. Again, this was addressed to Mr Iqbal Hussin. At page 18 was another letter from BT which again was addressed to Mr Iqbal Hussin and at page 21 was a third document from British Telecom being a letter dated October 2003 ,but it was addressed to Mr Iqbal Hussin. The first document which contained the appellant's name was an NHS medical card issued on 27th July, 2004.
22. At paragraph 32 the judge noted that the appellant had been frank that he had obtained false identity documents including a false passport which "somebody gave" him. He knew that it was false but had used it to obtain employment at Netto Supermarket and Next, the clothing retailers. The

appellant did not indicate any regret or remorse in using false documentation indicating that the appellant had no respect for the need to use genuine documents and also disregard for the requirement of permission and status to work legally in the United Kingdom.

22. The judge further noted that in cross-examination the appellant admitted that he had used a passport and other false personal documents to obtain credit, including a loan from the Halifax Bank and also a credit card. He indicated that he had not repaid the loan fully. The judge believed that this was simply another example of the appellant's disregard for the law and of his dishonesty.
23. At paragraph 34 the judge noted that the appellant had also claimed that his parents had British passports on the occasion when he was raided by Border Agency officers in 2009. This evidence was inconsistent with his claim that his adoptive parents allegedly told him that they had multi-entry visas. He told officers in 2009 when encountered that he had lost contact with his adoptive parents "a few years ago". The judge noted that in 2009 that would have been thirteen years ago. When asked what the truth was at the hearing the judge noted that the appellant replied, "after a few weeks they left". She noted that this failed to explain the confusion in his evidence.
24. The judge also noted that one telephone bill he relied on showed a call to Bangladesh lasting for 24 minutes. It was suggested by the respondent that this telephone call was evidence that he did still have contacts in Bangladesh. The appellant claimed that he had not made the call and that somebody else had done so. He was asked whether he recalled making that call and said he did not recognise it and believed that a friend used his phone. The judge was satisfied that the appellant did not recall the individual telephone call and was merely saying the first thing that came into his head. The judge did not believe that one such call would necessarily establish that he had links with Bangladesh but in the context of this appeal and all the other inconsistencies in the appellant's account she believed that his evidence was significantly undermined and was not prepared to accept his claim that he had no links or ties.
25. The appellant called a witness on his behalf, Mr Moznu Miah. He claimed to have stayed with this witness until he was 20, but the witness claimed that he had only stayed until he was 18. The witness presented himself as "Moznu Miah" in his witness statement and was introduced as such. He had signed his witness statement using that name and confirmed his name and address without hesitation. When asked about his nationality he produced a passport from his pocket in the name of "Mohammed Nanzurul Hassan". The judge believed that the photograph in the passport was the person appearing before her. When asked why the witness had a passport in a different name, he indicated that he had gone on a trip to perform Haj and told that he could not go because he did not have a Muslim name. He claimed that he changed his name. The judge did not

believe the reasons given by the witness for the change of name and said as much in open court, to give Counsel an opportunity to explore concerns about the apparent dishonesty of the witness. The judge did not know the true reason for the witness having two names, but was satisfied that it was for some wholly dishonest private reason or reasons.

26. On the evidence before the judge, she found that she was not satisfied as to his blanket assertion that he had no family or contacts in Bangladesh. She noted that she had found him to be a wholly unreliable witness and found that he did not meet the requirements of paragraph 276ADE. She went on to consider his Article 8 appeal but found that it would be wholly proportionate to facilitate immigration control over the appellant's right to a private life. She dismissed the appeal.
27. I find that my careful examination of the judge's determination reveals that the judge did not err on a point of law.
28. The appellant simply failed to discharge the burden of proof on him to show that he had no ties including social, cultural or family with Bangladesh. That was a finding which, on the evidence presented to her, she was entitled to make. Her findings are supported adequately by clear and logical reasons. First Tier Tribunal Judge Holt was entitled to find that the appellant's account of being left by adoptive parents was nothing more than a figment of the appellant's imagination. On her finding she was entitled to find that the appellant did not meet the requirements of the Immigration Rules. Her finding that the appellant's removal would be proportionate is not perverse. As the judge pointed out, the appellant has shown total disregard for the laws of this country and admitted to using false documentation to enable him to obtain loans (which apparently he has not repaid) and to obtain work to which he was not entitled.
29. In the circumstances I uphold the judge's determination. The appellant's immigration appeal is dismissed and the appellant's human rights appeal is dismissed.



Upper Tribunal Judge Chalkley