



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

Appeal Number: IA/04452/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 7 April 2015**

**Decision & Reasons Promulgated  
On 16 April 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE PEART**

**Between**

**ABDUS SALAM  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Pretzell of Counsel

For the Respondent: Ms Brocklesby-Weller, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant is a citizen of Bangladesh born on 10 April 1981. He appealed against the respondent's refusal to grant him leave to remain as a Tier 2 (General) Migrant under the points-based system dated 9 January 2014. It was not accepted that the appellant met the requirements of paragraph 245HD of HC 395 (as amended) because in summary, the appellant's certificate of sponsorship said that his salary would be £15,000 per annum which was below the minimum requirement of £20,300 per annum.

2. In a decision promulgated on 8 September 2014, Judge Cameron (the judge) found that the appellant could not show he could rely on the policy guidance in connection with a grant of leave prior to 6 April 2011. The appellant was granted leave on 5 April 2012 such that he did not satisfy the policy guidance he relied upon that where the previous leave was granted under the Rules in place before 6 April 2011 he was not subject to the salary threshold of £20,300. The judge considered Article 8 in terms of Section 19 of the Immigration Act 2014 and paragraph 117B in terms of the public interest requirements but found that the appellant could re-establish himself in Bangladesh and that the respondent's decision was proportionate.
3. The grounds challenged the judge's finding that the policy guidance relied upon by the appellant stated that where previously it was granted under the Rules in place before 6 April 2011, then he was not subject to the salary threshold of £20,300. The grounds referred to the respondent's own website at [2] of the grounds, indicating that the job must pay £20,500 or more unless the applicant's current or last permission to stay in the UK is as a Tier 2 (General) Migrant before 6 April 2011. The grounds submitted that the relevant date was not when the leave was granted but when the application was made and under which Rule the application was made with the resultant leave being granted. In the appellant's case, the COS (Certificate of Sponsorship) and application pre-dated 6 April 2011. The appellant made his application before 6 April 2011 and irrespective of when the leave was granted, it must have been granted in accordance with the Rules in place at the time of the application. The crucial date was when the application was made. Then as a matter of law, the application was decided after the "cut-off" date but with reference to the Rules in force before the "cut-off point".
4. The proposition advanced by the appellant was supported by Edgehill [2014] EWCA Civ 402 which made clear that the relevant date for consideration was the date of the application.
5. It was claimed that the judge further arguably erred in failing to appreciate that the appellant would have a legitimate expectation that having applied before 6 April 2011, his leave would be granted under the terms in force before that date and that was an aspect which should have featured in the judge's Article 8 assessment.
6. Put simply, the grounds claim that having applied prior to 6 April 2011, the appellant's leave was granted in accordance with the Rules in place at that date, despite the leave being granted afterwards.
7. Judge Foudy refused permission to appeal on 23 October 2014. She found that the relevant date was that of the grant of leave such that no arguable error was disclosed by the application.
8. The grounds were resubmitted. Upper Tribunal Judge Eshun gave permission to appeal the judge's decision on 10 February 2015. She found that it was arguable that the judge erred in his finding which I have set out above at [2].
9. Thus the matter came before me.

**Submissions on Error of Law**

10. Ms Brocklesby-Weller helpfully conceded that the judge had erred. That was because the appellant had made an application before 6 April 2012 such that it fell to be decided in accordance with the Rules in force on 5 April 2012.

**Conclusion on Error of Law**

11. The judge erred at [19] of his decision that the appellant was subject to an income threshold of £20,300 since that income threshold requirement only applied to applications made after 6 April 2012.
12. The judge made an error of law. I set aside his decision and remake the decision by allowing the appeal.

**Notice of Decision**

13. Appeal allowed.

Anonymity direction not made.

Signed

Date 13 April 2015

Deputy Upper Tribunal Judge Peart

**TO THE RESPONDENT**

**FEE AWARD**

As I have allowed the appeal and because a fee has been paid or is payable, I have considered making a fee award and have decided to make a fee award of any fee which has been paid or may be payable.

Signed

Date 13 April 2015

Deputy Upper Tribunal Judge Peart