Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: HU/00816/2019**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 12 September 2019	**On 24 September 2019**

Before

UPPER TRIBUNAL JUDGE KEITH

Between

MR ABDUL AHAD
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Islam, Legal Representative, instructed by Taj Solicitors Ltd
For the Respondent: Mr D Clarke, Senior Presenting Officer

DECISION AND REASONS

1. These are the approved record of the decision and written reasons which were given ex tempore at the end of the hearing on 12 September 2019.

2. This is the remaking of the decision in the appellant's appeal against the respondent's refusal of his human rights claim.

3. The appellant, a citizen of Bangladesh, applied for leave to remain in the United Kingdom ('UK') on 15 December 2017, which the respondent refused in a decision dated 31 December 2018 (the 'Decision').

4. Prior to this, he last entered the UK on 21 December 2003, on a visit visa. He remained in the UK, for at least part of the period unlawfully, except for a period on or after 8 August 2010, when he obtained an EEA residence card. His application for a permanent residence card was refused and on 23 May 2017, FtT (Judge Robertson) dismissed his appeal, on the basis that the appellant's estranged partner had not been exercising treaty rights during the five-year period up to 2016. Judge Robertson was critical of the appellant's credibility, as recorded at [13] of his decision.

5. The appellant's most recent appeal, against the Decision, was originally dismissed by a First-tier Tribunal Judge Row (the 'FtT'), in a decision promulgated on 8 April 2019. The FtT's decision was challenged and at a hearing on 11 July 2019, this Tribunal set aside the FtT's decision, while preserving specific findings; and adjourned the case for a hearing to remake the Decision. A copy of the error of law decision previously made by this Tribunal, which was promulgated on 26 July 2019, is annexed to this remaking decision.

6. In setting aside the FtT's decision, this Tribunal concluded that the FtT had erred in inadequately explaining why he rejected the appellant's assertion that he was estranged from his family in Bangladesh. This was material to the FtT's subsequent finding that the appellant would not, on return to Bangladesh, be without relatives who could be expected to provide him with financial and emotional assistance, for the purposes of his integration there.

7. The Upper Tribunal preserved the FtT's finding that there are no medical reasons amounting to very significant obstacles to the appellant's integration into Bangladesh. There was a detailed consideration at [7] of the FtT's decision on the issue and the finding was preserved.

The core issue in this appeal

8. The core issue in remaking the FtT's decision, is whether there are very significant obstacles to the appellant's integration into Bangladesh, for the purposes of Paragraph 276ADE(1)(vi) of the Immigration Rules; and also by reference to the appellant's human rights outside the Immigration Rules, noting Section 117B of the Nationality, Immigration and Asylum Act 2002.

The hearing before me

Preliminary issues - the appellant's evidence

9. In breach of Tribunal directions and Rule 15(2A) of the Tribunal Procedure (Upper Tribunal) Rules 2008, on the day of the hearing, Mr Islam sought to adduce what he initially asserted was limited oral evidence from three witnesses, through examination-in-chief, as his instructing solicitors had failed to obtain witness statements prior to the hearing, and had no explanation for that failure. While I initially agreed to this, it rapidly became apparent that the oral evidence was not limited; and the appellant referred to having given incomplete answers in evidence to the FtT because he had been cut off by the interpreter. I therefore directed, with the consent of Mr Clarke, Mr Islam to obtain written witness statements from the three witnesses (the appellant; Ms Jubeda Begum Khan, one of the appellant's sisters;

and Mr Saber Ahmed, a nephew of the appellant) whose evidence he wished to adduce. The hearing was put back until the afternoon and all three witnesses also gave oral evidence, on which they were cross-examined. The appellant did so with the benefit of an interpreter in Sylheti, Ms Chowdhury, and she confirmed their understanding of one another at the beginning of the hearing.

10. Other than in relation to the additional written witness statements and oral evidence given in response to the cross-examination by Mr Clarke, there was no additional evidence that was not before First-tier Tribunal Judge Row.

