Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: IA/34023/2013**

THE IMMIGRATION ACTS

Heard at Manchester Piccadilly	**Determination Promulgated**
On 24 February 2015	**On 16 March 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE BIRRELL

Between

MD KOBIR MIAH
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr T Chowdhury of Kingdom Solicitors
For the Respondent: Mr G Harrison, Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.

© CROWN COPYRIGHT 2015

2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Kelsey promulgated on 13 August 2014 which dismissed the Appellant's appeal under the Immigration Rules.

Background

3. The Appellant was born on 15 November 1991 and is a national of Bangladesh.

4. On 5 July 2012 the Appellant applied for leave to remain in the United Kingdom under Article 8 outside the Rules.

5. On 5 August 2013 the Secretary of State refused the Appellant's application and made directions for his removal under s 47 of the Immigration, Asylum and Nationality Act 2006. The refusal letter considered the Appellant's application by reference to Paragraph 276 ADE of the Immigration Rules and also considered whether there were exceptional circumstances which might warrant a grant of leave outside the Rules. The letter gave a number of reasons for refusing the application:

   (a) Given that the Appellant had only been in the United Kingdom since 2012 he did not meet the requirements for leave on the basis of the length of time he had lived in the United Kingdom.

   (b) Given the length of time he had lived in the United Kingdom there was no suggestion that he had lost all ties with Bangladesh.

   (c) The family life that the Appellant enjoyed in the United Kingdom with his adult family members did not meet the requirements of Appendix FM.

   (d) The Appellant still had social and cultural ties to Bangladesh.

   (e) The Appellant came to the United Kingdom on a visitor's visa and had no expectation of being able to stay.

The Judge's Decision

6. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Kelsey ("the Judge") dismissed the appeal against the Respondent's decision. The Judge found :

   (a) At paragraph 17 the Judge identified the burden and standard of proof in Article 8 cases.

   (b) At paragraph 18 the Judge identified that Appendix FM applied to application made on or after 9 July 2012.

   (c) He identified that the Appellant had lived in Bangladesh for 15 ½ years and in the United Kingdom for 2 years before he made the application subject of the current appeal.

   (d) He found there was little evidence to support the oral evidence that he had heard.

(e) The Appellant's statement referred to various family members in the United Kingdom some of whom had provided supporting letters but only one attended court to give evidence.

(f) The Judge found there was no evidence that the Appellant would struggle to survive on return to Bangladesh as he did not accept that the Appellant had no relatives there.

(g) The Judge found that there was conflicting evidence about whether this mother still had a home in Bangladesh and that this undermined his claim that he would have no where to live.

(h) The Appellant's had come to the United Kingdom as a visitor and made it clear that he would return.

(i) The Judge did not find that the Appellant's brother gave credible evidence about the family home in Bangladesh.

7. Grounds of appeal were lodged which in essence were that the Article 8 assessment was inadequate and initially permission was refused. The application was renewed and on 14 January 2015 Upper Tribunal Judge Southern gave permission to appeal stating that the Judge said only that the appeal under 'the Immigration Rules was dismissed' and that he was obliged to determine any matter raised as a ground of appeal and he had arguably failed to do so. However he concluded:

> "Not without hesitation I will grant permission. At the Upper Tribunal hearing the appellant is on notice that in the event that such an error of law is established he will need to satisfy the Tribunal that the error was a material one."

8. At the hearing I heard submissions from Mr Chowdhury on behalf of the Appellant that :

(a) He relied on his grounds of appeal.

(b) The Judge failed to carry out the balancing exercise as required under Article 8.

(c) The fact that the Appellant was an adult did not mean that he could not enjoy family life with those members of his family who were living in the United Kingdom.

9. On behalf of the Respondent Mr Harrison submitted that :

(a) He relied on the Rule 24 response.

(b) The Judge had grave concerns about the reliability of the Appellant's evidence about his circumstances and family life.

(c) In the face of the evidence before him he carried out an analysis of the Appellant's circumstances and concluded that there were no circumstances that would make it unreasonable for the Appellant to return to Bangladesh given that he had lived there for the vast majority of his life.

The Law

10. In relation to the issue of materiality of errors of law I have looked at the recent Court of Appeal decision in **SSHD v AJ (Angola) [2014] EWCA Civ 1636** that an error of law by the First-tier Tribunal may be considered immaterial –

> " … if it is clear that on the materials before the Tribunal any rational Tribunal must have come to the same conclusion or if it is clear that, despite its failure to refer to the relevant legal instruments, the Tribunal has in fact applied the test which it was supposed to apply according to those instruments."

