



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/05131/2019

**THE IMMIGRATION ACTS**

Heard at Birmingham  
On 7 November 2019

Decision & Reasons Promulgated  
On 25 November 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE O'RYAN

Between

MR RUHEL AHMED  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Dr E Mynott, instructed by Maya Solicitors  
For the Respondent: Mrs Aboni, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. This is the Appellant's appeal against the decision of Judge of the First-tier Tribunal Broe dated 14 July 2019 dismissing the Appellant's appeal against the Respondent's decision of 13 March 2019 refusing the Appellant's human rights claim.
2. The Appellant is a national of Bangladesh born in August 1994. On 4 June 2006 he was granted entry clearance to enter the United Kingdom as a visitor, valid until 4 December 2006. The Respondent accepts that the Appellant entered the United Kingdom on 27 June 2006. He would at that time have been 11 ½ years old.

3. There is no record of his having made any further application for leave to remain in the United Kingdom until an application made on 2 August 2018, when the Appellant was nearly 24 years old, in which he applied for leave to remain on the grounds of private life set out under paragraph 276ADE(1)(v), as a person aged 18 years or above and under 25 years and had spent at least half of his life living continuously in the United Kingdom, and under 276ADE(1)(vi), on the grounds that there would be very significant obstacles to his integration in Bangladesh.
4. In support of that application a letter of representations from Maya Solicitors dated 2 August 2018 provided that the application was being accompanied by 'documentary evidence of the people supporting him', although I have not seen any supporting evidence dated around the time of that letter. There is a letter from City Walls GP Practice in Chester dated 28 February 2019 which states that the Appellant was registered at the practice from 23 July 2009 to August 2011 and gave his address at that time in Chester.
5. In his decision of 13 March 2019, the Respondent refused the application for reasons set out briefly at paragraph 8 of that decision, that 'you have provided insufficient evidence that you have lived continuously in the UK for more than half your life'. Further at paragraph 11 it was asserted that the Appellant would not face significant obstacles to reintegrating into life in Bangladesh if returned.
6. The Appellant appealed, his appeal coming before the judge on 10 July 2019. The Appellant was represented but there was no appearance on behalf of the Respondent. The Appellant had provided a witness statement which includes the following passage, 'I confirm that I am a Bangladesh national. I arrived in the UK as a minor on 27 June 2006. I have never left the UK since this date of initial entry and have spent all my formative years in the UK. I am now 24 years old.' There were also letters within the Appellant's bundle from:
  - (i) a Mr Islam dated 25 February 2019 which states in summary that he had known the Appellant since 2006 through his family; the letter does not say anything about whether the Appellant had resided continuously in the United Kingdom since 2006;
  - (ii) a Mr Begum dated 21 February 2019 also stating that he had known the Appellant since 2009 through family and friends;
  - (iii) a Mr Hanzalah dated 23 February 2019 stating that he has known the Appellant for many years and then gives an assessment of his character;
  - (iv) a Mr Ali dated 23 February 2019 stating that he has known the Appellant from 2006 and that it had been around July or August (impliedly 2006) when they first met in a community park and played football.
7. In determining the appeal, the judge made the following findings:

"My Findings

  12. I have given careful consideration to all of the evidence and documents before me. The burden of proof is on the Appellant who must satisfy me that I should allow the appeal.

