



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

Appeal Number: IA/44009/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 8 June 2015**

**Decision & Reasons Promulgated
On 12 June 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVID TAYLOR

Between

**MR MD. REZA KAMAL
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Rahman, Legal Representative

For the Respondent: Mr E Tufan, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a 26 year old citizen of Bangladesh (born 5 October 1988) who has appealed, with permission, against the decision (promulgated on 24 October 2014) of First-tier Tribunal Judge Devlin, who dismissed his appeal against the respondent's refusal of his application to remain in the United Kingdom on the grounds of his private life under Article 8. His Article 8 claim included claims of fear to return to Bangladesh on the basis that he would be in danger there. The claim thus incorporated asylum, humanitarian protection and Article 3 claims and the judge dealt fully with those claims as part of his decision. He did not find the appellant's claims

to be credible [120] - [123] and he went on to dismiss the appellant's claims on all grounds.

2. The appellant sought permission to appeal. The application was at first refused by Designated Judge Coates in the First-tier Tribunal for the following reasons:

- “1. The Appellant is a national of Bangladesh, aged 27, who appealed against the Respondent's decision to refuse his application to remain in the United Kingdom on private life grounds. The application was considered by the Respondent under Paragraph 276ADE of the Immigration Rules. The appeal was dismissed by Judge of the First-tier Tribunal Devlin on the 24th October 2014.
2. Grounds submitted by the Appellant's representatives in support of an application for permission to appeal begin by asserting that the First-tier Judge erred by not taking into account the Appellant's witness statement as well as oral evidence. There is no substance in this ground because, at Paragraph 21, the Judge summarises the Appellant's case and expressly refers to his witness statement.
3. The second ground alleges that 'the First-tier Judge has failed to comply with common law duty to act in the decision making process'. That is meaningless.
4. The grounds next allege that the First-tier Judge failed to consider the 'CDS principles'. Reference is then made to the decision in **CDS (PBS "available" Article 8) Brazil [2010] UKUT 00305 (IAC)**. CDS was a PBS appeal relating to availability of funds. I fail to see what relevance it has to the appeal under consideration.
5. The next assertion is that the First-tier Judge's determination is 'full of mis-information and mistakes'. Reference is then made to inconsistencies in reference to the name of the Appellant's representative. I note that in the heading of the Decision and Reasons the Appellant's representative is said to be 'Mr Chawdhary, El Solicitors'. However, at Paragraph 3 the name is given as 'Chowdhury', at Paragraph 7 the name changes to 'Chowdhary' and at Paragraph 13 there is yet another version, namely 'Chaudhury'. It is only at Paragraph 20, and thereafter, that the name Rahman appears for the first time. This, in my view, demonstrates a regrettable lack of care in proof reading but a typographical error (or errors) does not necessarily amount to a material error of law. The remainder of the determination is well constructed, clearly written and deals comprehensively with every aspect of the appeal.
6. In contrast to the determination, the Appellant's grounds of appeal are poorly drafted and littered with grammatical mistakes. They are not, I regret to say, of the standard

which one would expect from solicitors practising in the United Kingdom. It is not until the fourth page that the issue of human rights, which is at the core of this appeal, is mentioned. Reference is made to the decision in **SSHD v Pankina**, the relevance of which escapes me. Paragraph 13 claims that the First-tier Judge's decision interferes with the Appellant's right to respect to private and family life, yet family life has never been relied on.

7. Finally, the grounds allege that the decision under appeal is 'Wednesbury unreasonable'. In my estimation there is simply no basis in law for making such an assertion. Every aspect of the Appellant's claim has received careful and comprehensive consideration. Clear findings have been made which are supported by cogent reasons.
8. The determination discloses no arguable error of law."

3. The appellant made a further appeal for permission the Upper Tribunal. On 22 April 2015 Upper Tribunal Judge Lindsley gave permission and included the following in her reasons:

"3. ... The First-tier Tribunal did make a number of errors with respect to the representative's name. More significantly at paragraph 131 of the decision there is reference made to the appellant being in a relationship with a Polish national which did not form part of his claim and at paragraph 133 it states that the appellant has only been in the UK for four years which is not the case as he entered on 28 December 2007 and was in the UK with valid leave as a student until 30 July 2013 when he claimed asylum.

