



Case No: UI-2022-006364

**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

First-tier Tribunal No: HU/02670/2021

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On 22 May 2023**

**Before**

**UPPER TRIBUNAL JUDGE KEBEDE**  
**DEPUTY UPPER TRIBUNAL JUDGE HUTCHINSON**

**Between**

**GOPAL CHANDRA DEY**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr D Coleman, Counsel

For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

**Heard at Field House on 25 April 2023**

**DECISION AND REASONS**

1. The appellant appeals, with permission, against the decision of the First-tier Tribunal dismissing his appeal against the respondent's decision to refuse his human rights claim.

2. The appellant is a national of Bangladesh born on 5 October 1975. He arrived in the UK on 28 August 2009 as a Tier 4 student with leave to enter until 31 December 2012. He applied on 5 December 2012 for leave to remain outside the immigration rules. His application was refused and he unsuccessfully appealed against that decision, becoming appeal rights exhausted on 21 December 2016. He then made

several unsuccessful applications for leave to remain in 2017 and 2018 which were all refused without a right of appeal.

3. On 28 August 2019 the appellant made a human rights claim in an application for indefinite leave to remain on the basis of ten years' continuous lawful residence in the UK and on the basis of his private life in the UK. His application was refused on 6 February 2020 under paragraph 353 of the immigration rules without a right of appeal. The appellant lodged a judicial review claim seeking to challenge that decision and the respondent agreed to reconsider his application. The application was refused again, in a decision of 19 March 2021, but with a right of appeal which the appellant exercised, giving rise to these proceedings.

4. In his application the appellant stated that he had become seriously ill in April 2010 with acute urinary retention and had undergone several procedures and operations in hospital as a result. He was unable to continue his studies because of his medical condition and the on-going treatment. He was also continuing to have medical treatment for problems with his spine. Such treatment was not available in Bangladesh and he would not survive without adequate treatment. The appellant said that he was a member of his Christian community and attended regular services and activities here, and would experience discrimination as a Christian in Bangladesh. He wished to remain in the UK to complete his medical treatment and complete the legal studies he had commenced.

5. The respondent refused the appellant's application on the basis that he did not meet the requirements in paragraph 276B for indefinite leave to remain on grounds of long residence as he had not completed ten years of continuous lawful residence in the UK, his valid leave having ended on 21 December 2016. The respondent noted that the appellant had no family life in the UK for the purposes of Appendix FM of the immigration rules and considered that he could not meet the requirements of paragraph 276ADE(1) on the basis of his private life, there being no very significant obstacles to his integration in Bangladesh for the purposes of paragraph 276ADE(1) (vi). The respondent considered that there were no exceptional or sufficiently compelling circumstances justifying a grant of leave outside the immigration rules. The respondent considered the evidence relied upon by the appellant in regard to his mental health problems and his medical conditions but considered that he could access some treatment in his home country and concluded that he had not demonstrated that the high threshold in Article 3 was met in that regard nor that the decision to refuse his application was in breach of Article 8.

6. The appellant's appeal was initially listed for hearing on 13 December 2021 but was adjourned in order for the relevant appeal bundles to be properly served. The appeal was then re-listed for hearing on 3 February 2022. The appellant produced a 240-page bundle for the appeal which included a witness statement, medical letters and appointments, various certificates for courses and studies completed in the UK, letters of support from friends and country information about job opportunities and religious minorities in Bangladesh.

7. The appellant's appeal came before First-tier Tribunal Judge Davey on 3 February 2022. The appellant was represented by Mr Coleman at that hearing. The judge heard oral evidence from the appellant and submissions from Mr Coleman. He found that the appellant was unable to meet the requirements of the immigration rules on grounds of long residence under paragraph 276B and on private life grounds under paragraph 276ADE(1), and that the respondent's decision was not in breach of Articles 3 or 8 of

the ECHR. He dismissed the appeal in a decision dated and promulgated on 26 October 2022.

8. The appellant sought permission to appeal against that decision to the Upper Tribunal on the grounds that there had been procedural unfairness and irregularity amounting to a material error of law as a result of the judge's delay in writing the decision which in turn had led him to forget the details of the claim and to give inadequate consideration to the evidence.

9. The matter then came before us and both parties made submissions. We shall address the submissions in the discussion which follows.

## **Discussion**

10. The issue in this appeal arises from the judge's delay in writing and promulgating his decision. The delay is of some eight months, the appeal having been heard on 3 February 2022 and the decision promulgated on 26 October 2022. Although it is stated in the heading that the decision was prepared on 10 February 2022, the decision is dated 26 October 2022 at the end and, in the event, the appeal proceeded on the basis that there had been a delay by the judge in writing the decision.

11. As the appellant's grounds acknowledge, in referring to the case of SB (Sufficiency of Protection, Mafia) Albania [2003] UKIAT 00028, a delay in deciding a case would normally only render a decision unsafe if the delay impacted upon the decision. We also have regard to the more recent case of SS (Sri Lanka) v Secretary of State for the Home Department [2018] EWCA Civ 1391 in that regard, where the Court of Appeal found that the correct approach was to ask whether the delay had caused the decision to be unsafe so that it would be unjust to let it stand.

