Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/07367/2019

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 18th March 2020	**On 20th April 2020**

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

SAYDUR RAHMAN
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr F Junior of Lawland Solicitors
For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction and Background

1. The Appellant appeals against a decision of Judge Lucas (the judge) of the First-tier Tribunal (the FtT) promulgated on 18th September 2019.

2. The Appellant is a citizen of Bangladesh born on 6th January 1993. He is now 27 years of age.

3. The Appellant arrived in the UK as a child visitor, together with his mother, on 11th February 2009. He had leave to remain from 19th January 2009 until 19th July 2009.

4. The Appellant was 16 years of age when he entered the UK. On 6th July 2009 he submitted form FLR(O) requesting further leave to remain. A covering letter was submitted with the application explaining that the application was based on compassionate circumstances, and human rights. The covering letter alleged that a fatwa had been issued in Bangladesh against the Appellant's mother as it was alleged she had been having an affair. The Appellant had had no communication from his father since 1999.

5. The Appellant's mother left him in the UK on 15th May 2009. He had been unsuccessful in making any contact with her after her departure. The letter, which was dated 1st July 2009, explained that the Appellant was being supported by friends and staying in various places on a temporary basis.

6. The application was refused on 8th April 2019, approaching ten years after it had been made. The Respondent noted that the Appellant did not claim to have a partner, parent or dependent children in the UK, and therefore did not consider family life pursuant to Appendix FM.

7. The Appellant's private life had been considered with reference to paragraph 276ADE(1). The Respondent found that the application failed on grounds of suitability under section S-LTR.1.6 as the Appellant's presence in the UK is not conducive to the public good. This was because on 20th April 2012 he had been convicted of an act outraging public decency for which he had received a conditional discharge of six months.

8. The Appellant was 16 at the date that he had applied for leave to remain and the Respondent did not accept that he satisfied the requirements of any of the provisions of paragraph 276ADE(1).

9. The Respondent did not accept that the application disclosed any exceptional circumstances which would result in unjustifiably harsh consequences if the Appellant had to return to Bangladesh. The Respondent noted that the Appellant had given a false address in his application. This had been discovered by Social Services who visited the address in February 2010 and discovered that the Appellant had never lived there. It was noted that the Appellant's mother had been able to return to Bangladesh without any apparent difficulty. It was noted that the Appellant's mother had been successful in making an entry clearance application to return to the UK on 12th February 2018. She had entered the UK with the Appellant's siblings.

10. The appeal was heard on 3rd September 2019. The judge heard oral evidence from the Appellant and his mother. It was noted that the Appellant's father did not attend the hearing, and neither did any of his siblings.

11. The judge found that the Appellant was not a reliable or plausible witness. It was accepted at paragraph 28 that he had "been within the UK for around ten years". The judge found that the application for leave to remain made in 2009 was based mainly on false information. It was accepted by the Appellant that a fatwa had not been issued against his mother, and his parents had never separated. A bogus address had been provided. The judge found the Appellant had not sought to correct the bogus information.

12. The Appellant stated that an agent had made the application for him but the judge did not find that plausible, as at the time of the application the Appellant had two adult parents in the UK.

13. The judge found that the Appellant's mother had returned to Bangladesh on more than one occasion. There was no explanation why the Appellant chose to remain in the UK between 2009–2017 when the rest of his family were in Bangladesh. The judge did not accept the claim that the family home in Bangladesh had been sold. The appeal was dismissed.

The Application for Permission to Appeal

14. It was contended that the judge had erred by failing to consider that the Appellant was a minor when he arrived in the UK. The judge had also erred by failing to address the effect of the Respondent's delay in making a decision upon the application for leave to remain.

15. It was claimed that the Appellant had a legitimate expectation of being given discretionary leave to remain in the UK after ten years' residence. It was not disputed that false information had been provided in the application, but it was submitted that the judge had erred by failing to consider that the Appellant was a minor at that time, and the false information was submitted by a third party. It was claimed that the Appellant was not aware of the contents of the application until he received the refusal letter in April 2019.

