



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

Appeal Number: UI-2023-000546

HU/00158/2022

**THE IMMIGRATION ACTS**

**Field House  
On 10 May 2023**

**Decision & Reasons  
Promulgated  
On 26 May 2023**

**Before**

**UPPER TRIBUNAL JUDGE PITT**

**Between**

**Akmal Khan  
(NO ANONYMITY DIRECTION MADE)**

Appellant

**and**

**Secretary of State for the Home Department**

Respondent

Representation:

For the appellant: Not present

For the respondent: Ms Cunha, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal against the decision issued on 16 January 2023 of First-tier Tribunal Judge Chinweze which refused the appellant's Article 8 ECHR appeal.
2. The appellant is a national of Bangladesh and was born on 19 October 1982.

3. The appellant came to the UK illegally on 1 August 2005. He made an application for leave outside the Immigration Rules which was refused on 17 July 2008. He made a further application on the basis that his status as a Bihari meant that he was stateless. That application was refused on 19 December 2013.
4. On 27 April 2020 the applicant applied for leave as the unmarried partner of a British national. The application was refused on 6 January 2022. The appellant appealed the decision and the hearing took place before Judge Chinweze on 4 November 2022.
5. Judge Chinweze accepted that the appellant met the suitability requirements; paragraphs 37 to 39. He had made arrangements with the respondent to pay off a litigation debt and, in line with the respondent's policy, the debt should not have been taken into account when considering the application for leave.
6. Judge Chinweze also accepted that the appellant had been in a genuine and subsisting relationship with his partner for 2 years prior to the date of the application; paragraphs 40 to 45.
7. The judge found that the appellant could not meet the English language eligibility requirements; paragraph 46.
8. Judge Chinweze went to assess whether there were insurmountable obstacles to the appellant and his partner exercising family life in Bangladesh as provided under paragraph EX1 of Appendix FM of the Immigration Rules; paragraphs 46 to 61. Judge Chinweze found that the appellant's partner could be expected to return to Bangladesh with him notwithstanding her mental health issues as she would be able to obtain appropriate treatment there. She came to the UK from Bangladesh and still had a Bangladeshi passport. She could live in a different part of Bangladesh from her family if they objected to her relationship with the appellant; paragraphs 59 and 60. Those findings are not challenged.
9. Part of the appellant's case regarding insurmountable obstacles was also that he was Bihari and could not return to Bangladesh or any other country as he was stateless. Judge Chinweze said this in paragraph 49:

“As noted in the appellant's immigration history he has previously applied for leave to remain on the basis of being stateless. The application was refused. The appellant accepts he did not appeal the refusal decision. The appellant has not produced any evidence that the Bangladeshi, Pakistani or Indian government will not give him citizenship. Since he did not appeal the refusal of his stateless application, I am bound to find that he has accepted its conclusions. I therefore give little weight to the appellant's assertion that he is stateless.

10. The appellant's only ground of challenge is that the First-tier Tribunal erred in reaching that conclusion. He maintains that he did provide evidence that he had challenged the refusal of his statelessness application in 2013 by way of judicial review. It was as a result of the unsuccessful judicial review that the litigation debt had arisen as discussed above.
11. Also, the appellant's bundle of evidence for the First-tier Tribunal hearing contained a Stranded Pakistanis General Repatriation Committee Card referring to the appellant as a Bihari refugee and a letter from the Committee dated 25 October 2004 stating that the appellant was a Bihari refugee and that his life in Bangladesh was very difficult.
12. The appellant also provided a letter from the Bangladesh High Commission dated 12 March 2007 which stated that a Bihari could not be removed from the UK to Bangladesh as they would not be considered to be Bangladeshi. There was also a letter dated 18 May 2007 from the Pakistan High Commission stating that Biharis were the responsibility of Bangladesh, not Pakistan. The appellant also provided a report issued in January 2006 named "Citizens of Nowhere" from Refugees International setting out the difficult situation for Biharis in Bangladesh at that time.
13. Ms Cunha accepted that these materials showed that the First-tier Tribunal had erred. There was evidence that the appellant had challenged the refusal of his statelessness application and did not accept the respondent's decision that he was stateless. He had provided some materials for the First-tier Tribunal which did show that in the past the Bangladeshi and Pakistani authorities had declined to offer citizenship to Biharis.
14. I was in agreement with Ms Cunha that the First-tier Tribunal had erred in paragraph 49 of the decision but did not find that this error was material, that is, it could not lead to the appeal being decided differently. The materials provided by the appellant concerning whether he would be granted citizenship in Bangladesh are from 2007 or earlier. They are 16 years old and not capable of showing that if the applicant applied for Bangladeshi citizenship now it would be refused or that he would be obliged to live in poor conditions in a camp if he returned now. The letter from the Bangladeshi High Commission is generic. Nothing indicates that the appellant has either applied for or been refused citizenship since he came to the UK in 2005. The material on which the appellant relies is significantly out of date and cannot support a case that the appellant is stateless now, would not be accepted as Bangladeshi and, if he were able to live in Bangladesh, would have to live in difficult circumstances because he is Bihari.
15. The appellant's grounds did not challenge any other aspect of the decision of the First-tier Tribunal. It was therefore my conclusion that the decision of the First-tier Tribunal showed an error but not a material error.

### **Notice of Decision**

16. The decision of the First-tier Tribunal does not disclose an error on a point of law such that it should be set aside to be remade and shall stand.

Signed: S Pitt  
Upper Tribunal Judge Pitt

Date: 10 May 2023