Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: HU/14364/2019**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On the 28 March 2022	**On the 05 September 2022**

Before

UPPER TRIBUNAL JUDGE PERKINS
DEPUTY UPPER TRIBUNAL JUDGE FARRELLY

Between

RAJAN KUMAR ROY
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr M Gill, QC, instructed by Clifton Law, Solicitors
For the Respondent: Ms S Cunha, Senior Home Office Presenting Officer

DECISION AND REASONS

1. In a decision promulgated on 23 September 2021 I set out my reasons for finding an error of law in an extemporary judgment immediately after the hearing before me on 24 February 2021. That decision deliberately left open the possibility of there being further reasons for finding an error of law before the final disposal of the case. A transfer order was made on 8 March 2022 so that the case could be finally determined by both of us sitting in this appeal.
2. As I explained in that judgement, I considered it appropriate to await the outcome of the final decision in **The Queen on the application of Waseem** under JR/3246/2019. I do not need to be reminded that I am not always able to

dispose of the work as expeditiously as anyone would wish but I think it only right to point out that on this occasion the appeal came back before the Upper Tribunal, according to Mr Gill, about three weeks after it became known that the Court of Appeal had refused permission to appeal the decision in that case.

3. We incorporate my Decision and Reasons for finding an error of law into this judgment and append it at the end.

4. As is explained there, this is an appeal against the decision of the First-tier Tribunal dismissing the appeal of the appellant against the decision of the respondent on 15 July 2019 refusing his application for indefinite leave to remain and refusing him leave to remain on human rights grounds.

5. It is important in this case to look at the immigration history in more detail.

6. The appellant entered the United Kingdom in April 2009 with entry clearance as a Tier 4 Student valid until the end of July 2011. That leave was extended until 29 May 2014. On 28 May 2014, that is (obviously) just before the expiry of his leave, the appellant made a further application as a Tier 4 Student. The application was refused and his appeal rights were exhausted on 29 July 2016. It was always accepted by both sides that the operation of Section 3C of the Immigration Act 1971 extended that leave until 29 July 2016.

7. As indicated above, the instant appeal is against the decision dated 15 July 2019 refusing an application of 2 May 2019. However it is clear that the appellant applied for further leave on 19 August 2016 (or possibly 23 August 2016 but nothing turns on this discrepancy). That application was within 28 days of his leave ending on 29 July 2016 and it is the appellant's case that he believed he was making an application at a time when he had leave to be in the United Kingdom.

8. On 10 March 2017 the appellant was detained when he reported to the immigration authorities.

9. The appellant then applied for asylum. On 25 July 2017 he applied for indefinite leave to remain on the basis of his private life outside the Rules. On 30 August 2017 he withdrew his asylum claim. On 2 May 2019 he varied the application of 25 July 2017 for indefinite leave to remain on human rights grounds to an application for indefinite leave to remain under paragraph 276B of the Immigration Rules (long residence provisions). That application was refused on 15 July 2019 and is the subject of the appeal.

10. It was thought for a time that the appellant had leave throughout and if that were right he would have qualified for leave to remain on the basis of ten years' lawful residence.

11. A related point was considered by the Court of Appeal in **Hoque and Ors v SSHD [2020] EWCA Civ 1357**. Mr Gill is fully familiar with the decision in **Hoque** as he was one of the main advocates. As he explained before us the decision "shut him out" but however there was an argument to be made concerning the Secretary of State's policy, in cases such as this that could have been of considerable assistance to the appellant if it had been approved. The argument was considered and rejected by the Upper Tribunal (the Honourable Mr Justice Lane, President with Upper Tribunal Judge Keith) in the decision of **R**

(on the application of Waseem and Others) v SSHD (long resident policy – interpretation) [2021] UKUT 00146 (IAC) and, as indicated above, Mr Gill accepted that the law was against him. We have little doubt that Mr Gill would have liked to have argued that the appellant in this case had or should be treated as having leave at the necessary time but accepted that such an argument was not open to him.

12. We make it plain that the parties agree that there was no evidence that the decision to reject the application of 19 August 2016 was ever served on the appellant.

13. Mr Gill sought to persuade us, without calling any fresh evidence but relying on documents produced and the material already before the Tribunal, that the appellant was entitled to remain on Article 8 grounds.

14. He must show that removing him would interfere with his private and family life and prove on the balance of probabilities any facts on which he relies. The respondent must show that removal is proportionate.

15. Given his length of stay in the United Kingdom we are quite satisfied that removal would interfere with the appellant's “private and family life”.

16. There were, essentially, two elements to the argument.

17. The first is the public interest in maintaining effective immigration control is very low in this case. The appellant is not someone who has misconducted himself in any way. He has not hidden from the authorities but rather made an application which he believed, and reasonably believed, would have the effect of being treated as if it had been made in time.

18. Second, the reasons for being allowed to remain in the United Kingdom on Article 8 grounds are essentially that the appellant would face very significant obstacles in establishing himself in his native Bangladesh. This was the result of his age, his prolonged absence from the country and credible evidence that Hindus, such as the appellant, are facing significant difficulties from militant Islamists who oppose their presence in Bangladesh.