13. I note that the Appellant entered this country as a visitor on 26 June 2006. This seems to be accepted by the Respondent. The Appellant was then a child of 11 years of age. Mr Maqsood (*the Appellant's advocate*) said that he was abandoned by his father who returned to Bangladesh where he died. I note that there is no mention of this in the Appellant's statement where he says merely that he is cut off from his family members in Bangladesh.
14. In any event the Appellant was a child when he arrived in 2006. There was no evidence at all to show how he managed to live. I do not find it credible that he would not have been living with adults whether or not they were relatives. There was nothing from anyone to explain how he was living. I note that he says that he has no relatives in this country yet in his application it said that he was supported by relatives who gave him £25 per week. There was no evidence of his attendance at school which would have been easy to obtain. There were no photographs of him as a child. There was no evidence from whoever was caring for him at that time.
15. He has provided a letter from a medical practice stating that he was registered from 23 July 2009 to August 2011 but nothing before or after those dates. He was 15 to 17 at that time. The letter states that he was living at an address in Chester but there is nothing from whoever he was living with. There are no medical records to show that he attended the surgery. There is none of the evidence that one might expect of life in this country such as telephone accounts, social media activities or involvement with any organisations.
16. The Appellant provided the letter from the surgery to support his application and it remains the only documentary evidence from an official source. The Respondent made his concerns clear in the Reasons for Refusal Letter but the only other evidence adduced by the Appellant is in the form of the letters and photographs described above. The photographs do not show him as a child and none of the authors of the letters attended to give evidence. I note that some of them live in Birmingham. There was no explanation for the failure to call any of them to give evidence and I find that I am able to attach only limited weight to the letters. There was nothing from the relatives who the Appellant claims support him. The Appellant says that he lives with Mr Miah and he provided his P60 but there is no statement from him and he did not attend to give evidence. None of the people in the photographs provided by the Appellant attended to give evidence.
17. The burden of proof is on the Appellant. He must have been aware that his application was refused because of a lack of evidence yet he has failed to address the issue in a meaningful way. He has not taken the opportunity to provide evidence which ought to have been available or to call witnesses who could have given evidence to support him.
18. I find that he has failed to discharge the burden of proof. He has not proved that he meets the requirements of paragraph 276ADE(1)(v). I do not accept his evidence about his lack of ties to Bangladesh and I am not persuaded that there would be obstacles to reintegration on return."

The Appellant's appeal was dismissed.

8. The Appellant appeals in grounds dated 17 July 2019 which are couched in rather vague terms but appear to argue that the judge erred in law, in summary, as follows:
- (i) failing to take into account the 'substantial letters from family members' that had known the Appellant and who had supported him whilst in the United Kingdom;
  - (ii) unreasonably requiring photographs of the Appellant as a child whereas paragraph 276ADE does not require photographs or an explanation as to who might look after an applicant whilst present in the United Kingdom;
  - (iii) not accepting the GP letter, on the grounds that the judge felt that there were no telephone accounts, social media activities or involvement in any organisations whereas it was inappropriate to place an onus on the Appellant to provide evidence which he would not have and which would not be the norm for a minor child;
  - (iv) there was no evidence that the Appellant had left the United Kingdom since his arrival; the judge failed to make any finding as to whether the Appellant had left the United Kingdom.
9. Permission to appeal was granted by Designated First-tier Tribunal Judge Macdonald in a decision dated 3 September 2019 on the basis that 'The judge does not reject the Appellant's evidence on credibility grounds and it is arguable that he has not provided adequate reasons to show why the Appellant does not meet the requirements of paragraph 276ADE'.

### **Submissions**

10. Dr Mynott for the Appellant argues that the Appellant's claim for leave to remain on the basis of 276ADE(1)(v) had been made out. There was evidence that he had arrived in the United Kingdom in 2006 and no finding that he had left since. The Appellant was between 18 and 24 and he had, on his own account, remained in the United Kingdom for half his life. Dr Mynott argued that if the judge was not disputing the credibility of the Appellant's account, then no adequate reason had been given for finding that the Immigration Rules were not satisfied, as the Appellant had himself asserted in his witness statement and he had been present in the United Kingdom since 2006 and had never left.
11. It was stated that the Appellant's case was supported by the letters from a number of persons (which I have already summarised above). If, in effect, the judge was challenging the credibility of the Appellant's account then in the absence of any cross-examination of the Appellant and in the absence of any matters of credibility being put to him during the course of the hearing, then the judge has proceeded unfairly.
12. Mrs Aboni resisted the Appellant's appeal and argued that the judge had directed himself appropriately in law and had arrived at a decision which was open to him on the evidence. There was no satisfactory evidence either at the time of application or on the appeal that the Appellant had resided continuously in the UK for half of his

life. It was open to the judge to find that the Appellant had not established his case based on the quality of the evidence that he was relying upon. The Appellant had known from the time of the Respondent's decision that the Respondent was of the view that the application was not adequately evidenced but the Appellant had elected to add very little further evidence to the application. There was, as the judge noted, a discrepancy between the Appellant's assertion in evidence as to having no relatives in the United Kingdom compared with his assertion in the FLR form that he had relatives in the UK who supported him by giving him £25 per week. The judge was entitled to treat the Appellant's credibility as diminished as a result. The judge was entitled to note that there was a singular absence of evidence which could normally be expected to have been provided by the Appellant, for example evidence from persons who had cared for him as a child, evidence of any school that he might have attended etc.

