



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

Appeal Number: IA/22936/2014

THE IMMIGRATION ACTS

Heard at Manchester

On 14th January 2015

**Determination
Promulgated**

On 27th January 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

**MR HASSAN AHMED
(NO ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr C Timpson, Counsel

For the Respondent: Mr A McVeety

DECISION AND REASONS

1. The Appellant is a citizen of Bangladesh born on 10th March 1996. The Appellant entered the UK on 15th September 2007 on a visit visa valid until 21st February 2008. On 2nd November 2011 he applied for indefinite leave to remain outside the Immigration Rules. His application for settlement was refused but he was granted discretionary leave to remain until 9th March 2014 as he was a minor with no suitable reception arrangements in Bangladesh. On 14th February 2014 the Appellant applied for indefinite leave to remain outside the Immigration Rules on compassionate grounds.

His application was refused by the Secretary of State by Notice of Refusal dated 19th May 2014.

2. The Appellant appealed and the appeal came before First-tier Tribunal Judge Pickup on 5th September 2014. In a determination promulgated on 19th September 2014 the Appellant's appeal was dismissed under the Immigration Rules and under Article 8 of the European Convention of Human Rights.
3. On 29th September 2014 the Appellant applied for permission to appeal to the Upper Tribunal. Permission was granted by First-tier Tribunal Judge Cheales on 11th November 2014. Granting permission Judge Cheales found that it was arguable that the judge's findings on whether the Appellant had ties to Bangladesh were inconsistent in that he found that the Appellant had no family friends or social support in Bangladesh but also found that he had significant connection to life in that country. On that basis Judge Cheales considered that there was an arguable error of law and found that all grounds could be argued.
4. On 24th November 2014 the Secretary of State responded to the Grounds of Appeal under Rule 24. It was submitted that the judge had considered the evidence of the appeal and made clear findings on the issue of ties to Bangladesh/Bangladeshi culture within paragraphs 21 to 39 of the determination and it was submitted that the findings were not inconsistent.
5. It was on that basis that the appeal comes before me to determine whether or not there is a material error of law in the decision of the First-tier Tribunal. The Appellant appears by his instructed Counsel Mr Timpson. The Secretary of State appears by her Home Office Presenting Officer Mr McVeety.

Preliminary and Definitive Issue

6. Both legal representatives start by seeking to address me on a preliminary point that they have considered. It is put to me that there is an error in the Grounds of Appeal on the basis that the appeal was brought under Appendix FM of the Immigration Rules and it should have been brought under the Immigration Directorate Instructions Family Migration Guidelines. I am specifically referred to paragraph 3.3.1 therein headed "Individuals Granted Discretionary Leave before 9th July 2012". The guidelines therein set out:

Applicants who were granted leave under the discretionary leave policy before 9th July 2012 will continue to be considered under that policy through to settlement provided they continue to qualify for leave and their circumstances have not changed. (Normally the person can apply for settlement after accruing six years' continuous Discretionary Leave, unless Discretionary Leave has been granted because the individual is

excluded from a grant of asylum or humanitarian protection, in which case ten years' leave is usually required.)

7. It is pointed out to me by Mr Timpson that leave in this instant case was granted in May 2012 when the Appellant was acknowledged as a minor and a further application should be considered under the policy and not the Rules and therefore the application at first instance should never have been considered under Appendix FM. Mr McVeety agrees and endorses this.

Findings and Decision

8. The error in this matter stems from the original consideration of the application and Notice of Refusal by the Secretary of State rather than due to any error of the Immigration Judge on the issues that were put before him. The error is in the Respondent's decision and hence the judge's decision. It is not appropriate therefore for me to proceed to consider the suggested errors of law in the First-tier Tribunal Judge's determination. This matter has been wrongly addressed at first instance by the Secretary of State.
9. I am satisfied consequently that there is a material error of law and the decision is fundamentally flawed albeit that that is through no fault of the Immigration Judge. In such circumstances I set aside the decision of the First-tier Tribunal and I remit the application for fresh consideration by the Secretary of State under the Immigration Directorate Instructions for Family Migration – Chapter 8 Transitional Provisions.
10. The First-tier Tribunal did not make an order pursuant to Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014. No application is made to vary that order and none is made.

Signed

Date **27th January 2015**

Deputy Upper Tribunal Judge D N Harris

TO THE RESPONDENT **FEE AWARD**

No fee order is applied for and no order is made.

Signed

Date **27th January 2015**

Deputy Upper Tribunal Judge D N Harris