16. It was contended that the judge had erred by finding that the Appellant had two parents in the UK when the application for leave to remain was made. The Appellant in his witness statement claimed that his mother had gone back to Bangladesh. It was claimed that the judge had erred by finding that there was no explanation why the Appellant chose to remain in the UK between 2009–2017 when the remainder of his family were in Bangladesh. The judge had failed to take into account that the Appellant's mother explained that she had left him in the UK for his own safety.

17. It was submitted that the judge had erred by failing to apply or consider paragraph 276ADE(1)(vi) and had therefore failed to consider whether there were significant obstacles to the Appellant's integration in Bangladesh.

18. It was contended that the judge had erred by failing to make any finding on the public interest considerations in section 117B of the Nationality, Immigration and Asylum Act 2002 (the 2002 Act).

The Grant of Permission to Appeal

19. Permission to appeal was granted by Judge Appleyard in the following terms;

> "2. The grounds assert that the judge erred in his approach to the evidence with particular reference to credibility, the issue of delay, the use of an agent, evidence as to why the Appellant remained in the United Kingdom between 2009 and 2017, erred in his approach to significant obstacles to the Appellant's reintegration back in Bangladesh, the fact that the Appellant was a minor at the time of his initial application and has failed to make findings in relation to the public interest. While some of these grounds are far stronger than others they are nonetheless arguable".

20. Directions were issued that there should be a hearing before the Upper Tribunal to ascertain whether the FtT had erred in law such that the decision should be set aside.

The Upper Tribunal Hearing

21. Mr Junior relied upon the grounds upon which permission to appeal had been granted. His initial submission was that the judge had erred by not considering paragraph 276ADE(1)(vi) but he did not pursue that submission, when it became apparent that the Appellant was not 18 at the date of application which is a requirement.

22. It was submitted that the judge had not considered the Respondent's delay in making a decision upon the Appellant's application, and had failed to take properly into account the Appellant's length of residence in the UK.

23. It was submitted that the judge had failed to take into account that the Appellant's family are in the UK and settled, although upon closer inspection of the documentary evidence it was accepted that the Appellant's father is settled but his mother and sisters have limited leave to remain.

24. Mr Tufan submitted that there were no material errors of law in the decision of the FtT. It was submitted that part of the delay had been caused by the Appellant providing what was subsequently accepted to be a bogus address, and it was submitted that the Appellant had not been prejudiced by the delay.

25. I asked Mr Tufan for his views on the omission by the judge to refer to section 117B, and was told that this was an error of law, but not material in the circumstances. It was submitted that the judge could not have come to any other conclusion than to dismiss the appeal.

26. In responding Mr Junior reiterated that although the address provided in the application had been bogus, that was not the fault of the Appellant but was the fault of the agent who submitted the application. I was referred to the Appellant's bundle before the FtT at pages 20–25 which demonstrated that the Appellant's representatives had attempted to "chase" the Respondent for a decision in this matter and had provided the Appellant's correct address.

My Conclusions and Reasons

27. I do not find that the judge erred in law by failing to appreciate that the Appellant was a minor when he arrived in the UK. In the first paragraph of the judge's decision, the Appellant's date of birth is recited. In paragraph 5 the judge records that the Appellant entered the UK on 11th February 2009.

28. The judge was aware of the delay in the Respondent reaching a decision on the application. At paragraph 3 the judge records that the application for leave to remain was made on 6th July 2009, and in the first paragraph of the decision the judge records that the Respondent's decision was not made until 8th April 2019. I do not find that the judge erred on this issue, and the delay made the application stronger than it might have been, had the Respondent made a decision shortly after the application had been made.

29. The judge at paragraph 38 did not err when concluding that the application for leave to remain, made in 2009, "was based largely upon bogus information with a false address".

