



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

Appeal Number: IA/29501/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 8th June 2017**

**Decision and Reasons Promulgated
On 9th June 2017**

Before

UPPER TRIBUNAL JUDGE COKER

Between

SHIHAB UDDIN

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr N Ahmed, instructed by Lincoln's Chambers Solicitors
For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. Mr Uddin was granted permission to appeal the dismissal of his appeal, by First-tier Tribunal Judge Lindsley, against the decision of the respondent dated 17th August 2015 refusing his human rights claim for leave to remain.

2. Permission was granted on limited grounds only namely:

“It was arguable that in consideration of the matter outside of the Immigration Rules the First-tier Tribunal did not consider the argument put forward in the skeleton argument and in the statement of the appellant’s aunt and the appellant’s own statement that he has a family life relationship with his aunt. He is clearly still in full time education and has lived with his aunt for the past 10 years, who has apparently taken on a parental relationship for him from the age of 11 years. This is arguably a significant matter which should have been placed in the balance and to which weight could be attributed. Simply because the aunt is found not to have told the truth about other matters does not mean that her evidence on this issue could not be material, and in any case would have to be placed with the appellant’s own testimony and that of his cousin.”

3. Findings of the First-tier Tribunal against which permission was sought, but not granted and therefore stand are as follows:

- (i) The First-tier Tribunal made clear and reasoned findings for its conclusion that the appellant was aged 21 and born in 1995 and not born in 2000 as claimed;
- (ii) the Tribunal clearly decided the case on the basis that the appellant’s father had died and that his remaining relatives in Bangladesh are his mother and brother;
- (iii) The First-tier Tribunal considered the appellant’s English language ability properly, considering it to be a neutral factor;
- (iv) Although the appellant is not financially self-sufficient because he is in full time education, the cousin’s financial support was taken into consideration.

4. The respondent opposes the appeal and refers in her Rule 24 response to findings by the First-tier Tribunal judge that

- (i) The appellant’s family in Bangladesh have continued to be involved with the appellant throughout his upbringing;
- (ii) The appellant was 21 at the date of hearing and not 18 as claimed;
- (iii) The evidence of the aunt was ‘incredible’;
- (iv) Neither the appellant nor his representatives advanced a case beyond the quality of his private life.

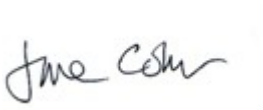
5. The respondent submits in her Rule 24 response that in the absence of a case being advanced about family life it was open to the First-tier Tribunal judge to find there were no compelling circumstance such as would warrant consideration outside the Rules.

6. The First-tier Tribunal found that whilst not in dispute that the appellant has developed a private life in the UK, no evidence was put forward in terms of the issue of reintegration to Bangladesh his account had been predicated upon an assertion that he had been entirely abandoned by his family in Bangladesh. The First-tier Tribunal judge did not accept that and found

there was family to whom he could turn in Bangladesh. In submissions, Mr Ahmed again reiterated that the appellant's aunt had taken the place of the appellant's mother. He referred to caselaw on the basis that the appellant was a minor – a fact specifically found not to be the case by the First-tier Tribunal. His skeleton argument referred to matters of proportionality that had been considered and reasoned findings made by the First-tier Tribunal and which were not the subject of the grant of permission.

7. Although the First-tier Tribunal judge states that in determining whether to allow an appeal on Article 8 grounds, compelling circumstances were required and it may be that the judge applied a rather simplified approach, the issue is whether in failing to make a specific finding about the appellant's relationship with his aunt, this amounts to an error of law such that the decision of the First-tier Tribunal be set aside to be remade. The appellant did not formulate his appeal based on his family life with his aunt.
8. The First-tier Tribunal judge does not make a finding of the nature and extent of his family life with his aunt but does make a finding that he has been and remains in contact with his mother and brother and they have remained interested and involved over the years. Even if his aunt has become a surrogate mother figure in terms of his care and upbringing in the UK, which the judge can be considered because of his other findings not to accept, the fact remains that this young man is at the date of the hearing aged 21, in education, has been in the UK for some 11 years and has contact with his mother and brother in Bangladesh. It cannot be said that the decision to refuse his human rights claim was disproportionate.
9. Even if the First-tier Tribunal judge had, as referred to in the grant of permission, found that the appellant's aunt had taken on the role of mother during his minority, when that is weighed in the balance with all the other findings made by the judge including issues of character, length of residence, education, language ability and other relatives in the UK as well as contact with his mother and brother in Bangladesh, the conclusion reached is not disproportionate.
10. There is no material error of law such that the decision of the First-tier Tribunal should be set aside to be remade.
11. The appeal is dismissed; the decision of the First-tier Tribunal stands.

Date 8th June 2017



Upper Tribunal Judge Coker