4. In the light of these significant errors it is arguable that the First-tier Tribunal Judge did not have his mind on the appellant's case when writing his decision and thus that unfairness has resulted.

5. In relation to the protection claim I have noted that paragraphs 19 to 125 of the decision of the First-tier Tribunal appear to be free of similar errors. However, this section of the decision is arguably preceded by the references to the wrong representative in the judge's consideration of the adjournment request (see paragraphs 5, 7 and 13)) and followed by the Article 8 claim in respect of which there were arguably errors as set out above. ... It is further arguable that the appellant has not had a fair determination of his protection appeal in that it is difficult to see how it can be said that the judge had his mind fully on the facts of the appellant's appeal in relation to part of the case but not the remainder."

4. In making his submissions to me on the issue of error of law Mr Rahman – who it would appear was the representative who appeared on behalf of the appellant at the First-tier Tribunal – relied on the grounds. He submitted that the appellant did not get a fair hearing because his application for an

adjournment had been refused. The adjournment had been applied for on the basis, it was claimed, that the Presenting Officer was rude to the appellant before the commencement in asking him why he had not, prior to that hearing, made a formal application for asylum. Further, the judge could not have had his mind on the facts of the case when preparing his decision because he referred to a Polish girlfriend – there was no Polish girlfriend and no reference to one in any part of the documentation – and he also on several occasions got the name of the appellant’s representative wrong. He also erred in saying that the appellant had only been in the UK for four years when he had been here for seven years. All of that rendered the decision unsafe.

5. In reply Mr Tufan submitted that the judge was entitled not to adjourn the hearing and had given clear and sustainable reasons for his refusal. As to the errors in the name of the appellant’s representative (only in the early part of the decision) that was minor and made no material difference to the outcome of the case. The same could be said for his slip in saying that the appellant had been in the UK for only four years rather than seven years.
6. The reference to the Polish girlfriend was clearly wrong. It was, however, included in only one paragraph [131] of the decision. It had presumably come from a previous template or decision of the judge and clearly should not have been included. But in reality it made no difference whatever to the comprehensive and detailed reasons that the judge had given on the facts of this case for dismissing the appeal on all grounds. Indeed, it was submitted that if the appellant had had a Polish girlfriend (which he did not) it might have added to his case rather than detract from it. Paragraph 131 of the decision could therefore safely be deleted and the remainder of the decision stood on its own.
7. I reserved my decision and have since re-read the First-tier Tribunal Judge’s decision and, indeed, all the evidence that was before him. There is no doubt that the judge got a number of matters factually wrong but I am not persuaded that any of those matters amounted to a material error of law such that the decision should be set aside. All the factual errors which are referred to above could and undoubtedly should have been corrected by the judge had he properly and carefully proofread his decision before submitting it for promulgation. It is certainly highly regrettable that he did not do so.
8. But there is nothing in his decision which leaves me to believe that he did not have his mind on the relevant facts of this case as it related to the appellant and the appellant’s claims. Certainly he should have got the name of the appellant’s representative right but that does not go to the essence of the claim. Nor does the apparent slip in referring to four years’ residence in the UK rather than seven years. The reference to a Polish girlfriend is more serious but again it was one discrete paragraph which the appellant and his representatives would immediately have known had nothing to do with him. All these errors would have been capable of

correction under the slip Rule - had the judge been asked promptly - because the extensive and careful reasons given by the judge on the substantive issues raised by the appellant were clearly within the reasonable framework of his findings having regard to the evidence that had been put before him at the hearing.

9. I deal finally, and briefly, with the ground relating to the adjournment request that had been refused. The judge was told of the circumstances and gave full reasons for refusing the adjournment at [5] - [18]. The judge found the adjournment request to be based on "spurious" grounds. It might perhaps have been different had the appellant not been legally represented but it is clear from the decision itself that the judge was satisfied that the appellant was well enough and able to give detailed oral evidence in support of his claim.

Notice of Decision

The decision of the First-tier Tribunal did not contain any material error of law such that it should be set aside. The decision shall stand.

No anonymity direction has been sought and none is made.

Designated Judge David Taylor
Deputy Upper Tribunal Judge
11 June 2015