



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

Appeal Number: PA/12434/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 27 February 2019**

**Decision & Reasons Promulgated
On 03rd April 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE I A LEWIS

Between

**YASSIN ARAFAT BHUIYAN
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Ferguson of Counsel instructed by Londonium Solicitors

For the Respondent: Ms S Cunha, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision of First-tier Tribunal Judge Eban, promulgated on 5 December 2018, dismissing the appeal against a decision of the Respondent dated 12 October 2018 refusing protection in the United Kingdom.
2. The Appellant is a citizen of Bangladesh born on 21 October 1986. He first entered the United Kingdom in September 2009 with leave to enter as a Tier 4 Student. He made subsequent applications for leave to remain in this capacity which were successful, but then a decision was taken to curtail his leave with effect from 26 January 2015. This history is

summarised at paragraph 2 of the decision of the First-tier Tribunal. Paragraph 2 continues the chronology in the following terms:

“The appellant applied for further leave which was refused on 23 March 2015. On 6 May 2015 the appellant applied for leave to remain on human rights grounds which was rejected as invalid on 14 July 2015. On 23 July 2015 he submitted a further human rights application which was refused with an in-country right of appeal. The appellant appealed and his appeal was heard on 21 March 2017 when it was dismissed by a decision promulgated on 31 March 2017 in appeal HU/05188/2016 (“the First Decision”). The appellant appealed the First Decision unsuccessfully. On 21 May 2018 the appellant claimed asylum.”

3. The appeal in HU/05188/2016 was heard by First-tier Tribunal Judge Povey, and was dismissed for the reasons set out in his decision. In the instant appeal First-tier Tribunal Judge Eban has helpfully summarised the findings of Judge Povey (paragraph 6).
4. The First-tier Tribunal Judge’s rehearsal of the chronology omits one further application made by the Appellant. After his previous appeal – against the ‘First Decision’ – the Appellant made a further application for leave to remain on human rights grounds. The application was made on 29 December 2017 and refused with no right of appeal on 21 April 2018.
5. The decision letter of 21 April 2018 was included in the Respondent’s bundle before the First-tier Tribunal (Annex E76-E80). It is clear from the decision letter that the Appellant essentially sought to rerun the same case that had been the subject of the decision in HU/05188/2016 – that it would be in breach of his human rights to remove him to Bangladesh because he had been diagnosed with ankylosing spondylitis. It is also clear from the decision letter that the Respondent, having considered the application, determined that nothing new significantly different had been raised in that application to amount to a ‘fresh claim’ pursuant to paragraph 353 of the Immigration Rules. Accordingly, not only was the application rejected but it was rejected on the basis that there was no fresh claim and accordingly no right of appeal.
6. It is in those circumstances that one month later the Appellant came to make his application for asylum on 21 May 2018.
7. It became readily apparent in the screening interview – and was essentially confirmed during the substantive interview – that the Appellant in truth had no asylum or protection claim to advance; he was, yet again, relying

entirely upon his medical condition. In the screening interview record it is noted that when invited to explain briefly all of the reasons he could not return to Bangladesh, the Appellant responded: *"I cannot get treatment to the same standard for my spondylitis in [Bangladesh]. I might be in a wheelchair there or will die if I don't have the treatment. No other reasons"* (Respondent's bundle at B5). See similarly the substantive interview, for example at questions 10 and 11 (C15).

8. In this context it seems to me that it should not go without comment that in evaluating the materials before the First-tier Tribunal in the current proceedings Judge Eban adopted the findings of Judge Povey and only made the following additional findings:

- "1. Those with disabling conditions in Bangladesh can be subjected to discrimination. This is based on what the respondent says in the reasons for refusal letter and the two reports referred to.*
- 2. The appellant is in close contact with his family in Bangladesh. This is accepted.*
- 3. There is no evidence that the appellant has a partner or children in the UK." (paragraph 14)*

It may readily be seen that none of these additional matters relates specifically to the nature or extent of the Appellant's medical condition; further save for the reference to discrimination in Bangladesh, none of them relates specifically to the nature or circumstances that the Appellant might confront upon his return. It is difficult in such circumstances to see - yet again - that the Appellant was advancing anything new or different about his circumstances. It would appear that the only reason he had secured himself an appealable decision was because he had presented himself to the Respondent as an asylum seeker, rather than - as he actually was - a person applying for consideration of a human rights claim based on his medical circumstances for a third time. I return to this at the end of my decision.

9. Be that as it may, the Respondent refused the Appellant's application for protection for reasons set out in a 'reasons for refusal' letter ('RFRL') dated 12 October 2018.

10. The Appellant appealed to the IAC.

11. Before the First-tier Tribunal the scope of the Appellant's challenge to the Respondent's decision was made clear:

“At the outset of the hearing Ms Ferguson confirmed that the appellant was not proceeding with his protection claim for asylum or under article 3, that he was not proceeding with an article 3 claim on medical grounds but that he was seeking to rely on his medical condition under article 8.” (paragraph 3).

