



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

**Case No: UI-2023-003957**  
**First-tier Tribunal No:**  
**HU/56058/2022**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On the 04 April 2024**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE ROBERTSON**

**Between**

**ANU MIAH**  
**(NO ANONYMITY ORDER MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Islam, Legal Representative

For the Respondent: Mrs Arif, a Senior Home Office Presenting Officer.

**Heard at Birmingham Civil Justice Centre on 29 February 2024**

**DECISION AND REASONS**

1. The appeal before me is that of the Appellant, who made an application for leave to remain in the UK on the basis of private and family life. This is the re-making of the decision in the appellant's appeal against the respondent's refusal, on 23 August 2022, of that human rights claim. My error of law decision was issued on 12 December 2023.
2. At the previous hearing, Mr Islam, for the appellant, accepted that the issue to be considered was confined to that of 20 years residence as at the date of the Tribunal hearing, and its impact, if any on the proportionality assessment [3]. The decision of the FTT was set aside and the matter re-listed for a resumed hearing, with the issues again confined to the issue of 20 years residence, and the effect of this on the assessment of proportionality under Article 8.
3. I restate that the First tier Tribunal Judge (the Judge), at the hearing before him, accepted at [2] and [10] that the Appellant entered the UK on 3 June 2003, and that he has not had leave to remain beyond the expiry of his visit visa on 12

November 2003. He accepted that the appellant had been in the UK since June 2003, and this was a preserved finding of fact.

4. Other findings of fact made by the Judge that were preserved are that:
  - a. The appellant is married in Bangladesh and has five children, but he went to UAE to work, he became estranged from them and he was not aware of where they moved to. Although there was evidence from Abdus Salam, dated 1 August 2021, that the appellant's wife and children had moved to a different area, he was not aware of where they had moved to. The appellant did not know what enquiries Abdus Salam had made regarding the whereabouts of the appellant's wife and children.
  - b. It was not accepted that there were very significant obstacles to the appellant's integration into life in Bangladesh because he had lived there for over 30 years before coming to the UK, and he had relatives in Bangladesh, with whom he could resume contact and arrange accommodation. The appellant had not made enquiries about employment opportunities in Bangladesh.
  - c. The appellant had shown resilience, having lived in UAE and the UK, and there was no reason why he could not return to live in Bangladesh. He had recently renewed his Bangladeshi passport, which established that he wished to retain his nationality and connections to that country.
5. I also note that the date of entry to the UK was 3 June 2003, that the date of application was 9 August 2021, and the date of decision was 23 August 2022. As at the date of application, the appellant had only been in the UK for 18 years and 2 months.
6. The appellant attended the hearing, with 8 witnesses, all of whom had submitted witness statements. The appellant adopted his witness statement at p 10 of the bundle submitted in support of his appeal, and Mrs Arif had no further questions for him. She also stated that all the other witness statements could be treated as having been adopted, without them being formally adopted, and that she had no additional questions to put to the witnesses.
7. In submissions, based on the preserved findings, Mrs Arif accepted that the appellant had been in the UK for 20 years. However, she submitted that under para 276ADE(1) of the Immigration Rules applicable at the date of decision, the appellant had to have been in the UK for 20 years as at the date of application, and he had not. She also submitted that immigration control was a weighty factor and removal was necessary for the purposes of immigration control. She submitted that there were no exceptional circumstances which would mean that removal resulted in a disproportionate interference with the rights of the appellant. Miss Arif also submitted that the appellant was not working and was relying on friends and associates, and there was evidence in the appellant's bundle that he had accessed NHS treatment and had been reliant on the public purse.
8. Miss Arif also submitted that the appellant could not speak English, and that, under the provisions of s 117B(5) of the Nationality, Immigration and Asylum Act 2002 (2002 Act) little weight could be given to the appellant's private life because his status had, during the period of his visit visa, been precarious, and

from the end of his visit visa, it was unlawful. She submitted that it would not be disproportionate to remove the appellant.

