



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/03927/2016

**THE IMMIGRATION ACTS**

Heard at Field House  
On 9 May 2018

Decision & Reasons Promulgated  
On 16 May 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE MONSON

Between

MOHAMMED MISSAN UDDIN CHOWDHURY  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Ms H. Foot, Counsel instructed via Direct Access

For the Respondent: Ms N. Willocks-Briscoe, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant appeals to the Upper Tribunal from the decision of the First-tier Tribunal (Judge M. R. Oliver sitting at Hatton Cross on 8 May 2017) dismissing his appeal against the decision of the respondent made on 25 May 2016 to refuse to grant him ILR under the Rules on the ground of ten years' continuous lawful residence or on the ground that there were very significant obstacles to his re-integration into the country of return (Bangladesh). The First-tier Tribunal did not make an anonymity direction,

and I do not consider that the appellant requires to be accorded anonymity for these proceedings in the Upper Tribunal.

### **The Reasons for the Grant of Permission to Appeal**

2. Permission to appeal was initially refused by Judge Pickup. He held that the Judge's findings under the Rules were fully justified on the evidence. As to the Article 8 appeal outside the Rules, it was difficult to see how it could have succeeded. The grounds were in error in suggesting that the appellant could derive any benefit from s117B of the 2002 Act. Also, it was difficult to see how his alleged mental health problems could have justified Article 8 relief outside the Rules, when medical treatment for this would be available in Bangladesh. The grounds were a poor attempt to re-argue the appeal.
3. However, following a renewed application to the Upper Tribunal, UTJ Frances granted permission to appeal on 21 February 2018 for the following reasons:

"The decision fails to engage with the evidence and fails to demonstrate why the Appellant's removal would be proportionate. The Appellant may not be able to make out his case on the facts, but the decision should demonstrate why that is the case."
4. By a notice dated 22 February 2018, Principal Resident Upper Tribunal Judge Dawson issued standard directions informing the parties that there was a presumption, if the FtT decision was set aside as erroneous in law, that the re-making of the decision would take place at the same hearing.

### **The Rule 24 Response**

5. On 13 March 2018 a member of the Specialist Appeals Team settled a Rule 24 response conceding the appeal, and inviting the UT to send the appeal back to the FtT to be re-determined on the basis that the determination of Judge Oliver was inadequate.

### **The Hearing in the Upper Tribunal**

6. At the outset of the hearing before me, I indicated my strong disapproval of the line taken in the Rule 24 Response, which subverted the presumption of re-making decisions in the UT where the nature of the error of law is one of inadequate reasoning. I also reminded the parties that I could only accept a concession of law, as distinct from a concession of fact, if I was satisfied that the concession was rightly made.
7. After hearing from Ms Foot, I was persuaded that an error of law was made out with regard to the Judge's reasoning on the Article 8 claim outside the Rules. My reasons for finding an error of law are set out below.
8. In normal circumstances I would have proceeded to re-make the decision at the same hearing, but I decided that this would be unfair as the appellant had been led by the respondent to believe that his appeal was going to be remitted to the FtT and so he had assumed that the hearing was going to be very short; and he had made plans for later that morning. In addition, Ms Foot said she wished to adduce evidence of a recent

change in circumstances. Due to the extent of further fact-finding that was going to be required on the issue of whether the Appellant had established family life or quasi-family life in the UK, I decided that it was appropriate to remit the appeal to the FtT.

### **Discussion**

9. Ms Foot, who appeared below, conceded at the outset of the hearing before Judge Oliver that the appellant was six months short of completing 10 year's continuous lawful residence, and so he could not qualify for leave to remain under Rule 276B.
10. The only extant issue under the Rules was whether there were very significant obstacles to the appellant's integration into the country of return. The Judge gave five reasons for answering this question in the negative at paragraph [11]. It was open to the Judge to find that he had family to return to, as the appellant had given evidence that he remained in contact with his parents, calling them 2 or 3 times a year to check how they were. The Judge was not bound to accept Ms Foot's submission in her skeleton argument that he had "*no supportive family*" in Bangladesh. Although the Judge did not address the question of whether the appellant's depression, suicidal thoughts and anxiety would be a significant barrier to re-integration, I am not persuaded that the Judge's reasoning on Rule 276ADE was inadequate. As held by Judge Pickup, there was no evidence to the effect that the appellant was unlikely to be able to access appropriate treatment for his mental ill-health in Bangladesh. Moreover, despite his ill-health, the appellant also relied on the fact that he had an active social life and engaged in charity work.
11. For the purposes of an Article 8 claim outside the Rules, the appellant relied on the factors listed at paragraph 20 of Ms Foot's skeleton argument. These included being akin to an additional father figure to the children of his friends, such that it would be contrary to their best interests for him to be removed. In his evidence, the appellant said they had become "*his surrogate family*".
12. The Judge did not make any findings on the above matters. His only observation on the Article 8 claim outside the Rules was a single sentence at the end of paragraph [11]:

"His leave in the United Kingdom has always been precarious."
13. Accordingly, I am persuaded that his reasoning on proportionality was inadequate. The Judge failed to make any findings on the quasi-family life claim (Ms Foot did not in terms submit that the appellant had established family life, as distinct from a strong private life "*encompassing close relationships with his friends' children akin to being an additional father figure for them*"); and he did not explain why the proposed interference was proportionate, having regard to the various considerations arising under Article 8(1) and Article 8(2) which were relied on by Ms Foot in her skeleton argument.

### **Notice of Decision**

The decision of the First-tier Tribunal contained an error of law, such that the decision must be set aside and re-made.

**Directions**

**This appeal is remitted to the First-tier Tribunal at Hatton Cross for a fresh hearing before any Judge apart from Judge M R Oliver.**

**None of the findings of fact made by Judge Oliver will be preserved.**

Signed

Date 10 May 2018

Judge Monson  
Deputy Upper Tribunal Judge