Scope of the grounds of appeal

11. By the time of Mr Islam's closing submissions, and following Mr Clarke's submissions, he began to make submissions in relation to an appeal in respect of the appellant's rights to a family life, as opposed to private life. FtT Judge Row had expressly referred at [3] of his decision to the issues before him as follows:

> *"Grounds of Appeal*
>
> *3. These were clarified by Mr Hosen for the appellant at the hearing. The appellant argued that he met the requirements of paragraph 276ADE(1)(vi). He should succeed inside the Rules and outside under Article 8 of the European Convention on Human Rights on the basis of his private life. He did not argue that he had a family life in the United Kingdom."*

Mr Islam confirmed to me that the grounds of appeal to the Upper Tribunal did not seek to challenge the scope of the issues, as understood by the FtT, or to appeal the FtT's lack of consideration of the appellant's family life. Bearing in mind the lateness during the proceedings in which he raised the issue (after evidence had been heard and Mr Clarke had made his submissions on the basis of private life, and specifically Paragraph 276ADE(vi) of the Immigration Rules, i.e. very significant obstacles to integration), I did not permit Mr Islam to pursue grounds on the basis of a breach of the right to a family life, beyond the issue of Paragraph 276ADE(vi) and factors related to the appellant's private life for the purposes of his rights under Article 8 of the ECHR. The extent to which he was estranged from relatives in Bangladesh and whether they would support him on his return there, was nevertheless relevant to the issue of whether there were significant obstacles to his integration.

Witness evidence in the Upper Tribunal – the appellant

12. The appellant suggested that his inaccurate oral evidence to the FtT about the number of his relatives in Bangladesh was explained because the interpreter at the hearing had cut him off before he had the opportunity to provide a comment in full. He went on to clarify that he had eight siblings; four sisters and two brothers in Bangladesh and two sisters in the UK. He also said he had two deceased siblings. He had other family members such as his ex-wife and five adult children in Bangladesh, but he did not have any contact with any relatives in Bangladesh, as a result of his relationship with his former EEA national partner. In contrast, his relatives in the UK supported him. The last time he had had contact with his family members in Bangladesh was in December 2003. He had first entered the UK on 20

July 2003, aged 52, with a wife and children in Bangladesh; returned to Bangladesh in August 2003, having met, but not entered into a relationship with his (later) EEA national partner; spoke to her briefly on the telephone while in Bangladesh and they got on well; decided to leave Bangladesh, his wife and children, with no intention of returning to them, and re-entered the UK on 21 December 2003 on a visit visa, which was extended until 21 June 2004; and then began a romantic relationship with his EEA partner in January 2004. He sold his car-hire business prior to leaving Bangladesh, as he knew he did not intend to return.

13. The appellant would have no home to return to in Bangladesh, as his brothers had taken over that home. When it was pointed out to the appellant that he had previously given evidence to the FtT (at [10]) that his wife was living in the matrimonial home, and he was asked whether his brothers had forced her to leave, he then said that he didn't know that his brothers had taken over his home, but supposed this was the case as that was the custom in Bangladesh. He did not in fact know what had happened to the family home in Bangladesh. He didn't know if his UK relatives remained in contact with his relatives in Bangladesh. He hadn't asked his UK relatives about any contact, as his relatives in Bangladesh were not interested in him. When it was put to him that Ms Jubeda Khan was in contact with relatives in Bangladesh, he accepted that she had been contact, despite his previous denial that he was unaware of such contact. He had not provided financial support to his children as they were not interested in him and he did not know how they or his estranged wife supported themselves. He denied that it was implausible that he would not have even asked about his childrens' welfare. His UK relatives, in contrast, supported him because they had met his EEA partner. Between 2003 and 2010, he had not worked, as he did not have a right to work. He had supported himself during these six years on the proceeds of the sale of his businesses in Bangladesh, as well as support from relatives: Mr Soroar Alam, Mr Ahmed and his two sisters in the UK.

