



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

Appeal Number: HU/16730/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 25th April 2018**

**Decision and Reasons Promulgated
On 27th April 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE PARKES

Between

**HASAN RUMI
(ANONYMITY DIRECTION NOT MADE)**

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Rahman (Legal Representative, JKR Solicitors)
For the Respondent: Ms A Everett (Home Office Presenting Officer)

DETERMINATION AND REASONS

1. The Appellant is a national of Bangladesh, he entered the UK on the 25th of February 2006 as a student with leave to remain until the end of May 2009. There were a number of extensions of leave to the 9th of May 2015. On the 8th of May 2015 a further application was made but refused with no in-country right of appeal, an appeal to the First-tier Tribunal was rejected for want of jurisdiction and was followed by judicial review proceedings which were unsuccessful, notification of the refusal being given on the 1st of February 2016. On the 8th of February 2016 made the application forming the basis of these proceedings. That application was refused but with an in-country right of appeal which the Appellant exercised.
2. The Appellant's appeal was heard by First-tier Tribunal Judge Gillespie at Taylor House on the 8th of December 2017. The Appellant's appeal was dismissed for the reasons given in the decision promulgated on the 5th of January 2017. It was common ground that the Appellant could not show that he had 10 continuous lawful residence in the UK, the Home Office accepted in the Refusal Letter that the Appellant had been without leave since the 24th of September 2015. The Home Office took the time without leave to the date of the application, the 8th of February 2016, making the total time without leave as 137 days.

3. In the decision at paragraph 30 the Judge calculated the time without leave as running from the 9th of May 2015 to the 8th of February 2016 and stated that came to “a full eight months and 46 days short of the 10-year qualifying period.” That was followed by an assessment of the Appellant's private life in the course of which the Judge found that the Appellant's removal would be proportionate. There is clearly a typing error in the number of days which perhaps should have read “16 days”. For this decision that is neither here nor there.
4. The grounds argue that the First-tier Tribunal Judge erred in respect of the nature of the Appellant's presence, it was argued that the Judge was wrong to characterise it as precarious when that term was understood to mean unlawful. It is also argued that the Judge erred in respect of the length of the gap in the Appellant's lawful residence in the UK, the date should have been taken from the 24th of September as stated by the Secretary of State. Consequently upon that it was argued that the Judge had not properly considered how nearly the Appellant had missed the 10 year period when assessing proportionality and had not considered the Appellant's explanation for the gap and its length.
5. Permission was granted by First-tier Tribunal Judge Hollingworth on the 22nd of February 2018. It was arguable that the period that the Appellant was without leave was less than that indicated by the Judge. It was arguable that an exact calculation should have been set out. Consequently it was arguable that the arguments regarding exceptionality could be viewed as having received less weight. There was no rules 24 response from the Secretary of State.
6. The submissions are set out in the Record of Proceedings and are referred to where relevant below. The Home Office indicated that the Judge might well have been correct in the analysis of the length of the gap in the Appellant's residence but conceded that in the Refusal Letter the period of 137 days was the time given in any event the Home Office maintained that the decision was proportionate even on the shorter period. I asked of Mr Rahman given that the rules could not be met what compelling circumstances existed to justify a grant of leave under article 8, he replied that taking into account the public interest the proportionality exercise would go in the Appellant's favour.
7. The Appellant's explanation for the gap and the applications he made was based on the advice he received from the solicitors he had at the time. The Appellant was represented but it was only at the hearing that this was raised, given that this was a point that was in issue and relevant it is not clear why it had not been addressed before. There was nothing from the Appellant's then representatives before the Judge to explain. Even if the Appellant had made a further application it is speculative as to the consideration that it would have received at that time.
8. As it stood the Appellant sought to appeal to the First-tier Tribunal in an application that was bound to fail and did so being rejected for want of jurisdiction. The application for judicial review was a justified mechanism for challenge but in the event did not assist the Appellant.
9. In my view the length of the gap that the Home Office had accepted in the Refusal Letter was the one to be applied to the Appellant's circumstances is not materially different from the longer period calculated by the Judge. 4½ months compared to 8 to 9 months of the Judge's decision is not particularly significant. The judge was considering a private life claim which attracts less significance than a family life claim and the observations in the cases referred to in paragraph 31 are relevant. The point was reinforced by *Patel and Others v Secretary of State for the Home Department* [2013] UKSC 72 which the Judge did not refer to but would have been pertinent.
10. In paragraphs 33 and 34 the Judge discussed the Appellant's circumstances and the statutory regime that applied. The Judge has to be taken to have found that there were nothing compelling

about the Appellant's circumstances that would justify a grant of leave outside the rules and there was nothing in the evidence that Mr Rahman could point to that would have led to a different conclusion. As the Judge observed in paragraph 33 his private life was of a fairly ordinary character and he retained links to Bangladesh. In the circumstances while it can be argued that the Judge considered a longer period than had been agreed by the Secretary of State that period, at 4½ months, was in the context of an unexceptional private life not material. The Judge was entitled to dismiss the appeal for the reasons given and the decision contains no error of law.

11. As a foot note I would add that the claim that the term precarious would have to mean illegal has no merit. The case of AM (S 117B) Malawi [2015] UKUT 260 (IAC) clearly drew the distinction between a person whose presence depended on grants of leave being precarious and those without leave being in the UK illegally.

CONCLUSIONS

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision.

Anonymity

The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and I make no order.

Fee Award

In dismissing this appeal I make no fee award.

Signed:



Deputy Judge of the Upper Tribunal (IAC)

Dated: 25th April 2018