



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

Appeal Number: HU/02800/2018

THE IMMIGRATION ACTS

**Heard at Birmingham Civil Justice
Centre
On 5th July 2019**

Decision & Reasons Promulgated

On 19th August 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

**MR JAKIR ALAM
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Howard (Solicitor)

For the Respondent: Mr D Mills (Senior HOPO)

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge James, promulgated on 23rd October 2018, following a hearing at Birmingham on 27th September 2018. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a male, a citizen of Bangladesh, and was born on 10th March 1999. He applied for leave to remain in the UK on the basis of his private life in the UK. By a decision dated 21st November 2017, the Secretary of State refused that application. The Appellant appeals that decision.

The Appellant's Claim

3. The essence of the Appellant's claim is that he claims to have entered the UK on 11th March 2012 on a visit visa. The visa was then verified biometrically and the Appellant was found to be in the name of Ifteyer Gazi, who was accompanied by Nilma Gazi, who claimed to be a parent. The purpose of the entry was to visit a sister in Birmingham. The visa application had stated that the Appellant was being supported by his father who continued to work in Bangladesh. The Appellant then applied for settlement in the UK claiming that both his parents were dead and that his father had been British. The Appellant claimed that he had been sent to the UK by his village elders. The application was refused. No dates for the application and refusal were provided by the Respondent Secretary of State. The Respondent considered the application under paragraph 276ADE(1) and determined that the Appellant did not meet the requirements of the Rules. In particular, the Appellant would not face insurmountable obstacles to integration on return to Bangladesh. The Respondent also decided that there were no exceptional circumstances to warrant a consideration of the Appellant's leave to remain outside the Rules.

The Judge's Decision

4. The judge heard evidence from a Mr Javaid Iqbal, who identified himself as the Appellant's foster parent. He also identified his signed statement dated 27th August 2018. There was then also evidence from Mr Dong Thoi Long, who identified himself as well as his statement. At the hearing, the Respondent also submitted that there was evidence to the effect that the Appellant had a sister living in the UK although she has not been called to give evidence in support of the Appellant. The Appellant had a normal adult sibling relationship with her only. He had been dishonest when he came to the UK. He should have been honest when he applied for settlement in 2016. At that time he was in a safe and trusting relationship. The fact now remained that he had a family in Bangladesh to whom he could return. He had spent thirteen years of his life in that country after all. The Appellant provided a five page skeleton argument. It was argued on his behalf that he was remorseful and had eventually told the truth. He had come to the UK with his mother who gave him his new identity. He was a child at the time. He had just followed his mother's instructions. He had now been in the country for six years and was an intelligent boy. He had obtained a place at Birmingham University to study economics. He had a loan from his foster parent for this purpose.

He would not be able to speak a national language or a dialect if he was returned to in Bangladesh. He only spoke English.

5. The judge held that there were no very significant obstacles to the Appellant's integration if he were to be returned to Bangladesh. He was clearly an intelligent and resourceful person. Although he claimed to have lost contact with his family, the judge was satisfied that he had family members living in Bangladesh. When he left he had his parents and two brothers living there and he would be able to reunite with them. The Appellant had spent thirteen years in Bangladesh and he would have spoken the local language there. He was an intelligent person. Moreover, English was commonly spoken in Bangladesh. (Paragraph 30). The judge went on to apply Article 8 outside the Immigration Rules (see paragraphs 31 to 35), taking into account Section 117B of the 2002 Act and the public interest requirement to maintain effective immigration controls. The judge held that the public interest requirement meant that the Appellant could not succeed. (See paragraph 34 to 35).
6. The appeal was dismissed.

Grounds of Application

7. The grounds of application raise a number of points. However, permission to appeal was only given on the question whether the judge's failure to make findings in respect of the evidence of the Appellant's foster carer, whose letter appeared at page 19 of the Appellant's bundle, meant that the judge's decision with respect to proportionality was wrongly undertaken. If this was so, then such an omission, in the failure to consider relevant evidence, would have been a material error of law.
8. On 21st November 2018, permission to appeal was granted.