14. He referred to being 68 years old, with medical problems although, for the avoidance of doubt, the preserved finding of the FtT are that there are in fact no medical issues preventing his return to Bangladesh. He said that 'at his age, he needed someone to look after him'. He lived in accommodation provided by Mr Soroar Alam, who owned a grocers' shop, where the appellant's accommodation was sited. Mr Alam owned other properties and did not live with him. Mr Alam did not charge him rent and provided him with free groceries.

15. The appellant believed that his UK relatives would be able to financially support him if he were returned to Bangladesh. However, he thought that they would be less willing to do so if he were not physically present in the UK.

16. The appellant ran three businesses in Bangladesh, starting the first in the 1970s and most recently starting the third of the businesses in 1992, hiring and leasing cars. He claimed not be able to set up a new business on his return to Bangladesh, reiterating his age and lack of finances to start up a new business.

Witness evidence - Ms Jubeda Begum Khan

17. Ms Khan had previously given evidence to the FtT, who had concerns about her credibility, at [14]. Ms Khan asserted that any apparent inconsistency in her previous evidence about the number of her relatives was explicable because she had intended to refer to relatives in the UK only, which had been misunderstood as referring to all of her relatives. She gave contradictory oral evidence before me. She initially asserted that she had not had contact with relatives in Bangladesh because she did not have the telephone numbers for them. She then stated that she telephoned relatives, including her brother in Bangladesh. She did not ask about the appellant's estranged wife or his children (her nephews and nieces) as her Bangladeshi relatives didn't like talking about the subject.

18. Ms Khan confirmed that she was close to the appellant since he arrived in the UK in 2003. She was asked why the appellant had not sought to regularise his status between 2004 and 2010, when he was in a relationship with his former EEA partner. She said that this was because the appellant had lost contact with his former partner when he was in hospital. When asked, she didn't know when the appellant was in hospital, for how long, or how a delay of 6 years in seeking to regularise his status was explained by a period in hospital. She then said that she didn't know why the appellant had not sought to regularise his status earlier.

Witness evidence – Mr Saber Ahmed

19. Mr Ahmed also sought to correct his previous evidence in the FtT about the number of relatives he had. He provided financial support to the appellant in the UK but would not be able to do so if the appellant were in Bangladesh. He owned a bed-and-breakfast business in the UK. He suggested that he gave a limited amount of money to the appellant and would not be able to continue to do so, even though he provided finances to the appellant in the UK, if the appellant were to be in Bangladesh. Mr Clarke asked him what the explanation was for the family's ability to support the appellant in the UK, but not in Bangladesh. He said that when the appellant was *'out of my eye'* he could not guarantee to make payments.

20. Mr Ahmed accepted that he had been close to the appellant. He did not know what had happened to the appellant's family in Bangladesh; did not know why the appellant had not previously sought to regularise his status in the UK; and did not know about the appellant's sale of his businesses in Bangladesh.

The Law

21. In respect of the appellant's private life, the appellant's rights of appeal are limited to those referred to in Section 84(1)(c) of the Nationality, Immigration and Asylum Act 2002, namely whether the respondent's decision breached the appellant's rights to a private life, under Article 8 of the ECHR. I need to consider whether the facts warranted consideration under Article 8, outside the Immigration Rules, although when considering Article 8, I took the Immigration Rules, including Paragraph 276ADE(1)(vi), as my starting point. I also need consider Section 117A of the Immigration Act 2002. Section 117A requires me to consider, in cases where I must determine whether the respondent's decision breaches the appellant's right to a

private life under Article 8, the considerations listed in Section 117B of that Act. I may consider the facts up to the date of this hearing.