13. Dr Mynott, by way of reply, emphasised the point that if the judge had been challenging the Appellant's credibility then the proceedings had been unfair.

### **Discussion**

14. I find that whilst the judge has referred to certain matters of the Appellant's evidence not being 'credible', what the judge has done, in essence, is to find, on the basis of the evidence adduced, that the Appellant has simply not met the burden of establishing to a balance of probabilities that he has been present in the United Kingdom for half of his life. It was manifestly clear to the Appellant from the content of the Respondent's decision letter that the evidence at the time of application had been deemed inadequate to satisfy the Respondent that the Appellant had been present for the relevant period. The question of whether or not the Appellant had in fact remained in the UK since his arrival in 2006 had therefore been placed very firmly in issue by the Respondent.
15. It cannot be said that a decision maker, whether the Respondent or a Tribunal, is obliged to take a bare assertion made by a witness that something is the case (here, that the Appellant had been physically present in the United Kingdom since 2006 and had never left) at face value when, in the circumstances of the case, it can ordinarily be expected for such an assertion to be supported by other evidence. The Appellant's position appears to demand decision makers to accept without question any assertion made by an applicant for leave to remain. Whilst there is no *specified evidence* that is required to establish an application for leave to remain under paragraph 276ADE, the judge's observations are in essence that one could have ordinarily expected to find the Appellant's assertions to be supported by a variety of other evidence of how he had managed to live in the United Kingdom; clear evidence as to who he had lived with; evidence from the relatives said to have financially supported him to the tune of £25 per week; evidence of his attendance at a school; and evidence of him being physically present as a child eg by way of photographic evidence of the 13 years of his life said to have been spent in the UK. The same point is made, in the asylum context, in ST (Corroboration, Kasolo) Ethiopia [2004] UKIAT 00119:

“15. The fact that corroboration is not required does not mean that an Adjudicator is required to leave out of account the absence of documentary evidence which might reasonably be expected. An appeal must be determined on the basis of the evidence produced but the weight to be attached to oral evidence may be affected by a failure to produce other evidence in support. The Adjudicator was entitled to comment that it would not have been difficult for the Appellant to provide a death certificate concerning his brother or some evidence to support his contention that he had received hospital treatment. These were issues of fact for the Adjudicator to assess.”

16. The reference to the judge finding certain matters not credible represents a finding that it was not credible that the Appellant would have been unable to adduce this sort of evidence. It is entirely reasonable for the judge to have expected the Appellant's bare assertion to have been supported by some form of corroborative evidence, in the circumstances of this case. This is not a protection claim, this is a human rights claim where the Appellant is obliged to establish his case to a balance of probabilities. He had simply not done so at the time of the application for leave to remain and, on the basis of the judge's findings, he had still not done so at the time the appeal came to be heard. The judge was not imposing a requirement of corroboration as a matter of law; the judge was using common sense.
17. I find that there was no procedural unfairness to which the Appellant has been subjected. He elected to evidence his case in the manner he did. The letters establish very little about where the Appellant was or what he was doing since 2006; they are extremely thin in detail, and the judge did not err in law in placing little weight on them. There was no error by the judge not making a specific finding that the Appellant had left the UK since his arrival in 2006. The judge was simply finding that the Appellant had failed, due to the sparsity of the evidence he had chosen to rely on, to establish to a balance of probabilities, that he had been in the UK continuously since that time.

### **Notice of Decision**

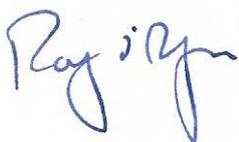
I find that there is no material error of law in the judge's decision.

The Appellant's appeal is dismissed.

No anonymity direction is made.

Signed

Date 25.11.19



Deputy Upper Tribunal Judge O'Ryan