19. We now consider those arguments in more detail.

20. We begin by considering any difficulties the appellant might have in establishing himself in Bangladesh. He explained these in a statement dated 2 May 2019. He asserted at paragraph 9 that it would be “very difficult” to relocate to any other country after he had established himself in the United Kingdom after he had arrived in 2009. He explained at paragraph 16 that he had no social contacts in Bangladesh and there would be no job for him. He also said that he was not eligible to apply for jobs in the public sector because he was now too old. He had no relatives because they had been living in the United Kingdom and had established themselves there. However, although it is plain from his statement that he really does not want to return to Bangladesh, there is little there that fleshes out his contention that he could not do that.

21. He did create a document entitled “additional grounds” dated 14 November 2017. He had referred to background evidence showing the difficulties faced by minorities, including Hindus, Buddhists, and Christians in Bangladesh because of being attacked by Muslim extremists. He emphasised there that he

had no place to live in Bangladesh, even on a temporary basis. His mother was involved in the process of removing to India. His younger brother and elder sister are Indian citizens and another brother had settled permanently in the United States of America. Having thus asserted that there was no one to support him he referred to evidence about Hindus being the victims of Muslim attacks. He said how crowds of Muslims attacked Hindu homes and temples in Bangladesh and how, soon before signing his statement in November 2017, "hundreds of Muslims" entered a Hindu neighbourhood and burned houses and a few months previously had ransacked fifteen temples and homes. He had served additional papers on the Tribunal and to the heading "appellant's supplementary bundle". It began with a piece from "p India" referring to "comprehensive account of the carnage in Bangladesh by Islamists."

22. This then led to an article explaining how "Durga Puja is 'an integral part of Hindu Bengali culture'". It is an event that is treasured and honoured in the Hindu community but practising Hindus in Bangladesh had experienced attacks during this special time. The article referred to "more than 315 temples and its idols" being looted in more than 30 districts in Bangladesh and "nearly 1,500" Hindu houses in Cumilla, Chandpur, Noakhali, Chittagong, Cox's Bazar, Feni, Chapai Nawabgong, and other districts where homes were attacked and vandalised. The names were given of ten Hindus who were killed. This was seen amongst the Hindu community as an indication that they were not wanted in a country which had decided to go "back to the ideology of previous Pakistan".
23. There was no confidence in the government to do anything about it.
24. Details of these attacks were given.
25. There is another article from the Observer Newspaper dated October 2021 referring to "Hindu-Muslim violence crosses border from Bangladesh to India".
26. There is an article from BBC News downloaded on 22 October 2021 referring to "Bangladeshi's Hindus living in fear following mob attacks" and then a detailed article justifying that headline.
27. We have reflected on these things. It is perfectly plain that there has been a spate of violence against Hindus in Bangladesh, largely by people professing to follow a certain strand of Islamic thought, although it should be noted that a very large number of followers of Islam do not involve themselves in attacking Hindus, which attacks have been extremely serious and on occasions fatal for the people against whom the attacks were directed.
28. Without in any way diminishing the seriousness of these attacks we are not able to say on this evidence that there is a nationwide risk to Hindus in Bangladesh. We are not able to say on the evidence before us that there is no effective means of protection. There is nothing to justify a finding that the government of Bangladesh is indifferent although that view was clearly expressed by one of the writers. There is nothing to show that all parts of the country are dangerous. We are not able to accept the appellant's contention that as a Hindu returning to Bangladesh he would be subject to a real risk of very serious violence or even general unpleasantness.

29. We accept that the appellant has no relatives in the country and that he is too old for government service. We do not accept that this means he is unemployable. He is plainly a man of some ability. He has obtained a Master's degree working in the United Kingdom and that can only be achieved by considerable wit and discipline. We do not accept that even without family support he would be incapable of establishing himself and putting down roots and building a new life. The fact he has no family support is not entirely disadvantageous. He can find a place where he wants to live without any need to conform to other people's expectations about where he should go. We understand his subjective concerns but we do not accept that he would be unable to find work and shelter in his country of nationality.

30. There are no very significant obstacles in the way of him re-establishing himself. There are difficulties but they are of a kind that can be overcome.

31. We then have to consider reasons for requiring him to leave. We do fully appreciate a point that has been made very clearly and forcibly and correctly by Mr Gill that this is not a man who has been involved in "playing the system". He is certainly not a man who has been involved in overt deception. We think it likely that he genuinely believed that he was on a course to remaining in the United Kingdom based on his residence but the fact is he is not. He has not been deceived by the government. It is not that kind of case. However the absence of aggravating features does not create a reason to allow him to remain. The fact is that effective immigration control is in the public interest and is governed by policy which is approved by Parliament in the form of the Rules that the appellant does not satisfy.

32. We have little doubt that if he were allowed to remain in the United Kingdom he would live industriously. He would contribute to society. He speaks English. From that point of view he would fit in perfectly well, but although these things all take weight off the "remove" side of the balance, they do not become good reasons to be allowed to remain.

33. We have reflected carefully on these things but we note that all of the elements of his private and family life that have been established whilst in the United Kingdom are very much at the "private life" end of the continuum. His immigration status has always been precarious or less and his private life cannot be given much weight because that is what Parliament has said at Section 117B(5) of the Nationality, Immigration and Asylum Act 2002.

34. We have read his statement and understand his mystification about the reasons for his being refused permission to remain but he is not entitled to his own Immigration Rules and he cannot satisfy the Rules that are there.

35. We cannot do other than conclude that although refusing him leave will interfere with his private and family life it is an interference that is entirely proportionate and lawful and we dismiss the appeal.

Jonathan Perkins

Signed
Jonathan Perkins
Judge of the Upper Tribunal

Dated 27 July 2022