

**Upper Tribunal  
(Immigration and Asylum  
Chamber)**  
IA/28705/2013



Appeal Number:

**THE IMMIGRATION ACTS**

**Heard at Field House, London**

**On 24<sup>th</sup> June 2014**

**Determination**

**Promulgated**

**On 28<sup>th</sup> July 2014**

**Before**

**UPPER TRIBUNAL JUDGE ROBERTS**

**Between**

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

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr D Coleman, of Counsel

For the Respondent: Mr S Whitwell, Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The Appellant a citizen of Bangladesh (born 10<sup>th</sup> February 1981) appeals with permission to the Upper Tribunal, against a determination of the First-tier Tribunal, in which his appeal against the Respondent's decision of 17<sup>th</sup> December 2009 to remove him and to refuse him leave to remain under Article 8 ECHR, was dismissed.

2. The Appellant claims he travelled to the UK in 2000; with an ex-employer and his family, who employed him as a houseboy. He claims he was left behind by the ex-employer who simply took him to a restaurant in Aldgate, left him and also took away his passport. In the meantime he also claims that he made his way to his maternal uncle's home at an address in London W2. The Appellant then claims to have supported himself in various catering establishments throughout his time in the UK.
3. In 2009 he made application for leave to remain based on his Article 8 private and family life that he said he had established with his uncle and his uncle's family. That application was refused. It was noted by the Respondent that the Appellant had entered the UK illegally and that there was no evidence to demonstrate that any claimed family life, extended beyond normal emotional ties. It was further noted that the Appellant had engaged in employment which, since he was an illegal entrant, he was not permitted to do.
4. The Secretary of State further looked at paragraph 395C of the Immigration Rules in the context of the Article 8 ECHR claim. She considered whether the Appellant should qualify for discretionary leave; but nevertheless maintained the decision to refuse leave to enter.
5. The Appellant was informed of the decision by letter dated 17<sup>th</sup> December 2009 and advised that he should leave the United Kingdom, since the decision attracted no right of appeal.
6. The Appellant did not leave the UK and on 3<sup>rd</sup> July 2013 he was served with a Section 10 removal notice; that notice did attract a right of appeal. It is this appeal which came before the First-tier Tribunal (Judge C M A Jones).
7. The Appellant's claim is that he would suffer a grave culture-shock if removed to Bangladesh and that he is at risk of inhumane and degrading treatment in breach of Article 3 of ECHR. He said his fear of returning to Bangladesh is a continuing one as the current climate is very unstable and breaches of human rights are rife. It was also claimed that he is suffering from severe depression, risk of self-harm and suicidal tendency and that he would have no medical or family support in Bangladesh. His relationship with his uncle Mr Bodral Hoque and his family is one of exceptional dependency and therefore would be unable to re-establish a private and family life in Bangladesh.
8. The First-tier Tribunal Judge having considered the evidence before her dismissed the appeal. The Appellant sought permission to appeal. The grounds seeking permission are lengthy but for the purposes of this hearing, permission was granted only in the following terms:

"Ground (3) asserts that the Judge erred in rejecting the evidence of the appellant's uncle Mr Hoque on the basis that it contradicts the appellant's evidence but the Judge did not set out the contradictions. The Judge stated [at 16] that she 'cannot accept Mr Hoque's evidence as reliable since it contradicts the evidence given in the appellant's statements'. It is arguable

that the Judge erred in law due to failure to give reasons for finding there were contradictions in the evidence.

Ground (4) argues that the Judge in considering Article 8 failed to take into account that under para 276ADE(vi) the appellant does not have meaningful ties to Bangladesh due to his residence in the UK since 2000. It is arguable that the Judge erred in law for failing to start her consideration of the Article 8 claim by reference to the Immigration Rules”.

Thus the matter comes before me to decide whether the determination of the First-tier Tribunal Judge discloses an error of law of such gravity that the decision needs to be set aside and remade.

