



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

Appeal Number: IA/24506/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 10 February 2015**

**Decision & Reasons
Promulgated
On 16 February 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE J M LEWIS

Between

**MOHAMMED HUSSAIN
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: None

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

DECISION AND REASONS

The History of the Appeal

1. The Appellant, Mr Mohammed Hussain, is a citizen of Bangladesh. He appealed against a decision of the respondent of 23 May 2013 refusing his application to vary his leave to remain in the UK and to make removal directions. His appeal was heard by Judge Andonian sitting at Taylor House on 10 October 2014. Both parties were represented, the Appellant by Counsel.

2. The appeal was based upon three grounds: political asylum, Article 3 of the ECHR and Article 8 of the ECHR. The grounds of appeal were fully set out in a letter from the Appellant's representatives to the Respondent of 5 November 2012 and his grounds of appeal of 19 June 20123 both prepared by his then solicitors.
3. The judge recorded at paragraph 1 of his determination that as the commencement of the hearing Counsel for the Appellant stated that the appeal was not being pursued on political asylum, Article 3 ECHR or humanitarian protection grounds but only on Article 8 human rights grounds based upon the Appellant's private and family life pursuant to Appendix FM and/or paragraph 276ADE of the Immigration Rules. The appeal proceeded on that basis. The judge heard the evidence of the Appellant and his brother. In a determination of 22 October 2014, promulgated on 29 October, the appeal was dismissed on Article 8 ECHR grounds.
4. Through his then solicitors, the Appellant sought permission to appeal. Three reasons for appealing are given. They all coalesce into a submission that, in considering the Appellant's appeal under Article 8, the judge should have read across his evidence, given in the context of political asylum, Article 3 ECHR and humanitarian protection, of the risk to him on return to Bangladesh and have taken that into account in his consideration of the Article 8 appeal, but had not done so. Essentially on the grounds that this was arguable, Judge Nicholson granted permission to appeal on 16 December 2014.
5. By 10 February 2015, when I conducted the error of law hearing, the Appellant's former solicitors had ceased to act for him and he was unrepresented. The appeal was convened for 2 p.m. on that day. By 2.40 p.m., when I reached it, there was no appearance by the Appellant nor any representative, nor any explanation for absence. The Notice of Appeal did not contain any telephone number for the Appellant, whom I would otherwise have asked the usher to telephone.
6. I satisfied myself from the file that notice of the date, time and place of the hearing had been properly given to the Appellant. Without any explanation for his absence, I heard the application in his absence, releasing the interpreter.
7. Mr Kandola made submissions, which I have taken into account. I reserved my determination.

Determination

8. The letter of 5 November 2012 from the Appellant's representatives to the Respondent sets out the facts of the case and then the legal basis of the application, first under Article 3 and then under Article 8 of the ECHR. It does not refer to political asylum or humanitarian protection. Nor do the

Appellant's grounds of appeal, which invoke the representations of 5 November 2012 and enlarge upon them.

9. The determination of Judge Andonian records the evidence of the Appellant and his brother. It is plain that the appeal was conducted solely on Article 8 grounds by reference to Appendix FM and paragraph 276ADE of the Immigration Rules and to Article 8 of the 1950 Convention. At paragraphs 7, 8, 9 and 14 the judge stated that there was no credible evidence to show that the Appellant would suffer on return insofar as his private life was concerned or that any breach of his right to family and private life would lead to unduly harsh consequences on return and that his evidence about his problems in Bangladesh were asylum orientated and therefore not to be considered. There is no suggestion at any of these points that Counsel representing the Appellant invited him to read across into the Article 8 context the Appellant's political asylum/Article 3 related evidence. Had the submission been made, the judge may be expected to have addressed it and reached a decision upon it.
10. The appeal was confined, at the Appellant's election, to Article 8. His Article 8 grounds were clearly delineated from his Article 3 and from any political asylum grounds. There is no warrant for the judge being required to read across evidence in a dimension of the appeal which was explicitly not pursued into the one which was. The fact that he did not do so was not an error of law. The decision is upheld.

Decision

11. The original determination contains no error of law and is upheld.
12. No anonymity direction is made.

Signed

Dated: 16 February 2015

Deputy Upper Tribunal Judge J M Lewis