



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

Appeal Number: PA/01281/2015

THE IMMIGRATION ACTS

Heard at Field House

On 4th April 2016

**Decision & Reasons
Promulgated
On 18th May 2016**

Before

UPPER TRIBUNAL JUDGE KOPIECZEK

Between

[E R]

and

Appellant

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No appearance and not represented

For the Respondent: Mr T Melvin, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Bangladesh, born on [] 1990. He arrived in the UK on 16 February 2007 as a child visitor in the company of his mother, with leave valid until 28 June 2007.

2. His appeal comes before the Upper Tribunal following a hearing before First-tier Tribunal Judge Howard (“the Ftj”) whereby the appellant’s appeal against his asylum and human rights claim was dismissed on all grounds. The Ftj who granted permission to appeal concluded that the findings made by Judge Howard in relation to asylum and Article 3 of the ECHR were open to him on the facts and evidence. He granted permission however, in relation to the judge’s consideration of Article 8 of the ECHR. Although the permission judge did not expressly state that permission was refused on grounds other than Article 8, it is clear that that is the import of his decision. He concluded that there was an arguable error of law in relation to Article 8 only, which is the basis upon which the appeal is before me.
3. At the hearing before me neither the appellant nor his representatives, Edward Alam and Associates, appeared. I am satisfied that both the appellant and his solicitors had notice of the hearing, notice having been sent to the appellant’s solicitors, and the appellant via his solicitors, on 8 March 2016. Efforts by Tribunal staff to contact the appellant’s representatives on the day of the hearing were unsuccessful. There was nothing to indicate that either the appellant or his representatives had wanted to attend but were, for some reason, unable to. There was no application for an adjournment. Accordingly, I decided to proceed to hear the appeal in the absence of the appellant and his representatives pursuant to rule 38 of the Tribunal Procedure (Upper Tribunal) Rules 2008.
4. The appellant’s grounds, upon which permission was granted in relation to Article 8, are to the effect that the Ftj had failed to make adequate findings with reference to his time in the UK in the previous eight years, with his parents and siblings. Nothing else of substance is said in those grounds.
5. Aside from rejecting the appellant’s credibility in terms of the claimed risk on return by reason of the appellant’s political activity with the Bangladeshi National Party (“BNP”), in relation to Article 8 the Ftj stated at [30] as follows:

“Mr Coleman in his submissions made reference to the appellant’s private and family life. On the evidence before me, limited to a statement from his father asserting he is present in the UK and seeking asylum, I do not find there is made out the need for an assessment outside the rules, see **SS (Congo) [2015] EWCA Civ 387.**”
6. Mr Melvin relied on the written submissions prepared for the hearing before me and on the ‘rule 24’ response. The written submissions refer to a previous Article 8 application having been refused with, it seems, an appeal having been dismissed, and appeal rights having been exhausted on 20 July 2012. The respondent’s written submissions continue to the effect that the evidence before the Ftj was that the appellant’s family members were still pursuing claims to remain and as such were not settled

in the UK. There was no evidence from other family members or other evidence relating to the appellant's residence in the UK.

7. Furthermore, it had not been contended on behalf of the appellant before the Ftj that the appellant met the requirements of the Immigration Rules in terms of Article 8. The appellant had arrived on a visit visa in 2007 accompanied by his mother, with leave only until 28 June 2007. Since that time he has not been granted any leave in the UK.
8. In the light of those facts, the appellant had no prospect of success in any Article 8 claim, and accordingly, there is no material error in the Ftj failing to consider Article 8 outside the Rules.
9. In the event that it is found that there is a material error of law in relation to Article 8, requiring the decision to be set aside, regard should be had to section 117 of the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act").
10. Supplementing those written submissions, Mr Melvin contended that it is difficult to see how any Article 8 case could have succeeded on the basis of the evidence before the Ftj. It is also to be borne in mind that the appellant's status in the UK has always been precarious. Reliance was placed on the Reasons for Refusal Letter dated 10 September 2015.

