



**First-tier Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: HU/17980/2019

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 12<sup>th</sup> November 2021**

**Decision & Reasons  
Promulgated**

**On 02<sup>nd</sup> December 2021**

**Before**

**UPPER TRIBUNAL JUDGE SHERIDAN  
DEPUTY UPPER TRIBUNAL JUDGE GA BLACK**

**Between**

**MR MOHAMMAD SAHID ULLAH CHOWDHURY  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr M Symes (Counsel instructed by Waterstone Solicitors)  
For the Respondent: Mr D Clarke (Senior Home Office Presenting Officer)

**DECISION AND REASONS**

1. The appellant is a citizen of Bangladesh, born on 18 December 1984. He appeals against a decision dated 25<sup>th</sup> October 2019 made by the

respondent refusing his human rights claim pursuant to his application for indefinite leave to remain on the basis of long residence.

2. Notice and grounds of appeal were submitted.
3. This hearing was a remaking following the setting aside of the First-tier Tribunal (“FtT”) decision which involved the making of an error of law. In light of *Pathan* [2020] UKSC 41 the Judge erred in law by characterising the unfairness suffered by the appellant as solely substantive, and so limiting the weight placed on that factor in the Article 8 assessment of family/private life. The findings of fact were preserved.
4. For the hearing the appellant produced a bundle of 144 pages and for the hearing a skeleton argument. The respondent’s bundle included the reasons for refusal and grounds of appeal.
5. At the hearing the appellant gave evidence, the details of which are set out in the record of proceedings. Both representatives made oral submissions which are set out in the record of proceedings.

### **The appellant’s immigration history and background**

6. The appellant entered the UK as a student on 16 October 2009. He was granted further leave to remain until 30 January 2017 having made in time applications.
7. On 30 January 2017, while seeking to obtain an offer to begin studying for a PhD, the appellant applied for further leave and subsequently obtained an offer of employment in an IT company. He varied his application to seek leave under Tier 2. That application was refused on the grounds that the respondent had not been able to contact his employer. Following successful Administrative Review proceedings and the respondent reconsidering her decision, on 30 April 2019 the appellant’s application was again refused on the basis that the sponsor’s licence had been revoked. The appellant’s application for Administrative Review was refused on 10 June 2019.
8. The appellant applied on 14 June 2019 for indefinite leave to remain outside of the Rules and on 19 October 2019 he varied his application to one for indefinite leave to remain on the basis of long residence.

### **Preserved Findings of fact of the First-tier Tribunal**

9. The FtT made finding of fact based on the appellant’s unchallenged evidence as set out in his witness statement (A/B page 5). We set out those preserved findings and which include the appellant’s immigration history as set out above (paras 6-8).
10. The appellant is married to a citizen of Bangladesh, whose father is recognised as a refugee in the UK. He has resided lawfully in the UK since October 2009. All his applications for leave were made in time. His wife

entered the UK in 2018 with Tier 4 leave valid until January 2020 in order to pursue studies in Public Health at London South Bank University. She is waiting for a hearing date for her appeal. The appellant and his wife have a young child born in February 2020. The appellant attended a number of universities in the UK and completed a BA honours degree at Sunderland University and Master's degree at Ulster University. His wife is seeking to pursue a career as a dentist having obtained a degree from the University of Chittagong.

- 11.** The appellant has family in the UK including his brother in laws family, three maternal uncles and their families. He is established and integrated in the UK.
- 12.** The appellant's father in law was an active member of Jamaat-e-Islami who has been charged with a number of offences that are still ongoing. These were false charges and it was found that he may not get a fair trial. The father in law was concerned for his son (the appellant's brother in law) who was involved in the student wing of Jamaat-e-Islami. The wife of his father in law returned to Bangladesh to be with her children. However, she has since returned to the UK in November 2019.

#### Further evidence before the UT

- 13.** In evidence before us the appellant confirmed that he had relatives in Bangladesh but that they would be unable to assist him or provide financial support for him if he returned as his mother was herself dependent on his uncle. His wife has close family in the UK. Whilst studying in the UK he was financially supported by his mother. At present he was supported by friends and family in the UK. He stated that he believes he was too old to secure employment in Bangladesh and he understood that it was difficult to get employment. He had not provided evidence to support his claim that relatives in the UK would not continue to support him in Bangladesh.
- 14.** The appellant confirmed that after the second Administrative Review he decided to apply on human rights grounds outside of the rules rather than for Judicial Review on the basis that by then his residence in the UK for was almost 10 years.
- 15.** As to his wife's fear from Jamaat-e-Islami, he believed that it would be easy for the authorities to locate her as her father was a prominent member.