22. As the issue under Paragraph 276ADE(1)(vi) related to the question of whether there are very significant obstacles to the appellant's integration in Bangladesh, I also considered the authority of Khalida Parveen v SSHD [2018] EWCA Civ 932, particularly paragraphs [8] to [9] and [19]:

"8. Since the grant of permission this Court has had occasion to consider the meaning of the phrase 'very significant obstacles to integration', not in fact in paragraph 276ADE (1) (vi) but as it appears in paragraph 399A of the Immigration Rules and in section 117C (4) of the Nationality Immigration and Asylum Act 2002, which relate to the deportation of foreign criminals. In Kamara v SSHD [2016] EWCA Civ 813, [2016] 4 WLR 152, Sales LJ said, at para. 14 of his judgment:

'In my view, the concept of a foreign criminal's 'integration' into the country to which it is proposed that he be deported … is a broad one. It is not confined to the mere ability to find a job or to sustain life while living in the other country. It is not appropriate to treat the statutory language as subject to some gloss and it will usually be enough for a court or tribunal simply to direct itself in the terms that Parliament has chosen to use. The idea of 'integration' calls for a broad evaluative judgment to be made as to whether the individual will be enough of an insider in terms of understanding how life in the society in that other country is carried on and a capacity to participate in it, so as to have a reasonable opportunity to be accepted there, to be able to operate on a day-to-day basis in that society and to build up within a reasonable time a variety of human relationships to give substance to the individual's private or family life.'

9. That passage focuses more on the concept of integration than on what is meant by 'very significant obstacles'. The latter point was recently addressed by the Upper Tribunal (McCloskey J and UTJ Francis) in Treebhawon v SSHD [2017] UKUT 13 (IAC). At para. 37 of its judgment the UT said:

'The other limb of the test, 'very significant obstacles', erects a self-evidently elevated threshold, such that mere hardship, mere difficulty, mere hurdles and mere upheaval or inconvenience, even where multiplied, will generally be insufficient in this context.'

I have to say that I do not find that a very useful gloss on the words of the rule. It is fair enough to observe that the words 'very significant' connote an 'elevated' threshold, and I have no difficulty with the observation that the test will not be met by 'mere inconvenience or upheaval'. But I am not sure that saying that 'mere' hardship or difficulty or hurdles, even if multiplied, will not 'generally' suffice adds anything of substance. The task of the Secretary of State, or the Tribunal, in any given case is simply to assess the obstacles to integration relied on, whether characterised as hardship or difficulty or anything else, and to decide whether they regard them as 'very significant'.

19. ….The bare assertion that the Appellant has 'lost all connections' with Pakistan and has no-one there who can support her is plainly insufficient. In the first place, it is prima facie surprising that she should have lost all connections with Pakistan. I accept that it is not impossible, but if it is indeed the case the Secretary of State was entitled to expect some particularised explanation of how it had come about, and why, in consequence, she would face

such problems on return. It would be important to know about her life in Pakistan before she came to this country, where she lived, what family and friends she had, whether she worked and what her educational or other qualifications were. It would also be important to know what had become of her family and friends and how, despite what the Secretary of State tends to call 'modern methods of communication', she had lost touch with them. Nothing of this kind was provided in the original application, nor indeed has it been provided at any stage in the course of the litigation. Without it, the Secretary of State was in my opinion justified in finding that the Appellant had not demonstrated the existence of very significant obstacles to (re- integration in Pakistan). (I also note, though this is not essential to my reasoning, that in the part of the decision dealing with Appendix FM it is noted that the Appellant's husband's passport shows that he has twice in recent years been to Pakistan for 'family visits'.)"

23. I considered the well-known authority of under *Razgar v SSHD [2004] UKHL 27*. The appellant needed to establish a private life in the United Kingdom. The subsequent questions then were:

    (a) Whether such interference would have consequences of such gravity as potentially to engage the operation of article 8?
    (b) Whether such interference was in accordance with the law?
    (c) Whether such interference was necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others?
    (d) If so, was such interference proportionate to the legitimate public end sought to be achieved? If the appellant met the Immigration Rules, that would weigh heavily in the appellant's favour when considering proportionality.

Findings

24. The brevity of these findings reflects the very limited evidence provided on behalf of the appellant in respect of a claim relating to private life.

