



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

Appeal Number: HU/15126/2017

THE IMMIGRATION ACTS

Heard at Birmingham

On January 7 2019

**Decision & Reasons
Promulgated
On 31 January 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

**MR JUBEL AHMED MIZAN
(ANONYMITY DIRECTION NOT MADE)**

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

Respondent

Representation:

For the Appellant: Ms Rutherford, Counsel, instructed by Samad & Co

For the Respondent: Mrs Aboni, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Bangladesh and he entered the United Kingdom as a visitor on February 3, 2009. His visa enabled him to remain in this country until July 2009. When he entered the United Kingdom he had been living in Bangladesh for a period of nine years, nine months and sixteen days. On January 27, 2012 he submitted an application on family/private life grounds to remain in the United Kingdom but this was refused without a right of appeal on January 3, 2013.

2. On September 20, 2016 the appellant submitted an application for leave to remain on family/private life grounds based on his relationship with his sister and her family and on private life grounds under paragraph 276ADE HC 395.
3. The respondent refused that application on November 2, 2017 on the grounds that he failed to satisfy the eligibility requirements of Section E-LTRC 1.6 of Appendix FM of the Immigration Rules because neither of his parents resided in the United Kingdom. The respondent also rejected his claim under paragraph 276ADE HC 395 because he did not in the respondent's view satisfy the requirements of that Section and it would not be unreasonable to require him to leave.
4. The respondent did consider whether there were exceptional circumstances based on the fact that the appellant had been living with one of his sisters since he arrived in this country and he also had another sister living here. He claimed he had lost contact with his family since his mother returned back to Bangladesh.
5. The appellant lodged his appeal on November 15, 2017 under Section 82(1) of the Nationality, Immigration and Asylum Act 2002 and his appeal came before Judge of the First-tier Tribunal Dhaliwal on May 24, 2018 but in a decision promulgated on June 29, 2018 the Judge dismissed his appeal.
6. Permission to appeal was sought on July 12, 2018 and permission was granted by Judge of the First-tier Tribunal Simpson on August 14, 2018. She found there was an arguable error of law and referred to the fact that whilst there had been an extensive examination of the appellant's circumstances there had been a failure to consider whether the appellant would have satisfied the requirement of paragraph 276ADE(1)(v) HC 395, as well as 276ADE(1)(iv) HC 395. Other issues were also highlighted in the permission.
7. No anonymity direction is made.

PRELIMINARY ISSUES

8. At the commencement of the hearing Mrs Aboni indicated that she had had an opportunity to discuss the nature of this appeal with Ms Rutherford and the position today was that the appellant had now been in this country for nine years, eleven months and four days and as he was over the age of 18 and under the age of 25, he would therefore now meet the requirements of paragraph 276ADE(1)(v) HC 395 and as this was a human rights appeal she accepted that it would be unreasonable in such circumstances to require him to leave the United Kingdom. She therefore accepted there was an error in law and rather than adjourning the case to be reheard either by this Tribunal or the First-tier Tribunal, she indicated that she would be content for the decision to be remade and the appeal allowed on human rights grounds.

FINDINGS

9. Having considered the evidence in this matter it is clear that the appellant has been here for a considerable period of time and if he was today submitting a fresh application under the Immigration Rules he would clearly satisfy paragraph 276ADE HC 395 due to his age and the fact that he has been in this country for more than half his life.
10. The approach therefore suggested by Mrs Aboni is a common-sense approach and whilst technically he does not, with regard to this application, satisfy the requirements of paragraph 276ADE(1)(v) HC 395, I accept there is a strong human right point because he has spent more than half his life here.
11. I accept the Judge did consider the length of time here, but I in assessing reasonableness I find the insufficient weight was placed on the fact that he had spent the period of time in this country having arrived here as a minor. In such circumstances and taking into account the observations above I find there has been an error in law.

Notice of Decision

I set aside the decision of the First-tier Tribunal and I remake the decision and allow the appeal on human rights grounds.

Signed

Date

18/01/2019



Deputy Upper Tribunal Judge Alis

TO THE RESPONDENT FEE AWARD

Although I have allowed the appeal I do not make a fee award as the appeal has been allowed due to current circumstances.

Signed

Date

18/01/2019



Deputy Upper Tribunal Judge Alis