My Conclusions

11. I am satisfied that the Ftj did err in law in his consideration of Article 8 of the ECHR. The very short paragraph which I have quoted is the extent of the Ftj's Article 8 assessment. There is no reference to the Article 8 Immigration Rules and no rehearsal of what submissions were made to the Ftj in relation to the appellant's private and family life. Furthermore, it is apparent that Article 8 was raised in the grounds of appeal to the First-tier Tribunal ("FtT"). Whilst the Ftj would have been entitled in appropriate circumstances to deal with the Article 8 ground concisely, his very cursory treatment of the Article 8 ground is legally unsustainable in my judgement.
12. Notwithstanding the submissions made on behalf of the respondent in terms of materiality, it is necessary to set aside the Ftj's decision in relation to Article 8 and to re-make the decision.
13. In re-making the decision I take into account the grounds of appeal before the FtT. Although it is suggested in the grounds that the appellant has his parents and siblings in the UK and has thus established family life, it is not said in the grounds that the appellant is able to meet the requirements of the Article 8 Immigration Rules. No reference is made to those Rules in the grounds. In his witness statement the appellant refers to the length of time he has been in the UK, referring to his parents, siblings, extended relatives and friends being settled here. He refers to having gained expertise and experience working as a chef and has considerable

knowledge of the English language. He refers to having adopted the British way of life and its culture.

14. In his father's witness statement it states that he, the appellant's father, has his wife and children in the UK awaiting consideration of his wife's application "under the 7 years Immigration Rules". He refers to his being part of that application and to one of his daughters having married a British citizen and being an expectant mother. That statement is dated 3 December 2015.
15. It appears that the appellant's father did not give evidence at the appeal before the FtT however.
16. So far as the Immigration Rules are concerned, the appellant is not able to meet the requirements of paragraph 276ADE(1)(iii), given that he has not lived continuously in the UK for at least 20 years. He has lived in the UK since 2007, a period of nine years. He is aged 25 years and so has not lived at least half his life in the UK. Accordingly, he is not able to meet the requirements of paragraph 276ADE(1)(v).
17. So far as subparagraph (vi) is concerned, the appellant has to establish that there would be very significant obstacles to his integration into Bangladesh. The respondent's decision letter notes that the appellant speaks Bengali and has spent the majority of his life in that country, including his formative years.
18. I also note that in the grounds of appeal to the FtT, it is stated on behalf of the appellant that he "has some close family members, friends or relatives in his country of origin but he could not rely on them [to] support him financially and emotionally."
19. If the grounds of appeal mean what they say, and there is no reason to believe otherwise, the appellant has relatives and family members in Bangladesh. In any event, the evidence before me, and indeed before the FtT, in relation to the 'very significant obstacles' point is sparse in the extreme. I am not satisfied that the appellant has established that there are very significant obstacles to his integration into Bangladesh. The evidence simply does not support that contention.
20. As to whether there is any need for further consideration of Article 8, outside the Rules, there is nothing to indicate that the appellant's circumstances are such as to warrant consideration outside the Rules. The evidence does not support the contention that he has family life in the UK, he being an adult, even if he does live with his parents, and even if he does have siblings here. There is no evidence that his relationship with any of those individuals extends beyond ordinary emotional ties.
21. Similarly, as I have already indicated, the evidence of the appellant's private life in the UK is sparse. There is no evidence from any friends, or even acquaintances. There is little to reveal the extent of his private life in

the UK. So, even if there was to be a consideration of Article 8 outside the Rules, regard would have to be had to the considerations in s.117B of the 2002 Act. The appellant can claim no positive benefit from being able to speak English, having regard to the decision in *AM (Malawi)* [2015] UKUT 260 (IAC). There is no indication one way or the other as to whether he is financially independent. More importantly, under s.117B(4) little weight is to be given to a private life established by a person at a time when he is in the United Kingdom unlawfully, as this appellant is. Furthermore, under s.117B(5) little weight is to be given to a private life established by a person at a time when his immigration status is precarious, as this appellant's is. Lastly, the maintenance of effective immigration controls is in the public interest.

22. In all the circumstances, no Article 8 case, either within or without the Article 8 Rules, has been established.
23. Accordingly, the appeal under Article 8 of the ECHR is dismissed. As already indicated, the asylum and human rights appeal otherwise was properly dismissed by the FtT and permission to appeal against the dismissal of his appeal on those grounds has been refused.

Decision

24. The decision of the First-tier Tribunal involved the making of an error on a point of law. Its decision in relation to Article 8 of the ECHR only is set aside, and I re-make the decision, dismissing the appeal under Article 8.

Upper Tribunal Judge Kopieczek

11/05/16