25. I find that that there are not obstacles to the appellant's integration in Bangladesh, let alone significant ones. The appellant's evidence in reality amounted to bare assertions, without evidence, that he was too old to re-establish a business and work in Bangladesh; he expressed a desire, because of his age, that he wanted someone to look after him; and he would miss the emotional support of friends and relatives in the UK.

26. I am very conscious that the question of integration goes beyond merely finding work and accommodation, but taking those as initial issues, I find that the appellant would be able to re-establish a business in Bangladesh, just as he has done so three times previously, over many years, in Bangladesh. The appellant's age is not a barrier to his doing so, bearing in mind his stated intention that he would recommence work in the UK if permitted to remain. Nor do I accept as reliable his claim that a lack of financial capital would prevent him from re-establishing a business; or his claim not to be able to work as a chef in Bangladesh, just as he has worked as a chef in the UK for many years. I do not accept as reliable Mr Ahmed's evidence that he would be unwilling to financially support the appellant on his return to Bangladesh, including

in re-establishing a business. Mr Ahmed and other members of the appellant's family have supported him for many years in the UK, including the period when he was not working between 2003 and 2010 and even since he began working as a chef in 2010. The appellant accepted that his family in the UK has the financial means to support him in Bangladesh. Mr Ahmed did not provide any real explanation for why that support would cease if the appellant were returned to Bangladesh, particularly given the closeness of the UK family members to the appellant and the fact that they have stood by him in circumstances were it is claimed that family members in Bangladesh would not.

27. I do not accept as reliable the assertion that the appellant is estranged from relatives in Bangladesh, and I find that the opposite is likely to be the truth.

28. On the one hand, the appellant refers to his lack of travel outside the UK as evidence of his estrangement. On the other hand, the circumstances of why the appellant did not seek to regularise his status prior to 2010 are confused. Ms Khan's oral evidence on the issue was entirely unreliable and contradictory, when she withdrew an obviously untenable assertion that the appellant had not regularised his status between 2004 and 2010 because of a period spent in hospital. Mr Ahmed's claimed ignorance of the issue was equally implausible, given the close relations between family members. The lack of perceived legal status in the UK and an inability to re-enter the UK is likely to explain why the appellant did not try to visit Bangladesh before 2010.

29. In event, the lack of physical visits to Bangladesh even before, but particularly after 2010, does not necessary mean that the appellant has been estranged from family members in Bangladesh. While the appellant claims not to have provided any support for his children, I do not accept as plausible his explanation for not doing so (their lack of interest in him) when he took the decision to leave Bangladesh. He did not suggest that he lacked the financial means to do so, and his evidence on his financial assets was contradictory. He asserted that his brothers had taken over his family home, but faced with his assertion that he had had no contact with, or knowledge of, family members in Bangladesh since December 2003, almost immediately on departure from Bangladesh, and so he could not have known about the take-over of the family home, he sought to reconcile the obvious contradiction by claiming that this was what he had supposed, rather than knew, because of the customs of Bangladesh. He referred to selling three businesses in Bangladesh swiftly prior to leaving there for the last time in December 2003 and living off the proceeds of the sale while in the UK, but has disclosed no financial or other documents showing the transfer of such sale proceeds, or ownership of the family home. I do not find as reliable the appellant's assertion that he no longer has a financial interest in his matrimonial home, or any other financial assets, such as savings, in Bangladesh.

30. The appellant's evidence about his UK relatives' contact with family members in Bangladesh was also contradictory. He claimed in oral evidence not to know of their contact, but then moments later referred to Ms Khan's contact with family members.

31. Ms Khan's evidence was also contradictory, claiming not to have telephoned relatives in Bangladesh because she did not have a telephone number for them, but then accepting that she had telephoned relatives but had not discussed the appellant's children with them.

32. I also do not accept as plausible that where, as here, UK relatives have asserted that they continue to have good relations with the appellant's relatives in Bangladesh, that they would not naturally have made enquiries as to at least the appellant's children, let alone his former wife, and that, given the closeness of the claimed relationship between the appellant and his UK relatives, he would not have learned of the circumstances of his children. I find that the untruthful assertion of ignorance is consistent with a wider desire to not tell the truth in terms of the claimed estrangement between the appellant and his relatives in Bangladesh.

