



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

Appeal Number: IA/29585/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 20th January 2015**

**Decision & Reasons
Promulgated
On 27th January 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE MCCLURE

Between

**MR MOHAMMED MEHEDI HASAN
(NO ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Kabir, Solicitor of SEB Solicitors

For the Respondent: Mr Shilliday, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant, Mr Mohammed Mehedi Hasan, date of birth 1st August 1984, is a citizen of Bangladesh.
2. I have considered whether any of the parties to the present proceedings requires the protection of an anonymity direction. Taking account of all the circumstances I do not consider it necessary to make an anonymity direction.

3. This is an appeal by the Appellant against the determination of First-tier Tribunal Judge Sangha promulgated on 27th October 2014. The judge dismissed the appeal of the Appellant against a decision of the Respondent dated 10th July 2014 to refuse the Appellant a residence card as evidence that he was entitled to reside in the United Kingdom as a family member of an EEA national under Regulation 8 of the Immigration (EEA) Regulations 2006.
4. By permission granted on 10th December 2014 First-tier Tribunal Judge O'Garro granted permission to appeal to the Upper Tribunal.
5. On 11th September 2009 the Appellant was granted entry clearance to the United Kingdom as a Tier 4 Student under the points-based system. That leave was to run from 28th October 2012. On 26th September 2011 the Appellant applied for an extension of his leave which was granted. On 30th April 2013 the Appellant applied for an EEA residence card as confirmation of a right to reside in the United Kingdom as an extended family member of an EEA citizen exercising treaty rights in the UK.
6. The Appellant was seeking to assert that he was an extended family member of a Mr Aminul Islam Begum as he was dependent upon and/or a member of the household of Mr Aminul Islam Begum whilst in Bangladesh in the past and was presently dependent and a member of the household of Mr Aminul Islam Begum in the United Kingdom.
7. As set out above the Appellant came to the United Kingdom in 2012. Mr Aminul Islam Begum did not become a citizen of the EEA until 2013. It is noted within the determination at paragraph 17 that Mr Begum became a Spanish citizen at the beginning of 2013. Accordingly there was no point in time when the Appellant was resident or dependent upon an EEA citizen whilst he was in Bangladesh.
8. I draw attention to the case of Dauhoo [2012] UKUT 79 and the case of Moneke [2012] UKUT 341 in which the Upper Tribunal summarised the requirements of Regulation 8. The case law emphasises that the EEA national has to be an EEA national at the time that the applicant was dependant or a member of the household in his home country and prior to coming to the United Kingdom. In the present circumstances the EEA national only became an EEA national after the Appellant came to the United Kingdom. Accordingly the Appellant cannot succeed under the Regulations in respect of his application for an EEA residence permit.
9. The Grounds of Appeal continue by arguing that the judge has failed to consider Article 8. The first point to be made in respect thereof is that there is no decision currently to remove the Appellant. The decision refusing to issue a residence card specifically states that the Appellant is required to leave the United Kingdom failing which a separate decision may be made to enforce removal at a later date. Until such time as there is a decision to remove the Appellant it does not appear that the present arrangements with regard to the Appellant are to be altered. What is

required on the Appellant's part is that the Appellant should make a proper application to remain either under the Immigration Rules or on the basis of his Article 8 rights. The Appellant has made no such application.

10. There can be no reason why the Appellant should not make such an application and have a proper consideration of whether he would be entitled to remain in the United Kingdom in accordance with the immigration rules and Article 8. In such circumstances until such time as the Appellant has made a proper application I see no reason why the Secretary of State should consider in detail the Article 8 rights of the Appellant. All that is required is for the Appellant to make a proper application which he has not done.
11. I would also note that on the basis of the evidence presented the only evidence of any family or private life relates to the two statements submitted by the Appellant and Mr Begum, his Sponsor and cousin. The extent of any family life is a period of one year when the Appellant has been living with Mr Begum and a period when it is suggested he has been dependent on Mr Begum for financial support.
12. The Appellant came to the United Kingdom as a student and was given further leave as a student. Once the purpose for which the Appellant was given leave is complete in the normal course of events the Appellant would return to his home country. He is in the UK on a temporary basis without any expectation of being able to stay. The Appellant has the opportunity of remaining provided he can comply with the Immigration Rules or can assert any substance to an Article 8 right to private or family life.
13. Other than the aspects outlined of dependency of a financial nature or living with Mr Begum for a period of a year the Appellant has not put forward any other aspects other than the education that he came to enjoy in the United Kingdom.
14. In accordance with the cases of CDS Brazil [2010] UKUT 305 [see also LL (China) v SSHD [2009] EWCA Civ 617 education in the United Kingdom is an aspect of private life but there is no right to education. The development of other aspects of private life need to be present to give substance to such private life. Once that purpose of the leave is complete and the Immigration Rules give an opportunity to stay, the continuation of that private life aspect is more than amply covered by the Rules themselves.
15. The Appellant has family in Bangladesh, his home country. His parents are there. His siblings are there. In the United Kingdom he has Mr Begum. He has asserted that he has a financial dependency upon Mr Begum. However, as is evident from paragraphs 17, 18 and 19 of the determination the judge did not accept the evidence with regard to financial dependency. The judge was perfectly entitled to make findings in respect thereof and to reject such financial dependency.

16. That being the extent of family life and private life, the family life would have to meet the requirements with regard to Kugathas [2003] EWCA Civ 31 and on the facts as presented I would not have found that Article 8 family life existed in respect of the facts as presented. With regard to private life the Appellant has not asserted any other material aspect and his right to education is limited by the fact that he could succeed under the Immigration Rules provided he met the Rules himself. If the Appellant wishes to pursue his studies then he should make a proper application to remain as a student.
17. Taking all the circumstances into account the requirement of the Appellant to make a proper application to have proper consideration of his private life I find is not such an interference in any Article 8 right as to make a breach of the Article engaged on the facts as presented.
18. Taking account of the circumstances I do not find that the judge has made a material error of law in failing to consider Article 8. The fact of family life has not been proved in accordance with Kugathas. The fact of private life has not been proved. In all the circumstances I find that the judge was entitled to deal with the matter in the manner that he did. Even if the judge has made an error of law, such error of law is not material as all that is required is for the Appellant to make appropriate application to be entitled to stay in accordance with the Immigration Rules.
19. Accordingly for the reasons set out I find that there is no arguable material error of law in the determination and I uphold the decision to dismiss this matter on all grounds.

Notice of Decision

The appeal is dismissed

No anonymity direction is made.

Signed

Date **27th January 2015**

Deputy Upper Tribunal Judge McClure

TO THE RESPONDENT FEE AWARD

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

Signed

Date **27th January 2015**

Deputy Upper Tribunal Judge McClure