12. It is the appellant's claim that the delay in this case did adversely impact upon the decision and thus rendered it unsafe. The reasons given for that are set out in the grounds and Mr Coleman's submissions and are essentially that owing to the delay the appeal, when decided, was decided as though it was a paper case without consideration of the oral evidence and submissions and that the judge failed to make any reference to the 240 page bundle and failed to consider the various aspects of the appellant's evidence. Those included letters from the appellant's friends, evidence of his extensive voluntary work for the Red Cross and the Church, evidence of his work with Covid vaccinations and the Rhythms of Life, the event of his parents having been killed in an earthquake in 2015 and its affect upon the appellant and his return to Bangladesh, evidence relating to him being a practicing Christian and the objective material about the discrimination of religious minorities in Bangladesh, evidence of age discrimination in the labour market in Bangladesh, and the appellant's ability to speak English for the purposes of an assessment under 117(B) of the Nationality, Immigration and Asylum Act 2002. Mr Coleman submitted that there was extensive evidence before the judge and in the appellant's statement, in relation to his health problems and the private life he had built up in the UK over the years of residence since 2009, none of which had been given proper consideration by the judge and that the judge had failed to consider the fact that the appellant had lost his parents and his family home in Bangladesh and had nothing to return to and would suffer discrimination as a Christian.

13. There is, of course, no requirement for the judge to cite and address, and to make specific findings upon, each and every part of the evidence relied upon by the appellant. What is required is that he gives anxious scrutiny to the evidence as a

whole and assesses it in the context of the relevant immigration rules and statutory framework. It was Mr Clarke's submission that that was what Judge Davey did, and we accept that that is the case. Although the judge's decision could arguably have been more detailed, what is apparent is that he did have regard to the evidence relied upon by the appellant and he undertook a full assessment of the appellant's case under the appropriate legislative framework. There were no credibility issues arising and there was therefore no need for the judge to make specific references to the oral evidence. Neither did he need to cite Mr Coleman's submissions, when he clearly had regard to the relevant issues arising before him. His decision was properly structured in terms of addressing the immigration rules, Article 8 and Article 3, and he considered the documentary evidence in the relevant context.

14. At [2] of his decision, the judge considered the appellant's immigration history and length of residence in the UK for the purposes of paragraph 276B and properly found that the requirements of the immigration rules could not be met in that regard. Indeed that part of his decision has not been challenged. At [3] he considered the evidence in terms of any family life established by the appellant in the UK and the nature of the relationships developed in the UK as part of his private life. At [6] he had regard to the letters of support from the appellant's friends and acquaintances. Whilst the grounds of appeal at paragraph 1.3 criticise the judge's comment on the evidence, at [6], as "brief" it is clear that the judge was referring specifically to the evidence of financial support rather than the evidence as a whole, and was entitled to find it limited. At [11] the judge was clearly considering the evidence about the appellant's voluntary work activities in the UK and at [14] he considered the appellant's claim in regard to concerns about his situation in Bangladesh as a Christian.

15. In addition to those matters, and contrary to Mr Coleman's submissions, the judge gave detailed consideration to the appellant's claim in regard to his medical issues, from [7] to [13], in the context of the immigration rules and the question of 'very significant obstacles' to integration in Bangladesh for the purposes of paragraph 276ADE(1)(vi), and in terms of Article 3 and Article 8. He gave full and detailed consideration to the medical evidence, in relation to the appellant's physical condition as well as his mental health, at [7] and [12], having regard to the treatment and medication he had received and was receiving, and noting the lack of clear evidence of the current situation in terms of required surgical treatment for his spine problem. The judge considered the appellant's claim about his concerns as to the lack of adequate treatment in Bangladesh and the likely impact upon him of being removed from his current treatment, but quite properly noted the lack of independent supporting evidence in that regard.

16. As Mr Clarke submitted, the only issues raised in the grounds which were not specifically mentioned by the judge were the appellant's claim about his parents' death in Nepal seven years ago, the issue of age discrimination in the employment market in Bangladesh and the appellant's ability in the English language. We agree with Mr Clarke that the evidence available to the judge in relation to those matters was such that none of them, taken individually or cumulatively with the rest of the evidence, could have materially assisted the appellant in succeeding in his claim, and in any event we find no reason to conclude that they did not form part of the judge's overall assessment. The judge clearly gave consideration to the appellant's likely circumstances on return to Bangladesh, in the context of 'very significant obstacles' to integration in Bangladesh as well as exceptional or compelling circumstances outside the immigration rules under Article 8, and those would all have been matters taken into account.

17. Having ourselves carefully considered the evidence before Judge Davey we find nothing to indicate that the passage of time between the hearing of the appeal and the promulgation of the judge's decision had led to any material omissions or inadequacy in the judge's assessment. All relevant matters were considered by the judge and proper reasons were given by the judge for reaching the conclusions that he did. There is no suggestion that the appellant has been prejudiced by the delay in the making and issuing of the decision in his appeal other than in the terms discussed above and we accordingly do not accept that there has been procedural unfairness or irregularity arising from the delay. We reject the appellant's assertion that the delay had caused the decision to be unsafe. For all these reasons we find no errors of law in Judge Davey's decision and we uphold his decision.

**Notice of Decision**

18. The making of the decision of the First-tier Tribunal did not involve an error on a point of law requiring it to be set aside. The decision to dismiss the appeals stands.

Signed: S Kebede  
Upper Tribunal Judge Kebede

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

26 April 2023