33. Returning to the question of the appellant's integration in Bangladesh, he has the skills to develop businesses there; a desire to work (at least in the UK); the financial backing from UK relatives to help him do; and likely access to assets, including a stake in the family home in Bangladesh. Having lived in Bangladesh until aged 52, he would in no sense be an 'outsider', who would be unable to adapt and re-establish life there. He gave evidence to this Tribunal in Sylheti and lives amongst Bangladesh diaspora family members in the UK, with close friends from the diaspora community. There is every reason to expect that his UK relatives, who have supported him financially for many years, would continue to provide emotional support when he is in Bangladesh via modern means of communication, just as they do with other relatives in Bangladesh; and there is no evidence that he could not form new friendships in Bangladesh, just as he has done since his arrival in the UK. He would also have continuing relations with family members in Bangladesh, as I find that the claimed estrangement is not truthful or accurate.

Conclusions

34. Based on my findings above, and noting the Parveen authority and the need for a broad evaluative assessment, I conclude that there are not very significant obstacles to the appellant's integration in Bangladesh, and would have concluded this even if the appellant had been estranged from immediate family members in Bangladesh, noting his means to support himself; the emotional support from UK relatives; the period of his time spent living in Bangladesh (52 years), and noting that even in the 15 years of his presence in the UK, he has developed close relations with members of the Bangladesh diaspora community and is in no way isolated from it. The appellant does not meet the requirements of paragraph 276ADE((1)(vi) of the Immigration Rules.

35. Considering the appellant's private life more widely, he has unquestionably developed a private life in the UK in the 15 years he has been here. Part, but not all of that, was developed during the period of his relationship with his former partner, which was accepted as genuine when he was issued with an EEA residence card in 2010.

36. For the purposes of a Razgar analysis, I also accept, given the period of time spent by the appellant in the UK and the consequential adjustment necessary for the appellant to return to Bangladesh, that the refusal of leave to remain is of sufficient gravity to engage the appellant's rights under Article 8 of the ECHR. However, noting that the appellant does not meet the requirements of the Immigration Rules, that interference was legitimate and necessary. This in turn leads to the final question under Razgar, which I considered by reference to Section 117B of the 2002 Act.

37. Adopting a holistic, 'balance-sheet' approach recommended in the case of Hesham Ali v SSHD [2016] UKSC 60, in the appellant's favour, he has developed a private life over 15 years while in the UK and at least in 2010 when he had obtained an EEA residence card by virtue of his relationship with his former EEA partner, did so when his presence in the UK was lawful. His re-integration, even without any real obstacles in Bangladesh, will require a period of re-adjustment. He has worked in the UK lawfully since 2010 and had expressed a willingness to do so in future, which is in his favour in terms of integration in the UK.

38. On the other hand, Judge Robertson in May 2017 reached a conclusion about the respondent's refusal of an EEA permanent residence card in January 2016. Judge Robertson did not accept that the appellant's former partner had been exercising treaty rights in the period after the appellant obtained an EEA residence card in 2010. It follows that at some point between 2010 and 2016, any private life was developed when the appellant's immigration status was precarious, and correspondingly limited weight should be attached to it. Based on my findings already outlined, the appellant would be able to further strengthen his private life in Bangladesh, in respect of which I did not find that all ties had been cut. He will be able to re-establish himself fully in Bangladesh. The public interest in the maintenance of immigration control is also a very weighty factor, when the appellant does not have any other basis for remaining in the UK. In the circumstances, the respondent's refusal of leave to remain was wholly proportionate and was not in breach of the appellant's rights under article 8.

Notice of Decision

39. The FtTs decision involved an error of law, such that it was set aside. I re-make it by dismissing the appellant's appeal.