### **Error of Law Hearing**

9. Mr Coleman for the Appellant, recognising the limitations placed on him submitted that the First-tier Judge had not given adequate reasons for her rejection of the Appellant’s uncle’s evidence. The Judge was under a duty to give clear reasons for finding oral evidence to be not credible and such findings had to be supported by reasons. The First-tier Tribunal Judge had stated at [16] of the determination what amounted to one line.

*“I cannot accept Mr Hoque’s evidence as reliable since it contradicts the evidence given in the appellant’s statements”.*

Mr Coleman submitted that if one compared the Appellant’s evidence with his uncle’s, there are no contradictions shown. Even if there were the Judge has failed to say what they are. This is material because it means that the uncle’s evidence is discounted and had it been properly factored in the Judge may have found that family life under Article 8 was engaged. So far as ground 4 is concerned Mr Coleman sensibly limited his submissions to saying that the Appellant had been denied consideration under the Immigration Rules.

10. Mr Whitwell on behalf of the Respondent relied on the Rule 24 response. Further to that, he emphasised that firstly so far as ground 4 is concerned, it is hard to see how the FtT Judge can be said to have erred. It is quite correct that there was no consideration of 278ADE or Appendix FM of the Rules. Since the Appellant has no partner or wife he could not benefit from those parts of the Rules in any event. Further, what is being appealed against is a decision made in December 2009. The refusal was based on paragraph 395C and Article 8, which were the relevant Rules and jurisprudence at that time.

### **Has the Judge Erred?**

11. The First-tier Tribunal Judge heard oral evidence from both the Appellant and his uncle. The saving grace in this determination is that the Judge has

made a full note of both the evidence-in-chief and the cross-examination of the Appellant's uncle Mr Hoque. In [16] the Judge having taken note of the evidence before her concluded that she did not find the Appellant to be a credible witness. She gives full and considered reasons for this finding. What is clear from a reading of the determination is that she compares the various statements of the Appellant to his oral evidence and finds the Appellant's "statements were glaringly at odds with the oral evidence". There has been no challenge to that finding and therefore it stands. When dealing with Mr Hoque's evidence the Judge reports in [16], "I cannot accept Mr Hoque's evidence as reliable since it contradicts the evidence given in the Appellant's statements". The Judge's conclusion is somewhat brusque perhaps, but the question is whether her reasons are adequate.

12. The starting point, in my judgment, must lie with the Judge's findings in respect of the Appellant. The Judge comprehensively disbelieved the Appellant's account and this she was entitled to do. She found fundamental discrepancies in the Appellant's account because he said on the one hand that he was always in work and on the other he had no regular work due to lack of papers. That contrasts with the Appellant stating that he had lived with his uncle for fourteen years and that his uncle supported him. The latter statement gives the impression of the Appellant living full-time with his uncle and being entirely dependent upon him. Mr Hoque however in his statement says he first became aware of the Appellant's presence in the United Kingdom sometime in December 2000 when he arrived at his doorstep in London W2.
13. Mr Hoque goes on to say that the Appellant remained in the United Kingdom and lived with him at the aforementioned address (London W2) from time to time for up to approximately six years. He often went away in search of employment. He then goes on further in [6] of his statement to say "Jubel has over the years also stayed with me and my family at 21 Ham Park Road for about a year since from sometime in 2006". All this is a far cry from the Appellant's evidence of an uncle who has been providing all the support for him. The First-tier Tribunal Judge was entitled to reach the conclusion that she could not accept Mr Hoque's evidence as reliable because it contradicts the evidence given in the Appellant's statements. Her reasons are adequate.
14. So far as ground 4 is concerned Mr Coleman quite properly did not press that matter. I accept Mr Whitwell's submission that the Appellant having applied for leave to remain outside the Rules in October 2009 and the application being refused in December 2009, the First-tier Tribunal Judge was not required to consider the appeal in respect of paragraph 276ADE (Edge Hill [2014] EWCA Civ 42).

**DECISION**

15. For the foregoing reasons the First-tier Tribunal did not make a material error of law and the Appellant's appeal against its decision is therefore dismissed.

No anonymity direction is made

**Signature**

Judge of the Upper Tribunal

**Dated**

**Fee Award**

I have dismissed the appeal and therefore there can be no fee award.

**Signature**

**Dated**