



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

Appeal Number: AA/10921/2014

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 19 May 2015**

**Given orally at the hearing**

**Decision & Reasons  
Promulgated**

**On 10 June 2015**

**Before**

**THE HONOURABLE LORD MATTHEWS sitting AS AN UPPER TRIBUNAL  
JUDGE UPPER TRIBUNAL JUDGE MCGEACHY**

**Between**

**JAMAL AHMED  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Miss D Qureshi, Counsel, instructed by Taj Solicitors

For the Respondent: Mr P Nath, Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant is a citizen of Bangladesh who was born in September 1971. He came to Britain in 2000 and claimed asylum. It was found that he had claimed asylum in France and he was removed to France on third country grounds on two occasions before, on the third occasion, entering Britain in September 2000 when he made a further asylum claim.

2. It appears that at that stage he was subjected to bail conditions but that very quickly he stopped complying with these and was noted as an absconder. The reason which Miss Qureshi gives for that happening is that he did not speak English. He was newly arrived in Britain and did not have any legal advice. The reality of course is that he says that when he arrived back in Britain he was living with other members of his family who presumably had been here for some time and would have been able to read English and moreover he would have known that he should not abscond.
3. Thereafter there was a delay until 2010 when he was apprehended and the asylum claim was effectively revived. He was then subject to reporting conditions which it appears he followed.
4. What of course is relevant is that during the period between 2000 and 2010 the appellant did nothing to ask the Home Office how his asylum claim was progressing. There is a duty on a claimant to keep in touch with the respondent and ensure that their claim is not forgotten.
5. The appellant was in due course refused in November 2014 and his appeal was heard by Judge of the First-tier Tribunal Farmer on 10 March 2015 and dismissed in a determination promulgated on 16 March. Judge Farmer noted the appellant's immigration history, noted relevant country guidance regarding asylum claims from Bangladesh and reached the conclusion that the appellant's asylum claim could not succeed. That decision has not been challenged.
6. The judge, however, did go on to consider the rights of the appellant under Article 8 of the ECHR in paragraphs 30 onwards of his determination. He found that the decision would not cause the United Kingdom to be in breach of its obligations under the 1950 Convention. He noted the basis of the appellant's claim and first turned to the Rules in paragraph 276ADE. He found that the appellant could not qualify under the Rules. He stated in paragraph 39 that clearly neither paragraph 276ADE nor Appendix FM is as explicit as the Rules relating to deportation but he said that the respondent put a gloss on this by adopting the policy set out in **Nagre** which made specific reference to the instructions of the respondent given to officials considering cases that did not meet the requirements of the Immigration Rules. He then set out those circumstances.
7. He then turned to relevant case law setting out the principles in the House of Lords judgment in **Razgar** [2004] UKHL 27 and other relevant case law such as that in **Kugathas** [2003] EWCA Civ 31 which makes it clear that, generally speaking, the relationship between adult siblings is not one that leads to a right to family life which would be infringed.
8. He then considered the judgment of the House of Lords in **EB (Kosovo)** [2008] UKHL 41 and said that delay in decision making might cause an individual to lose specific advantage of opportunities and it might create

circumstances which strengthened an individual's claim to family or private life, spouse, work or community ties.

9. He looked at the decision in **MM (Serbia and Montenegro)** [2005] UKAIT 00163 and noted the guidance therein that delay without more cannot be determinative on its own; that delay might lead to a claim being "truly exceptional" only if it would lead to a conclusion that there would have been a free standing claim which could have led to an extension of stay which had been lost because of the delay; and that the delay should not have been acquiesced in by the applicant - an applicant is not entitled to sit back and enjoy whatever this country has to offer, relying on no more than the administrative incompetence of the authorities.
10. He went on to say he accepted that there had been some delay in this case. He did not find the delay assisted the appellant's claim in the circumstances and he relied on the speech of Lord Brown of Eaton-Under-Heywood in **EB (Kosovo)** at paragraph 42 where Lord Brown had said that if the public interest otherwise demands that a claim fails it should not succeed merely because it might have been stronger had it been determined earlier. Judge Farmer therefore went on to dismiss the human rights appeal.
11. Lengthy grounds were submitted which referred to a considerable amount of case law but they in effect boiled down to the point on which permission to appeal was granted which was that of delay. It was on that point that Miss Qureshi has argued that the judge erred in law. We accept that she was at some disadvantage on her first point which was that the appellant had lived at his brother's house without interference or questioning by the Home Office and that there were no conditions with which he had not complied as it appears from documents on the file which Mr Nath has that in fact the appellant, although on bail conditions, did not comply with those conditions albeit that it is claimed that he went on living at the same house.
12. The reality is that it was the duty of the appellant to keep in touch with the Home Office and certainly to comply with the conditions that were imposed upon him.
13. Miss Qureshi emphasised that since 2010 the appellant has complied with reporting conditions and that this shows that he had had no wish to evade being detected. She emphasised the delay as being an unconscionable delay because the appellant had built up private life rights. While we note the judgment in **EB (Kosovo)** which does emphasise that delay can lead to private life rights being built up, for example when an appellant marries, has children and so on, Judge Farmer correctly pointed out that has not happened in this case.
14. It appears in any event that the appellant is no longer living in the house with other members of his family. He is working and living in Preston. He is not exercising in any way family life with other members of his family.

There is nothing in the evidence before us which indicates that he has had a family or private life here which effectively could not be continued in Bangladesh. He could work there. He could form friendships and so on.

15. Moreover, it is evident that Judge Farmer was correct to point out that the appellant could not benefit from the provisions of the Rules, and the reality is that Section 117 of the Nationality, Immigration and Asylum Act 2002 sets out relevant factors to take into account in an Article 8 assessment, the principal of which is the maintenance of effective immigration control.
16. This is a case of a man who has no basis for stay here. He is not entitled to asylum. He has not built up any family relationships here nor indeed is there any particular evidence of his exercising private life here.
17. In these circumstances we can only conclude that the decision of the First-tier Tribunal Judge was correct and that he made no error of law in his determination and we find therefore that his determination dismissing this appeal shall stand.

**Notice of Decision**

The appeal is dismissed.

Signed

Date

Upper Tribunal Judge McGeachy