



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal
IA/27979/2013**

Number:

THE IMMIGRATION ACTS

**Heard at Field House
On June 27, 2014**

**Determination
Promulgated
On July 1, 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

**MR REZAUL ISLAM SUHAG
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Khan (Legal Representative)

For the Respondent: Ms Everett (Home Office Presenting Officer)

DETERMINATION AND REASONS

1. The Appellant, citizen of Bangladesh, was born on May 3, 1985. He entered the United Kingdom on December 16, 2012 with a six-month visa entitling him to enter the United Kingdom until June 4, 2013. On May 29, 2013 he submitted an application to vary his leave to enter. This application was refused on June 20, 2013 and at

the same time a decision to remove him under section 47 of the Immigration, Asylum and Nationality Act 2006 was taken.

2. On July 4, 2013 the Appellant appealed to the First-tier Tribunal under Section 82(1) Nationality, Immigration and Asylum Act 2002 (hereinafter called the 2002 Act), as amended, and on January 28, 2014 Judge of the First-tier Tribunal Hussain (hereinafter called “the FtTJ”) heard his appeal. He dismissed his appeal in a decision promulgated on March 27, 2014.
3. The Appellant lodged grounds of appeal on April 4, 2014 and permission to appeal was granted by Judge of the First-tier Tribunal Lambert on May 14, 2014. Permission was granted because the FtTJ had failed to make any findings on the appellant’s private or family life. Judge of the First-tier Tribunal Lambert made clear in her permission that the FtTJ had properly considered the appellant’s “asylum” and “article 3” claims.
4. The matter came before me on the date set out above and the sponsor and her daughter were present.
5. Ms Everett accepted that the failure by the FtTJ to deal with original application was an error in law. She accepted the FtTJ appeared to have concentrated on asylum grounds and overlooked the real reason the application had been made despite the record of proceedings recording the representatives’ submissions on the very issue.
6. Mr Khan asked whether I would revisit the part of the application that had been refused as he submitted there were inadequate reasons. Having considered the determination and both Mr Khan’s and Ms Everett’s submissions I was satisfied that there was no reason to revisit this issue. The FtTJ had considered relocation and found this possible and there was no evidence before the FtTJ that suggested this was not possible. The First-tier Judge had considered similar submissions and rejected them.
7. In those circumstances I was left with the error of law on family and private life grounds.
8. Mr Khan submitted that as the FtTJ had not considered this the matter should be remitted to the First-tier Tribunal for a hearing on the appellant’s claim. Ms Everett had no strong views on the matter.
9. Part 3, Section 7.1 to 7.3 of the Practice Statement states:

“Where under section 12(1) of the Tribunals, Courts and Enforcement Act 2007 (proceedings on appeal to the Upper Tribunal) the Upper Tribunal finds that the making of the decision concerned involved the making of an error on a point of law, the

Upper Tribunal may set aside the decision and, if it does so, must either remit the case to the First-tier Tribunal under section 12(2)(b) (i) or proceed (in accordance with relevant Practice Directions) to re-make the decision under section 12(2)(b)(ii).

The Upper Tribunal is likely on each such occasion to proceed to re-make the decision, instead of remitting the case to the First-tier Tribunal, unless the Upper Tribunal is satisfied that:

- (a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or
- (b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal.

Remaking rather than remitting will nevertheless constitute the normal approach to determining appeals where an error of law is found, even if some further fact finding is necessary."

10. I did consider retaining this matter in the Upper Tribunal but came to the conclusion that as there had been no consideration whatsoever of his family or private life that this was an appropriate case to be remitted to the First-tier Tribunal. I also had regard to the fact that the appellant had changed solicitors and new witnesses were to be called to support the claim and currently there were no statements from them.
11. The appellant's nearest hearing centre was Taylor House so I agreed to remit the case to that centre. In light of a new policy at Taylor House I was unable to fix a date but the listing department in due course will allocate the date.
12. I made the following directions:
 - i. The case will be listed for a two-hour oral hearing at Taylor House Hearing Centre.
 - ii. The appellant's representatives must file and serve on both the Tribunal and respondent a bundle of any documents that are to be relied on for the next hearing to include witness statements from any person to be called. Such statements will stand as evidence-in-chief.
 - iii. The appellant's bundle of documents must be filed no later than fourteen days before the next hearing date.
 - iv. A Bengali (Sylheti) interpreter is required.

- v. For the sake of clarity the hearing is confined to the appellant's claims for private and family life only.

Decision

13. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law only with regard to the appellant's private and family life. The FtTJ's other decision stands.
14. The appeal is remitted back to the First-tier Tribunal for a fresh appeal hearing under Section 12 of the Tribunals, Courts and Enforcement Act 2007.

Date:



DEPUTY UPPER TRIBUNAL JUDGE ALIS
IMMIGRATION AND ASYLUM CHAMBER