30. The judge did not err, in not accepting that the Appellant had a legitimate expectation that he was entitled to be granted leave to remain after being resident in the UK for ten years. In fact, section 117B(5) provides the opposite, in that little weight should be given to a private life established by a person at a time when the person's immigration status is precarious.

31. I find no error of law at paragraph 31 in which the judge rejects as implausible the Appellant's explanation that an agent was to blame for the false information contained in the application for leave to remain. The judge found there was no need for the Appellant to use an agent as he had two adult parents who cared for him at that time. It may be that the Appellant's mother had departed from the UK when the application was made, but the witness statement submitted by the Appellant's father, which was in the Appellant's bundle before the FtT, and is dated 20th August 2019, confirms that he first came to the UK on 3rd November 2001 and "finally got my status in September 2009". It is not clear why the

Appellant's father did not submit the application for leave to remain on behalf of the Appellant.

32. The judge did not err in not considering paragraph 276ADE(1)(vi) because, leaving aside the issue of suitability raised by the Respondent in the refusal decision, the Appellant was not 18 at the date of application.

33. The judge did err by failing to consider section 117B of the 2002 Act. This error is not however material in the circumstances of this appeal.

34. This is because section 117B(1) provides that the maintenance of effective immigration control is in the public interest. The judge's failure to consider this cannot be of assistance to the Appellant. In fact, it is detrimental to the Appellant's case. The Appellant, or his family on his behalf, submitted a false application for leave to remain.

35. Section 117B provides that it is in the public interest that a person seeking leave to remain can speak English and is financially independent. These are neutral factors, in that the Appellant can speak English, and is not reliant upon public funds.

36. Section 117B(5) relates to the Appellant. This is because he has only ever had a precarious immigration status. He submitted an application for leave to remain prior to the expiry of his leave in 2009, but has never held any leave other than as a child visitor which expired in 2009. It is appropriate to attach little weight to the private life that he has established in those circumstances.

37. In my view the judge erred by not adopting a structured approach. The judge should firstly have made a finding as to whether Article 8 was engaged. It appears that it is accepted that Article 8 was engaged, based on the Appellant's private life. The judge should then have considered whether the Appellant could succeed by reliance upon Appendix FM in relation to family life, or paragraph 276ADE(1) in relation to private life. The judge would have had to have found that the Appellant could not succeed on those grounds.

38. The judge should then have considered whether there were any exceptional circumstances which would result in unjustifiably harsh consequences if the Appellant was not allowed to remain in the UK. It is not expressly stated that the judge did this, but it can be implied from the decision that the judge found no such exceptional circumstances existed.

39. The failure to adopt a structured approach is not, given the circumstances of this appeal, a material error of law. In this appeal, the Appellant presented as a single man on whose behalf a false application for leave to remain had been submitted. He had residence in excess of ten years but his immigration status was always precarious. There were no relevant medical issues, and there were no language or cultural difficulties if the

Appellant returned to Bangladesh. The judge did not find the Appellant and his witness to be credible and gave reasons for that finding.

40. The judge was entitled to find that the Appellant had established a private life in the UK, but that interference with that private life was necessary in the interests of maintaining effective immigration control, and proportionate in the circumstances. Had the judge adopted a structured approach, based on the evidence presented on behalf of the Appellant, the judge would have had to, in my view, dismiss the appeal.

41. I conclude that the judge's decision does not contain a material error of law.

Notice of Decision

The decision of the FtT did not involve the making of an error of law such that the decision must be set aside. I do not set aside the decision. The appeal is dismissed.

There has been no application for anonymity and I see no need to make an anonymity direction.

Signed Date 18th March 2020

Deputy Upper Tribunal Judge M A Hall

TO THE RESPONDENT
FEE AWARD

The appeal is dismissed. There is no fee award.

Signed Date 18th March 2020

Deputy Upper Tribunal Judge M A Hall