



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/08272/2016

THE IMMIGRATION ACTS

Heard at Field House
On 11th April 2018

Decision & Reasons Promulgated
On 23rd May 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE RENTON

Between

ANISUL HAQUE
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr F Junior of Lawland Solicitors
For the Respondent: Ms J Isherwood, Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The Appellant is a male citizen of Bangladesh born on 3rd March 1998. The Appellant first arrived in the UK on 14th January 2009 when he applied for asylum. That application was refused but the Appellant was granted discretionary leave to remain

on the basis of his age until 1st December 2012, and then 3rd September 2015. On 14th August 2015 the Appellant made an application for leave to remain on asylum and Article 8 ECHR grounds. That application was refused for the reasons given in a Reasons for Refusal document dated 2nd March 2016. The Appellant appealed and his appeal was heard by Judge of the First-tier Tribunal Norton-Taylor sitting at Taylor House on 13th June 2017. He decided to dismiss the appeal for the reasons given in his Decision dated 30th June 2017. The Appellant sought leave to appeal that decision and on 2nd February 2018 such permission was granted.

Error of Law

2. I 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. As already mentioned, the Judge dismissed the appeal on asylum and humanitarian protection grounds and Appendix FM of HC 395. Neither decision has been impugned in this appeal. The Judge then considered the Appellant's Article 8 ECHR rights outside of the Immigration Rules. The Judge followed the format in **Razgar** and found that the Appellant had a family life and also a private life in the UK which would not be interfered with to such a degree of gravity as to engage the Appellant's Article 8 ECHR rights. However, the Judge went on to consider the proportionality of the Respondent's decision. He treated the best interests of any children as a primary consideration and gave proper weight to the public interest by considering the factors set out in Section 117B of the Nationality, Immigration and Asylum Act 2002. The Judge carried out the balancing exercise necessary for any assessment of proportionality and concluded that the public interest carried the most weight and therefore that the Respondent's decision was proportionate.
4. At the hearing before me, Mr Junior argued that the Judge had erred in law in coming to this conclusion. He referred to paragraph 19 of the Decision and noted that the Judge had been aware that the Appellant had spent over eight years in the UK by the time of the hearing before the Judge. However, the Judge had failed to apply the Respondent's Asylum Policy Instruction Version 7.0 which stated at Section 10 in effect that those who had spent more than six years with discretionary leave to remain ought to be granted indefinite leave to remain under the former Policy.
5. In response, Ms Isherwood submitted that there had been no such material error of law. She referred to paragraphs 3.8; 5.1; 7.1 and 7.2; and 10.1 of the Policy. She argued that the Appellant did not come within the ambit of the Policy, particularly as the Appellant did not come within the provisions of Section 7.2. Following the decision in **AG and others (Policies; executive discretions; Tribunal's powers) Kosovo [2007] UKAIT 0082**, the Appellant's human rights must be considered first, and any discretionary power to allow him to remain was otiose. The Tribunal had no power to substitute its own decision for that of the Secretary of State where the benefit of a Policy depended on the exercise of a discretion. The Judge had made a

thorough and proper assessment of the proportionality of the Respondent's decision and had come to a conclusion open to him.

6. I find no material error of law in the decision of the Judge which as a consequence I do not set aside. The Appellant's argument depends entirely on the Judge's failure to consider the Policy when deciding the issue of proportionality. However, as Ms Isherwood argued, this does not amount to a material error of law. Following the decision in **AG**, the Judge was right not to take account of the Policy when initially deciding proportionality. It may be the case that the decision of the Respondent was made not in accordance with the law, but that was an argument not put to the Judge and therefore it cannot be an error for him not to deal with it. In any event, the Appellant is excluded from the benefit of the Policy by virtue of Section 7.2 thereof.
7. For these reasons I find no material error of law in the decision of the Judge.

Notice of Decision

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

I do not set aside that decision.

The appeal to the Upper Tribunal is dismissed.

Anonymity

9. The First-tier Tribunal did not make an order for anonymity. I was not asked to do so, and indeed find no reason to do so.

Signed

Dated 20th May 2018

Deputy Upper Tribunal Judge Renton