Signed Date 19 September 2019

J Keith

Upper Tribunal Judge Keith

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Signed Date 19 September 2019

J Keith

Upper Tribunal Judge Keith

ANNEX: ERROR OF LAW DECISION

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/00816/2019

THE IMMIGRATION ACTS

Heard at Field House
On 11 July 2019

Decision & Reasons Promulgated

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Before

UPPER TRIBUNAL JUDGE KEITH

Between

MR ABDUL AHAD
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr T Shah, Taj Solicitors
For the Respondent: Mr T Melvin, Home Office Presenting Officer

DECISION AND REASONS

40. These are the approved record of the decision and written reasons which were given ex tempore at the end of the hearing on 11 July 2019.

41. This is an appeal by the appellant against the decision of First-tier Tribunal Judge Row (the FtT), promulgated on 8 April 2019, (the 'Decision') by which he dismissed the appellant's appeal against the respondent's refusal on 31 December 2018 of his human rights claim. The respondent's decision in turn had refused the appellant's application for leave to remain based on his family and private life in the United Kingdom ('UK') following his entry on a visit visa to the UK on 21 December 2003, after which he had remained in the UK, for at least part of the period unlawfully, except for a period on or after 8 August 2010 and ending on or before 23 May 2017,

during which period he had initially obtained an EEA residence card but by 23 May 2017, his application for a permanent residence card had been dismissed.

42. In essence, the appellant's claims involved the following issues: whether there would be very significant obstacles to his integration into Bangladesh, his country of origin, for the purposes of paragraph 276ADE(1)(vi) of the Immigration Rules, noting his health conditions; his relatives and friends in the UK; the alleged lack of connections and support in Bangladesh, and noting that he is now aged 68 and the claimed lack of benefits for older people in Bangladesh.

The FtT's Decision

43. The FtT was not impressed by various aspects of the evidence in the hearing before him, finding there to be inconsistencies in the evidence about the appellant's relatives in Bangladesh and an absence of any medical reason preventing the appellant's integration. He also concluded that the appellant's relatives in Bangladesh would be willing to support the appellant.

The Grounds of Appeal and Grant of Permission

44. The appellant lodged grounds of appeal which are essentially that the FtT had failed to evaluate whether the appellant's relatives in Bangladesh would be willing to support him in light of a claimed estrangement between the appellant and them following his relationship with an EEA national, which is the background to him initially obtaining the EEA residence card.

45. First-tier Tribunal Judge Beach granted permission on 5 June 2019 on the basis that it was arguably unclear whether the FTT rejected the appellant's account, if any, of the estrangement. First-tier Tribunal Judge Beach's grant of permission was not, however, limited in its scope.

The appellant's submissions

46. In the hearing before me I considered both the grounds of appeal and also the respondent's response under Rule 24. On behalf of the appellant it was said that Judge Beach had referred to the appellant's age, length of residence and connections as gaps in findings. Whilst the Rule 24 response provided by the respondent had referred to paragraph [14] of the Decision, that in itself was brief and it was unclear from paragraph [14] whether FTT had not accepted the evidence in relation to the claimed estrangement as opposed to the number of relatives in Bangladesh. In particular, it was pointed out that the appellant never sought to deceive the FTT, stating clearly in paragraph [17] of his witness statement that he had a wife and children in Bangladesh but was estranged from them, and it was this evidence and its apparent rejection which was insufficiently explained. That was material to the Decision as it comprised one of the potential bases on which it was said there could be very significant obstacles.

The respondent's submissions

47. In response, the respondent indicated that at paragraph [14], the reference to witness evidence being, at best, 'varied' on the issue, amounted to discounting the witnesses' credibility. The FtT had sufficiently considered the witness evidence, referring expressly to it, and had reached the conclusion that the family circumstances in Bangladesh were not as claimed. As an aside, there was no evidence that the Bangladesh marriage had ever been dissolved. The appellant's wife and children continued to live in the family home and no Tribunal properly directing itself could find that there were obstacles, let alone very significant obstacles, to the appellant's integration in Bangladesh.

48. In terms of the law, I considered both paragraph 276ADE(1)(vi) of the Immigration Rules and also the appeal by reference to the appellant's human rights in the context of section 117B of the Nationality, Immigration and Asylum Act 2002, although I do not set those provisions out for the purposes of brevity.

