



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-005180
First-tier Tribunal No:
HU/52852/2021
HU/09966/2019

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 08 May 2024

Before

UPPER TRIBUNAL JUDGE JACKSON

Between

Md Asaduzzaman Azad
(NO ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr C Mannan of Counsel, instructed by Law Lane Solicitors
For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

Heard at Field House on 14 March 2024

DECISION AND REASONS

1. The Appellant appeals with permission against the decision of First-tier Tribunal Judge Swaney promulgated on 15 August 2022, in which the Appellant's appeal against the decision to refuse his human rights claim dated 2 June 2021 was dismissed.
2. The Appellant is a national of Bangladesh, born on 20 August 1981, who first entered the United Kingdom on 25 October 2010 as a Tier 4 (General) Student with leave to remain as such to 31 July 2012. He made a further application for leave to remain on 31 July 2012 which was refused on 22 October 2022 and his appeal against that refusal was dismissed on 7 February 2013, with his appeal rights exhausted on 25 April 2013. A further application for leave to remain as a

student made on 23 May 2013 was granted to 27 March 2015, albeit that leave to remain was curtailed on 18 March 2014 to end on 17 May 2014.

3. On 25 April 2014, the Appellant made a further application for leave to remain as a student which was granted to 30 December 2015, although that leave was also curtailed on 7 April 2014 to end on 11 October 2014. A further application on 10 April 2014 was refused on 27 May 2015, with an appeal allowed out of time (the appeal was made on 15 August 2015, with an extension of time granted on 22 September 2015) and the Respondent's decision reconsidered and refused on 30 May 2019. The Appellant's appeal against that decision was dismissed on 28 November 2019 and his appeal rights were exhausted on 17 July 2020. An application made on 30 July 2020 on compassionate grounds was treated as void, with a varied application made on 30 September 2020 on the grounds of long residence.
4. The Respondent refused the application the basis that the Appellant had not had any lawful leave to remain since 27 July 2015 as his appeal to the First-tier Tribunal at that time was out of time, he did not benefit from continuing leave to remain pursuant to section 3C of the Immigration Act 1971. Further, the Appellant had not subsequently been granted any leave to remain. As such he could not meet the requirements of ten years' continuous lawful residence in the United Kingdom. Further, the Appellant had not established any family life in the United Kingdom and as to private life, there would be no very significant obstacles to his reintegration in Bangladesh where he had spent the majority of his life. Finally, there were no exceptional circumstances to warrant a grant of leave to remain outside of the Immigration Rules.
5. Judge Swaney dismissed the appeal in a decision promulgated on 15 August 2022 on all grounds. In relation to the period after 2015, it was found the Appellant did benefit from section 3C leave once an extension of time had been granted on his appeal, which carried through to the fresh decision in 2019 and up to the Appellant becoming appeal rights exhausted on 17 July 2020, with the Appellant having made a new application within 14 days.
6. However, it was found that there was no express concession by the Respondent up to 2015 and in fact there was a period between 7 November 2012 and 23 November 2012 when the Appellant was not lawfully resident as his appeal against the refusal dated 22 October 2012 was submitted out of time and the decision to extend time was only made on 10 January 2013. The Appellant's leave to remain ended at the deadline for his appeal and only resumed from the date on which his appeal was lodged once an extension of time was granted.
7. In any event, the Appellant had been an overstayer since 17 July 2020, which was three months short of having been in the United Kingdom for ten years and as an open-ended overstayer, there is no continuous lawful residence since that date, or even after the period up to 31 August 2020 is disregarded by virtue of paragraph 39E(3) of the Immigration Rules (which was also still short of the required ten years).
8. Overall, it was found that the Appellant could not meet the long residence rules, nor had he shown that there were very significant obstacles to his reintegration such that paragraph 276ADE of the Immigration Rules was not met; and there was only limited evidence of any private life established such that his removal would not be a disproportionate interference with Article 8.

