



IAC-AH-PC-V1

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

Appeal Number: IA/27907/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 18th August 2015**

**Decision & Reasons Promulgated
On 9th September 2015**

Before

**UPPER TRIBUNAL JUDGE RENTON
UPPER TRIBUNAL JUDGE GRAY**

Between

**KAMRUL HASSAN SUMON
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr D Balroop, Counsel instructed by Malik Law Chambers
Solicitors

For the Respondent: Ms E Savage, Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The Appellant is a male citizen of Bangladesh born on 2nd February 1985. The Appellant's immigration history is that he first entered the UK on 27th September 2006 with leave to enter as a student until, eventually, 30th November 2008. Subsequently the Appellant was granted leave to remain as a Tier 1 (Post-Study Work) Migrant until 14th October 2010. The

Appellant then applied for further leave to remain as a Tier 1 (General) Migrant which application was refused on 22nd December 2010. Following judicial review proceedings, the application was reconsidered but again refused on 16th June 2014 for the reasons give in a Refusal Letter of that date. The Appellant appealed that decision, and his appeal was heard by Judge of the First-tier Tribunal S Walker (the Judge) sitting at Taylor House on 8th January 2015. He decided to dismiss the appeal under the Immigration Rules and on human rights grounds for the reasons given in his Decision dated 17th January 2015. The Appellant sought leave to appeal that decision, and on 17th March 2015 such permission was granted.

Error of Law

2. We must first decide if the decision of the Judge contained an error on a point of law so that it should be set aside.
3. The case has a long history. The application for leave to remain made on 12th October 2010 was originally refused on 22nd December 2010. The Appellant appealed that decision but that appeal was dismissed by the First-tier Tribunal and leave to appeal to the Upper Tribunal was refused. The Appellant sought a Judicial Review of that decision, which application was resolved by consent at a hearing on 17th April 2012 when it was ordered that the original refusal decision be quashed and that the application be reconsidered. Apparently it was part of that order that the Respondent consider the factors set out in paragraph 395C of HC 395 and such consideration appears at the foot of page 6 of the refusal decision of 16th June 2014 although by then paragraph 395C had been removed from the Immigration Rules to be replaced by paragraph 353B.
4. The refusal decision was initially made under the provisions of paragraph 322(2) of HC 395 on the basis that the Appellant had used a false document as part of his application. The Judge upheld that decision and dismissed the appeal under the Immigration Rules for that reason. That decision has not been impugned in this appeal. The Judge then considered the Appellant's Article 8 ECHR rights. It was conceded by the Appellant's representative that the Appellant had no family life in the UK, and therefore the Judge was only concerned with the Appellant's private life. The Judge followed the format given in the decision in **R (Razgar) v SSHD [2004] UKHL 27**. He was satisfied that the Appellant had a private life in the UK which would be interfered with by the Respondent's decision to such a degree of gravity as to engage the Appellant's Article 8 rights. However, the Judge found such interference to be proportionate.
5. At the hearing, Mr Balroop submitted that the Judge had erred in law in coming to that conclusion. Mr Balroop referred to the grounds of application and argued that the Judge had erred in law by failing to consider if the Respondent had exercised her discretion properly in accordance with paragraph 395C. This was a material error. There had

been some consideration of the relevant factors at paragraph 28 of the Decision, but not all of those factors had been considered in the round.

6. In response, Ms Savage referred to the Rule 24 response and argued that any such error of law was not material. The Judge made his decision upon findings of fact which had not been challenged in this appeal. Most of the factors mentioned in paragraph 395C were dealt with by the Judge, and if he had considered them all, his decision would have been the same.
7. We find no material error of law in the decision of the Judge. The Judge carried out the Article 8 ECHR assessment in the proper way and demonstrated that he had carried out the balancing exercise necessary for any assessment of proportionality. The Judge carried out a careful and detailed analysis of the relevant evidence, particularly that relating to the extent and nature of the Appellant's private life in the UK. The Judge attached the appropriate weight to the public interest, and for the reasons which the Judge explained at length at paragraphs 26 to 29 inclusive of the Decision, found that such public interest outweighed those factors in favour of the Appellant. This was a decision open to the Judge on the evidence before him.
8. It is not clear whether any decision to remove under Section 10 of the Immigration and Asylum Act 1999 was made, but it seems to be the case that the Respondent agreed to carry out a paragraph 395C consideration and this appears in the refusal decision. That part of the decision was not specifically dealt with by the Judge in his Decision, but if that was an error of law, then we find it not to be material. Looking at the factors listed in paragraph 395C, they are all referred to and dealt with by the Judge in his Decision with the exception of any criminal record of the Appellant. As the Appellant has no criminal record, this was not a relevant factor. In our view it follows that if the Judge found the decision of the Respondent to be proportionate, it follows that the Judge did not disagree with the Respondent's exercise of her discretion under paragraph 395C.

Notice of Decision

The making of the decision of the First-tier Tribunal did not involve the making of a material error on a point of law.

We do not set aside the decision, and the appeal to the Upper Tribunal is dismissed.

Anonymity

The First-tier Tribunal did not make an anonymity direction and we find no reason to do so.

Signed

Date

Upper Tribunal Judge Renton