Decision on error of law

49. I concluded that there was a material error of law in the Decision, but for reasons I will set out, it is appropriate that the Upper Tribunal should remake the Decision, with a preserved finding. The material error was the reasoning at paragraphs [10] to [14] of the Decision. Paragraph [10] refers to the appellant and a number of his witnesses giving evidence about his contacts in Bangladesh. It goes on to state that he had only two siblings and that they were the only family he had, both of whom were settled in the UK. When 'pressed' about this in evidence he said that his wife and six male children were living in Bangladesh and that his wife was living in the matrimonial home. Other witnesses then gave evidence, whose evidence is recorded at paragraphs [11] to [13] and it is apparent from the FtT's record of their evidence that there is an apparent inconsistency about the number of relatives said to be living in Bangladesh.

50. The FtT concludes at paragraph [14] that:-

> *"the evidence of the appellant and his three witnesses concerning his family circumstances in Bangladesh can best be described as varied. The most charitable thing that can be said about their evidence is that I do not find any of them to be a reliable witness as to fact concerning the appellant's family circumstances in Bangladesh."*

It was clear that this was material to the Decision as it goes on to state at paragraph [18]:

> *"I do not accept that the appellant would be without friends or relatives in Bangladesh. He retains a home there in which his wife is living. He has at least five adult male children and another child who is 16 or 17 years old. All could be expected to provide him with some financial and emotional assistance. I have no doubt that all of them would be pleased to see him."*

51. On the one hand, paragraph [14] could be read potentially to suggest that not only the evidence on the number of relatives living in Bangladesh was inconsistent, but there was also inconsistent evidence on nature of those relationships, ie. whether there was estrangement or not. However, when seen in the context of paragraph

[10], such a conclusion is not adequately reasoned. The inference from paragraph [10], when the Decision refers to the appellant stating about the only family he had and about being 'pressed' in evidence, is that he was deliberately attempting to mislead about not having any family members in Bangladesh. However, as correctly pointed out by Mr Shah in the hearing today, in fact at paragraph [17] of his witness statement, which was before the FtT, it clearly states that before entering the UK he was married and has children from the marriage. The witness statement continues that after his relationship with his former EEA partner, his wife, children and all other relatives decided not to keep in any contact with him. They said that he brought shame on the family and they did not wish to have anything to do with him. At that time he felt hopeless and his sisters and his family in the UK supported him through that period. He continued, at paragraph [18] of his written statement, that on his return to Bangladesh, there would be very significant obstacles as he did not have any savings or supportive relatives who would help him set up a business. I accept Mr Shah's submission that in written witness evidence before the FtT, the appellant had clearly stated that he did have relations in Bangladesh albeit from those with whom he had become estranged.

52. Whilst it is apparent from the FtT's record of evidence that there are apparent discrepancies as to the number of relatives in Bangladesh, that is a separate issue which had been identified in the grant of permission application by FtT Judge Beach from the issue of the question of estrangement. I am not satisfied that the reasoning at paragraph [14] of the Decision adequately explains the rejection of the claimed estrangement and therefore on that basis, the inadequate reasoning is material noting that it forms the basis of the conclusions about very significant obstacles at paragraph [18]. Therefore there was a material error of law in the Decision.

Notice of Decision

53. The Decision contained an error of law in respect of the reasoning around the issue of estrangement of the appellant from his relatives in Bangladesh. I therefore set aside the Decision. However, I preserve the findings of the FtT, to which there has not been any substantive challenge before me, that there are no medical reasons presenting very significant obstacles to the appellant's integration into Bangladesh. There was a detailed consideration at paragraph [7] of the Decision and that finding is preserved.

54. I regarded it as appropriate that in terms of disposal, that the Upper Tribunal should remake the decision, at a relisted hearing.

55. No anonymity direction is made.

Signed Date 25 July 2019

J Keith

Upper Tribunal Judge Keith