The appeal

9. The Appellant appeals on two grounds as follows. First, that the First-tier Tribunal erred in law as a matter of procedural fairness by not raising any concerns at the hearing as to a break in lawful residence between 7 November 2012 and 23 November 2012 in circumstances where the Respondent had not disputed lawful residence prior to 2015. Secondly, that the First-tier Tribunal erred in law in reaching an irrational conclusion by giving significant weight to the Appellant not meeting the requirements of the Immigration Rules as the Appellant's lengthy lawful residence dilutes the public interest in removal. Further, that it was perverse to find that the lack of any written statements from friends was a basis for finding the Appellant had no substantial connections in the United Kingdom.
10. When permission to appeal was granted, the Appellant was invited to submit evidence from Counsel who attended the First-tier Tribunal hearing as to the claimed concession by the Respondent that the Appellant's residence up to 2015 was accepted to be lawful. This point was never addressed on behalf of the Appellant. The Respondent however clarified that there was no express concession on this point, but neither was there any specific dispute raised by the Respondent as to the pre-2015 period.
11. At the oral hearing, there was no further explanation available for the failure by the Appellant to submit the expected evidence in support of the first ground of appeal.
12. In oral submissions on behalf of the Appellant, it was submitted that the First-tier Tribunal went behind a matter which had been agreed by the parties, that the Appellant's residence in the United Kingdom had been continuously lawful up to 27 July 2015 and made a finding contrary to that based on assumptions that a previous appeal had been submitted out of time, resulting in a period of unlawful residence between 7 November 2012 and 23 November 2012.
13. Mr Mannan pursued the first ground of appeal on the basis that it was part of the decision, but was unable to make a submission that this was material to the outcome of the appeal given the otherwise unchallenged findings that in any event, the Appellant could not meet the requirement for ten years' continuous lawful residence as he was still three months short (even discounting the brief gap in 2012); that he could not meet the requirements of paragraph 276ADE of the Immigration Rules and that the Appellant's removal would not be a disproportionate interference with his right to respect for private and family life contrary to Article 8. It was simply emphasised that the finding in relation to a short period in 2012 formed a part of the decision and was therefore open to challenge.
14. On behalf of the Respondent, Mr Tufan submitted that the issue in this appeal was materiality and the findings on the period in 2012 were simply not material to the outcome of the appeal. As the Appellant was an open ended overstayer since 2020, he could not succeed under the long residence rules in paragraph 276B of the Immigration Rules and the other findings were unchallenged and lawfully open to the First-tier Tribunal to dismiss the appeal.
15. There were no specific oral submissions on the second ground.

Findings and reasons

16. As appears to have been accepted by Counsel on behalf of the Appellant during the hearing, the first ground of appeal, even if made out, was wholly immaterial to the outcome of the appeal which would inevitably have still been dismissed on the basis of unchallenged findings that the Appellant could not in any event meet any of the requirements of the Immigration Rules (on long residence or private life grounds) and that his removal was not a disproportionate interference with his right to respect for private and family life. There was no merit in pursuing this ground of appeal at all in these circumstances. There was no material error of law by the First-tier Tribunal on the first ground.
17. The second ground of appeal was not pursued orally at the hearing and in any event does not identify any error of law by the First-tier Tribunal. It was lawfully open to the Judge to take into account that the Appellant did not meet the requirements of the Immigration Rules when considering the public interest, with consideration otherwise expressly given to the Appellant's length of residence. There are clear and cogent reasons why the Appellant's removal was not disproportionate taking into account all relevant matters, including the fact that there was very limited evidence of the nature and extent of the Appellant's private life. The comment that there were no written statements from any friends did not materially add to this primary difficulty that the Appellant had simply not evidenced any substantive private life in the United Kingdom.

Notice of Decision

The making of the decision of the First-tier Tribunal did not involve the making of a material error of law. As such it is not necessary to set aside the decision.

The decision to dismiss the appeal is therefore confirmed.

Notice to Show Cause (to Law Lane Solicitors)

There are two distinct matters to be raised in relation to the conduct of this appeal on behalf of the Appellant. First, that when permission to appeal was granted there was an express requirement for evidence to be filed on behalf of the Appellant as to whether the Respondent had expressly conceded that residence prior to 2015 was lawful. A written statement from the Appellant's legal representative at the First-tier Tribunal was expected in accordance with BW (witness statements by advocates) Afghanistan [2014] UKUT 00568 (IAC).

Secondly, the composite bundle prepared by the Appellant's solicitors for the appeal before the Upper Tribunal contained irrelevant material comprising of a complaint against a First-tier Tribunal Judge who undertook an earlier case management hearing (not the Judge who's decision was under appeal) which had nothing to do with the grounds in the present appeal. Further, for the reasons set out in MS (judicial interventions, complaints, safety concerns) [2023] UKUT 00114; that was wholly unprofessional and inappropriate.

These matters were both raised with Mr Mannan at the hearing, who could offer no explanation on behalf of those instructing him on either matter. I indicated that directions would follow for Law Lane Solicitors to make written representations on both.

Further to the decisions in R (Hamid) v SSHD [2012] EWHC 3070 (Admin), R (Sathivel & Ors) v SSHD [2018] EWHC 913 (Admin) and R (Shrestha) v SSHD [2018] UKUT 00242, **Law Lane Solicitors are directed to file a written response to the following points within seven days of the date this order is sent.**

Law Lane Solicitors shall identify the person responsible for the case. If the person responsible is not a qualified solicitor, the firm shall also identify the solicitor who is responsible for supervising the caseworker.

Law Lane Solicitors shall make any further representations in response to the matters outlined above relating to the conduct of this case before the Upper Tribunal considers whether it is appropriate to refer the matter to the Solicitors Regulation Authority. Failure to respond to these directions will lead to the matter being referred to the Solicitors Regulation Authority.

G Jackson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

17th April 2024
Correction on 1st May 2024