



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

Appeal Number: IA/23005/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 16th August 2017**

**Decision & Reasons Promulgated
On 5th September 2017**

Before

Upper Tribunal Judge Chalkley

Between

**MUMINUR RAJA CHOWDHURY
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No appearance

For the Respondent: Ms Julie Isherwood, a Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant was born on 15th December 1980, and is a national of Bangladesh.
2. The appellant entered the United Kingdom as a Tier 4 (General) Migrant (Student) on 28th January 2010 and was granted further leave to remain in the same category until 30th April, 2012.

3. He was granted further leave to remain as a Tier 1 (Post-Study Work) Migrant until 1st August 2014, and then granted further leave to remain as a Tier 2 (General) Migrant until 15th September 2014.
4. The appellant was issued with a notice of intention to removal from the United Kingdom on 29th October 2014 and made application for further leave to remain on the basis of his family and private life on 16th January 2015. This was refused on 12th March 2015, and following further submissions, the respondent reconsidered the application and maintained her decision in a notice dated 3rd June 2015. The appellant appealed that decision to the First-tier Tribunal and his appeal was heard by First-tier Tribunal Judge Fox on 17th November 2016 at Harmondsworth.
5. Dissatisfied with the judge's decision, the appellant sought and was granted leave to appeal.
6. First-tier Tribunal Judge Page believed that the grounds were arguable in complaining that the determination "lacks appropriate and adequate reasoning". He suggested that the judge's decision at paragraphs 17 to 22 show a paucity of reasoning.
7. The matter was listed for hearing before me at 10.00 a.m. on 16th August 2016. By letter sent by facsimile on 7th August 2016, the appellant's solicitors wrote to the Tribunal indicating that the appellant had informed them that he wishes the Tribunal to, *"conduct his appeal hearing on paper. The hearing is scheduled to take place at Field House, EC4A 1DZ, on Wednesday 16th August 2017 at 10 am."*
8. At 10.40 a.m. there was no appearance by or on behalf of the appellant. It seemed clear to me that the appellant had no intention of attending the hearing, given what his solicitors had said in their letter.
9. The appellant was given notice that the matter had been listed for oral hearing and I am satisfied that he had been served with notice giving him the date, time and place fixed for the hearing of the appeal. I proceeded with that hearing.
10. Ms Isherwood told me that she relied on the respondent's Section 24 notice and urged me to find that there was no error of law in the determination. I reserved my decision.
11. I have very carefully read the determination of First-tier Tribunal Judge Fox and the lengthy grounds seeking permission to appeal. The grounds suggested that the judge erred by failing to note the respondent's consideration of the appellant's circumstances outside the Immigration Rules were made *"on wrongful/mistaken legal premise"*. There is no merit in this challenge. The judge considered the matter himself outside the Immigration Rules and was satisfied that there was no evidence of

circumstances which would justify the Secretary of State granting the appellant leave to remain outside the Immigration Rules.

12. Next it was suggested in the grounds that the judge failed to identify that the respondent's decision failed to consider the appellant's circumstances against the mandatory provisions of Section 117A(2). With very great respect, the judge was considering the matter himself and at paragraph 14 of his determination he makes it perfectly clear that he considered Section 117A(2) of the 2002 Act.
13. Next it was suggested that the judge failed, "*to appropriately apply the principles Immigration Rules in relation to proportionality assessment of the appellant's case*". I am not entirely clear what is meant by that, but it is abundantly clear from the determination that the judge was satisfied that the appellant could not meet the requirements of the Immigration Rules and he therefore considered the matter outside the Rules. The judge makes it clear at paragraph 24 that he was satisfied that there were no circumstances such as would justify the granting of leave by the Secretary of State on the basis of the appellant's Article 8 rights outside the Immigration Rules.
14. The grounds then suggest that the judge was wrong in his assessment of the appellant's mother's dependency upon him, which goes beyond normal emotional ties. With very great respect the judge noted at paragraph 20 that the appellant's mother had provided a letter of support, in which she states that the appellant visits her home. The judge concludes from that the appellant lives independently and that any alleged dependency is incidental to her daily care needs. As the judge points out at paragraph 21, the remaining letters of support submitted on behalf of the appellant demonstrate that the appellant's mother has other family members who can undertake the grocery shopping on her behalf.
15. The grounds are nothing more than expressions of disagreement with the judge's decision. It is not relevant that the Secretary of State found that there were no exceptional circumstances because the judge considered the matter outside the Rules. The grounds do not identify how a consideration of Section 117 factors would favour the appellant, but it is quite clear from paragraph 14 of the determination that the judge considered that provision of the 2002 Act. It is quite clear that the judge found that there was no dependency by the appellant's mother on the appellant beyond normal emotional ties.

Notice of Decision

16. I am satisfied that the finding of the First-tier Tribunal Judge did not involve the making of an error of law and his decision is upheld.
17. No anonymity direction is made.

Richard Chalkley
Upper Tribunal Judge Chalkley

TO THE RESPONDENT
FEE AWARD

I have upheld the decision of First-tier Tribunal Judge Fox and therefore there is no fee award.

Richard Chalkley
Upper Tribunal Judge Chalkley