9. When asked, Mr Islam confirmed that the appellant had not met the requirement, under 276ADE(1) for the appellant to have been in the UK for a period of 20 years as at the date of application, but submitted that at the date of hearing he had met the requirement. He submitted that both under 276ADE(1)(iii) and under Appendix PL 5.1(a), the appellant had met the 20 years continuous residence provisions. In the response to the preserved finding as to renewal of his passport by the appellant, he submitted that the only reason the appellant had renewed his Bangladeshi passport was because he had no other identity document. As to the use of the NHS, he submitted that whilst there was evidence of attendance at the GP, and evidence of prescriptions, it was not established that these services were not paid for because the appellant was not cross-examined. He submitted that as to exceptional circumstances, he had no home in Bangladesh, he was estranged from his family (as set out in his witness statement) and he had an established private life in the UK. He submitted that exceptional circumstances had been made out.
10. In relation to the submissions, whilst I can accept that the appellant applied for his Bangladeshi passport because he did not have an identity document, it is more difficult to find that he has paid for the use of NHS services. It was the appellant's evidence that identified that he had used NHS services, and it was for him to show that those services had been paid for; it was evidence that would have been reasonably available to him (TK (Burundi) and was not within the evidence submitted in support of his appeal.
11. It is not the respondent's case that the appellant has not now achieved 20 years continuous residence; it is that he did not meet the provisions of para 276ADE(1)(iii) at the date of application. At the date of application, the appellant had only been in the UK for a period of 18 years and 2 months. By the date of this hearing, the appellant had in fact been in the UK for 20 years and 8 months. There was nothing within Mrs Arif's submissions that suggested that if the appellant now put in an application for leave to remain on the basis of 20 years continuous residence that leave would not be granted.
12. In assessing proportionality, to the facts as set out above, I apply the provisions of s 117B of the 2002 Act. The factors weighing in favour of the public interest are:
  - a. The appellant cannot meet the provisions of the immigration rules - he had not lived in the UK for a continuous period of 20 years at the date of application.
  - b. Mr Islam submitted that the circumstances the appellant would find himself in Bangladesh amounted to exceptional circumstances. However, this was not made out; it was a preserved finding of fact that it was not established that there were very significant obstacles to the appellant's integration into Bangladesh.
  - c. The maintenance of effective immigration control is in the public interest.

- d. The appellant's stay in the UK, as submitted by Mrs Arif, was during the six month period of his visit visa, precarious and then the rest of his stay was unlawful. I therefore attach little weight to his private life.
- e. There is no evidence before me that that the appellant can speak English well enough to integrate into society (para 117B(1)).
- f. Although the appellant has not worked in the UK, there is no evidence that he has claimed benefits; he has relied on his friends for his maintenance and accommodation and this was not disputed by Mrs Arif. However, the appellant cannot gain any positive benefit from either factor because they are at best, neutral factors.

13. I take the following factors into account in the appellant's side of the balance:

- a. The respondent has not raised any suitability issues to justify a refusal of leave.
- b. The appellant has been in the UK now for a continuous period of over 20 years, which is the respondent's own cutoff point after which leave would be granted due to length of residence, to which I attach significant weight.

14. Mr Islam submitted that it was disproportionate to refuse leave. However, bearing in mind that (i) effective immigration control is in the public interest, (ii) the appellant has not established that he can speak English well enough to integrate into society; and (iii) the only consequence of the appeal being dismissed is that the appellant will have to make a new application, I asked Mr Islam (in view of those points) if it was disproportionate to require the appellant to make a new application now that he can satisfy the provisions of the immigration rules. He stated that it was not disproportionate. However, I have considered the facts of this case carefully and on the basis that (i) the suitability requirement has been met; (ii) there is a finding that the appellant has now been in the UK for over 20 years; (iii) a new application is, on the balance of probabilities, likely to be successful; (iv) the appellant, in his new application only has to show that he has met the 20 year continuous residence requirement (not that he met the English language or any other requirement), I find that it would be disproportionate to remove him.

#### Notice of Decision

15. The First-tier Tribunal Judge erred in law. I set aside his decision. I remake the decision to allow the appellant's appeal.

**M Robertson**

**Case No: UI-2023-003957**  
**First-tier Tribunal No: HU/56058/2022**  
Deputy Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**Date: 27 March 2024**