Submissions

9. At the hearing before me, Mr Howard relied upon the grounds of application. He submitted that the one point upon which permission had been granted was that the judge had failed to actually record the foster parent's evidence, or to draw attention to the letter at page 19. In short, if the foster parent's evidence had not been factored into the proportionality exercise, then this had to be a material error, such that this matter should now be remitted back to the First-tier Tribunal, on the basis of an error of law by the judge below.
10. For his part, Mr Mills submitted that he would have to accept that the evidence of the foster parent had been neglected in the judge's eventual assessment under Article 8. However, the Appellant had entered the UK as a child with a false identity. When he reached adulthood, he continued to maintain that falsity. It was true he had done very well in this country. He had secured good GSCE results as well as A levels and was set to go to read economics at Birmingham University. Nevertheless, he had entered

as a visitor, intending to make a short term visit to see a sister. The public interest did require the maintenance of effective immigration control. The foster parent's letter (at page 19 of the bundle) does not say anything over and above that which would normally be said, such as that the Appellant is a nice boy who has done well in his exams, and had developed a family life with the foster parents. There was, on the other hand, no other distinctive factor which would have militated against the public interest in the maintenance of immigration control.

No Error of Law

11. I am satisfied that the making of the decision by the judge did not involve the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision and re-make the decision. My reasons are as follows.
12. First, whereas it is true that the judge has not drawn express reference to the foster parent's evidence, and nor has the judge referred to the letter at page 19 of the Appellant's bundle, that is not to say that the judge was oblivious of such evidence. Indeed, the judge records in the determination that "I received evidence from Mr Javaid Iqbal who identified himself and his address" and that he had identified a signed statement dated 27th August 2018. That reference to a signed statement is indeed the very letter at page 19 of the Appellant's bundle. Therefore, the evidence was plainly in the judge's contemplation.
13. Second, insofar as it is a case that the judge is not seen to be actively placing this evidence of the foster parent in the balancing exercise, when deciding under Article 8, whether or not the balance of considerations fell in the Appellant's favour, the error is not a material one. All that Mr Javaid Iqbal states is that the Appellant was placed in foster care with them over four years ago and that he "is a very kind, considerate, trustworthy and polite young person and is very much education focused, doing very well in his GCSEs and A levels. Our aim now is to get him into university to do a degree in economics ...". He goes on to say that the Appellant "has made a family life for himself here, doesn't know any better, sending him back to a country which now is alien to him would be very unjust and truly damaging to him ...". It is not in dispute that the Appellant had formed a family life, after living for a period of some half a dozen years with the foster parent. The judge does not cast doubt on it. It is a truism. The remaining question is that in relation to the statement by the foster parent that the Appellant "doesn't know any better" than the life in the UK and that "sending him back to a country which now is alien to him would be very unjust".
14. However, the judge does engage with this argument in the determination. The judge is not satisfied that the Appellant, who had spent thirteen years in Bangladesh and was in school until sixth grade, who had also spoken a local language at that time, and was an intelligent person, would have difficulty in reviving his language skills (see paragraph 30). Thereafter,

the judge spends considerable time in separate paragraphs looking at the “**Razgar** question” before concluding that in this case, the public interest in the maintenance of immigration control would take priority over the Appellant’s private and family life rights.

15. As the judge also concluded,

“In the light of the dishonesty in making his applications for leave to remain in the UK it cannot be said that the Appellant was in the UK lawfully when he formed his private life and little weight can be given to it. Further, his immigration status was precarious” (paragraph 34).

16. The judge also recognised the fact that the Appellant had initially maintained a lie on account of what he had been told to say by his parents but “he failed to admit the truth until he was aged 20” (paragraph 35). He also had no significant mental or other health issues and “he will be able to integrate on his return to Bangladesh and he will have the advantage of an education in the UK” (paragraph 35). For all these reasons, the judge was entitled to come to the conclusion that he did on the evidence before the Tribunal.

Notice of Decision

17. The decision of the First-tier Tribunal did not involve the making of an error of law. The decision shall stand.

18. No anonymity direction is made.

19. This appeal is dismissed.

Signed

Date

Deputy Upper Tribunal Judge Juss

17th August 2019