



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

Appeal Number: IA/10769/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 20th February 2015**

**Decision & Reasons
Promulgated
On 5th March 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE MURRAY

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**BADRUL ISLAM
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr Melvin, Home Office Presenting Officer
For the Respondent: Ms Fonoshe, Counsel, for Your Right, Solicitors, London

DECISION AND REASONS

1. The Appellant in these proceedings is the Secretary of State, however for convenience I shall now refer to the parties as they were before the First-tier Tribunal.

2. The Appellant is a citizen of Bangladesh born on 21st February 1969. He appealed against the decision of the Respondent dated 18th July 2013, which decision was to remove an illegal entrant/person subject to administrative removal under Section 10 of the Immigration and Asylum Act 1999 – asylum/human rights claim refused. His appeal was heard by Judge of the First-tier Tribunal Mitchell on 5th November 2014. The judge allowed the appeal to the limited extent that he concluded that the decision was not in accordance with the law. The judge found that the application remains outstanding and the Respondent should make a decision in accordance with the law.
3. An application for permission to appeal was lodged by the Respondent and permission was granted by Judge of the First-tier Tribunal Chambers on 5th January 2015. The grounds submit that the appeal does not succeed pursuant to the decision in **Edgehill [2014] EWCA Civ 402** and in any event should have been determined rather than remitted. Permission was granted, although the permission states that the outcome might not necessarily be in the Respondent's favour.

The Hearing

4. The Presenting Officer handed me the case of **Singh [2015] EWCA Civ 74** relating to the changes made to the Immigration Rules on 9th July 2012 and whether in this case, the new Rules should be considered, as the Appellant applied before 9th July 2012. The case of Singh states that the new Rules can be considered even if the application was made before 9 July 2012, where an Article 8 case is being dealt with.
5. The Appellant's representative submitted that this Appellant's claim succeeds under the Rules, so this does not apply. He submitted that the Appellant has been here for fourteen years, so his application must succeed under the Rules.
6. The Presenting Officer put to her that as the Appellant arrived in the United Kingdom in 2002, his fourteen years will not be up until 2016, so how can the fourteen year Rule apply. The Presenting Officer submitted that there is a clear material error in Judge Mitchell's decision as he should not have remitted the case, he should have determined the case. He referred to paragraph 56(2) of **Singh** stating that as from 6th September 2012 the Secretary of State was entitled to take into account the provisions of Appendix FM and paragraphs 276ADE – 276DH in deciding private or family life applications even if they were made prior to 9th July 2012 and the result is that the law as it was held to be, in **Edgehill**, only pertains to decisions taken in the two month window between 9th July and 6th September 2012. The Presenting Officer submitted that as there has been no fair hearing in this case the appeal should be remitted back to the First-tier because there have been no substantive considerations. He submitted that if the appeal is dealt with in the Upper Tribunal the matter will go on to further litigation. He submitted that the First-tier Tribunal should be allowed to make a reasoned decision in this appeal.

7. The Appellant's representative submitted that the IS151A was never served on the Appellant. I was referred to the skeleton argument submitted to the First-tier Tribunal before the hearing. The representative is mistaken in this. What the skeleton argument is stating is that the Appellant was served with an IS151A as a result of verbal deception, not that he was only served verbally with the notice. The Appellant's representative submitted that at the First-tier hearing it was put to the Tribunal that the Appellant has resided in the United Kingdom since 2002 and so he had accumulated long residence when he made his application in 2011. She submitted that the new Rules should not be considered and I was again referred to the said case of **Edgehill**.
8. Because of the new case of **Singh** the new Rules can be considered relating to human rights issues.
9. There is a clear material error of law in the judge's determination. The judge should have determined the appeal and not remitted it.
10. I am setting aside the First-tier determination.
11. I direct that there shall be a First-tier hearing of this appeal at Taylor House on 18th August 2015.

No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge Murray