#### Our decision and reasons

- 16.** The focus of the appeal is family/private life outside of the Rules. We rely on the preserved findings of fact set out above. In addition, we accept the appellant's oral evidence given at the hearing before us. We find that the appellant has established private life in the UK. His period of residence is now 12 years during which he has studied and developed relationships.

We accept that his family life is with his wife who has no right to remain. She has an extensive network of relatives in the UK including her parents with whom the family have close ties and for whom support and care is provided for by the appellant and his wife. We have taken into account where the best interests of their baby lie and find that given his/her very young age it is in remaining with his/her parents (s.55 Borders & Citizenship Act 2009).

- 17.** In our view the crux of this appeal was whether or not the appellant suffered from procedural unfairness such that it amounts to unjustifiably harsh consequences capable of outweighing the public interest in immigration control. Mr Clarke submitted that the appellant chose to change direction by making an application outside of the rules and in effect abandoned his Tier 2 claim and suffered no prejudice. In applying *Pathan* there was no material effect on the public interest and he suffered no deprivation and unfairness.
- 18.** Mr Symes emphasised the two year period of delay in the Tier 2 application. Had it not been for the delay the appellant would have been in a beneficial position in terms of his tier 2 application and would have been given 60 days in which to find another sponsor, pursuant to the then existing policy. His situation was materially altered because in 2019, two years later, he had no leave to remain and finding a new sponsor would have been significantly more difficult. Mr Symes did not actively pursue the issue of difficulties faced by his wife on return based on her links with her father who was found to be a refugee.
- 19.** It is common ground that the appellant's tier 2 application was refused on 3 August 2017 and there followed an Administrative Review application where the respondent accepted that the decision required reconsideration. Thereafter it was re-refused on 30 April 2019 as the sponsor's licence was revoked. A further application for administrative review was refused. We find that there was procedural unfairness because the respondent failed to take reasonable steps to make contact with the appellant's sponsor in 2017 and thereafter delayed the decision until 2019 at which point the licence was revoked. The appellant would have received the benefit of the policy to grant 60 days grace period in which to find a new sponsor. The respondent failed to notify the appellant that his sponsor's licence had been revoked prior to his application being refused and the appellant had no opportunity to make alternative arrangements. We reject the argument put by Mr Clarke that the appellant suffered no unfairness as clearly he did by reason of not being able to pursue his tier 2 application. We are satisfied that given the length of lawful residence in the UK albeit predominantly as a student and therefore in precarious circumstances, he was on course to having his Tier 2 application granted but for the respondent's delay in relation to the decisions made in August 2017 and April 2019. This is a factor that weighs in his favour in assessing the public interest. There is a degree of flexibility in the weight to be attached to section 117B(5). We are satisfied that the remaining sections in 117B are met - the appellant speaks English and is financially dependent and

resides with his wife's relatives who are lawfully resident in the UK. Of significance is the fact that the appellant had no role in the failure of his tier two applications. He has lived in the UK lawfully throughout and pursued all applications in time. He has been absent from Bangladesh for 12 years now and has limited family ties there, together with a decreased opportunity for employment. He cannot rely on familial support in Bangladesh and his mother has no funds available having spent her life savings on the appellant's studies with the expectation that he would in turn be able to support the family. His wife's family are established in the UK. We acknowledge that were the appellant to return to Bangladesh there could be some difficulties caused by his association with his father in law.

- 20.** In considering *Pathan* in which a distinction is drawn between procedural and substantive unfairness, the Supreme Court (*Pathan* [2020] UKSC 41) has now reversed that decision where it found that procedural fairness required the respondent to notify an individual at the first reasonable opportunity that his sponsor's licence had been revoked. In this instance the respondent failed to do so, which amounts to procedural unfairness in dealing with his tier 2 application. Our view is that this issue makes a material difference to the proportionality assessment and tips the balance in favour of the appellant.

### **Notice of Decision**

The appeal is **allowed**.

Signed

Date 25 November 2021

GA BLACK  
Deputy Judge of the Upper Tribunal

### **TO THE RESPONDENT** **FEE AWARD**

We have allowed the appeal but decline to make any fee award.

Signed

Date 25 November 2021

GA BLACK  
Deputy Judge of the Upper Tribunal