Finding on Material Error

11. Having heard those submissions I reached the conclusion that the Tribunal made no material errors of law.

12. The Appellant in this case made an application for leave to remain under Article 8 outside the Rules on 5 July 2012. I am satisfied that the Judge at paragraphs 16 and 17 correctly identified that Appendix FM applied to applications made on or after 9 July 2012. He correctly identified the burden and standard of proof in an Article 8 claim and what the Appellant had to show to establish his case.

13. I am satisfied that in dismissing the case 'under the Immigration Rules' this was a typographical error given that the Judge had already identified that Appendix FM and paragraph 276 ADE applied to application after 9 July 2012 and set out that Article 8 was the issue in this case in paragraph 17.

14. In his findings at paragraphs 19 to 25 the Judge set out a analysis of the Appellant's circumstances which although they do not expressly refer to Article 8 and would have benefited from a more focused identification of the questions set out in **Razgar [2004] UKHL 27** are in essence an analysis of all the issues that he would have addressed had he followed **Razgar**. Indeed when asked to identify any factor that the Judge had failed to incorporate in his analysis that may have affected his decision Mr Chowdhury was unable to do so only referring to evidence of the sale of the family property and his mothers indefinite leave to remain which was not in fact evidence placed before the Judge. Thus I am satisfied that while the judge did not explicitly refer to Article 8 as in **AJ** *'the Tribunal has in fact applied the test which it was supposed to apply according to those instruments.'*

15. Even if I were wrong about the Judge having carried out what amounted to an Article 8 assessment in substance if not in form I am satisfied that on the basis of the material before him had he carried out a more structured analysis under Article 8 any tribunal would have come to the conclusion that this appeal should fail.

16. I find that in relation to the Appellant's private life in the United Kingdom the only error was in failing identify a number of relevant factors on the Respondent's side of the balancing exercise. The Judge failed to refer to section 19 of the Immigration Act 2014 which amended the Nationality, Immigration and Asylum Act 2002 by introducing a new Part 5A which contains sections 117A, 117B, 117D and 117D and applied to *all* appeals heard on or after 28 July 2014 *irrespective* of when the application or immigration decision was made. This would have required the Judge to take into account in the balancing exercise that the maintenance of effective

immigration controls is in the public interest and given that the Appellant could not meet any requirements of the Rules and had come to the United Kingdom only as a visitor this was a relevant issue.

17. The Judge was also obliged to take into account that it is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are able to speak English, because persons who can speak English are less of a burden on taxpayers, and are better able to integrate into society. There was no evidence before the Judge that the Appellant could speak English although he claimed that he could. The Judge would also be required to take into account that little weight should be given to a private life established by a person at a time when the person's immigration status is precarious. In this case the Appellant came to the United Kingdom as a visitor and therefore had no expectation that he would be allowed to stay and therefore his status was precarious. Nor did the Appellant produce any evidence to show that he would be self sufficient for while he claimed he would be able to work there was no evidence of any skills or that he had worked while in Bangladesh.

18. I accept Mr Chowdhury's submission that there is no blanket rule that adult children ceased to have family life with a parent or other close family members because they turn 18 but the evidence of the nature of his family life was both limited and, the Judge found, unreliable. In assessing the Appellant's family life in the UK he would of course have taken into account that although he claimed to have a number of family members in the United Kingdom only one had attended to give evidence. The Appellant had brothers and sisters none of whom attended court and his mother also failed to attend and the Judge was entitled to attach little weight to the supporting letters provided. There was no evidence before the Judge on which he could conclude that their relationship went beyond normal emotional ties particularly given the fact that the Appellant had remained in Bangladesh while other family members came to the United Kingdom to settle. Thus arguably it would have been open to the Judge to conclude that he had no family life as defined by Article 8 on the basis of the evidence before him.

19. Even had he gone on to assess proportionality those other facts that he explicitly referred to in his decision would have inevitably have led to the conclusion that the decision to remove was proportionate: that the Appellant had lived the majority of his life in Bangladesh and that the Judge rejected his assertion that he had no home or family in Bangladesh and had not been wholly truthful about his circumstances.

CONCLUSION

20. **I therefore found that no errors of law have been established and that the Judge's determination should stand.**

DECISION

21. **The appeal is dismissed.**

Signed Date 14.3.2015

Deputy Upper Tribunal Judge Birrell