12. I emphasise that it may be seen that it was the Judge’s clear understanding, having confirmed the matter with Counsel for the Appellant, that the Appellant was only relying upon Article 8 in his appeal and doing so by reference to his medical condition. Indeed there was no specific evidence filed or relied upon in respect of private life by reference to such matters as personal relationships, friendships, and so on. This was a case that rested upon the Appellant’s medical condition and was advanced under the ground of Article 8; Article 3 was expressly not pursued.
13. There is no suggestion in the grounds of appeal filed in support of the application for permission to appeal that Judge Eban misunderstood the position of the Appellant. There is no attempt to impugn the Judge’s understanding of the Appellant’s case as expressed at paragraph 3 of his Decision.
14. Indeed, when the materials in the appeal are considered in the round, it may readily be appreciated that there was nothing in the materials that would support a case under Article 3 pursuant to the understanding of Article 3 in medical cases explored in **AM (Zimbabwe) [2018] EWCA Civ 64** (including the development of the scope of Article 3 pursuant to the consideration of **Paposhvili**). As such it was entirely appropriate and realistic for the Appellant to have indicated, through Counsel, his reliance on Article 8 only, and that he was not relying on Article 3.
15. The First-tier Tribunal dismissed the Appellant’s appeal for the reasons set out in the decision promulgated on 5 December 2018.
16. The Appellant sought permission to appeal to the Upper Tribunal which was granted by First-tier Tribunal Judge Ford on 2 January 2019.
17. The grounds of appeal submitted in support of the application for permission to appeal raise two distinct areas of challenge: *“Ground-1: FTT has failed to give adequate reasons why A’s circumstances are not exceptional”*, developed at paragraphs 5-8; and *“Ground-2: Wrongful assessment of financial independency”*, developed at paragraph 9. Ground 1 is pleaded with reference to **AM (Zimbabwe)**. Ground 2 pleads that the

Judge had erred in law in suggesting that the Appellant was not financially independent.

18. The grant of permission to appeal in material part is in these terms:

“2. It is argued that the Tribunal erred in its approach to the medical issues in the case (Articles 3 and 8) in

a. Failing to give adequate reasons as to why the Appellant’s circumstances are not exceptional in line with the guidance given in the case of AM (Zimbabwe) and Anor. -v- SSHD 2018 EWCA Civ 64. Although the Appellant’s condition is not life threatening, given the evidence that his current treatment is not available to him in Bangladesh this ground is arguable. The Tribunal may have erred in interpreting the issue of undue harshness as one of integration only

b. Finding that the Appellant is not financially independent when the evidence was that his family and friends support him. This ground is not arguable. The Appellant relies heavily on the NHS for medical treatment for which he is not in a position to pay thereby placing a burden on the public purse.

3. Ground 1 is arguable. Ground 2 is not arguable There is an arguable material error of law.”

19. Notwithstanding the terms of the grant of permission to appeal, in my judgment the first difficulty that the Appellant encounters in pursuing his challenge before the Upper Tribunal is that he did not rely upon Article 3 before the First-tier Tribunal.

20. The reference to ‘very exceptional circumstances’ in **AM (Zimbabwe)** is in the context of a consideration of Article 3: see **AM (Zimbabwe)** at paragraphs 18 and 19. To that extent the grounds of appeal - and indeed the basis of the grant of permission to appeal - rely on a submission that the First-tier Tribunal Judge failed properly to apply Article 3 jurisprudence. In my judgement in circumstances where the Appellant was not relying upon Article 3 this ground of challenge cannot possibly succeed.

21. This was the only basis of the grant of permission to appeal: although passing reference was made to Article 8 in the opening sentence of paragraph 2 of the permission decision, paragraph 2a is based on Article 3 ; at paragraph 2b permission to appeal was not granted in respect of ground 2. That is sufficient to dispose of the challenge.

22. Nonetheless, for completeness I explored a possible Article 8 challenge with Ms Ferguson – particularly given that the criticisms raised at paragraphs 6, 7 and 8 in respect of the approach to medical evidence could inform a consideration under either or both Article 3 and Article 8.

23. Paragraphs 6-8 of the grounds of appeal are in the following terms:

“6. It is accepted that A’s health is currently stable but this stability depends on the continuous monitoring of A’s health and combination of drugs. The letter from Apollo Hospital confirms the unavailability of the treatment and drugs in Bangladesh. A confirms in his evidence that the prescribed drugs and treatment are not available in Bangladesh.

7. The FTTJ has therefore erred in law in not giving enough weight to the medical evidence. FTTJ’s conclusion at [17] is therefore flawed because according to medical evidence, A would need support on his return to Bangladesh if he is out of treatment.

8. FTTJ further erred in law at [19] applying the wrong test under immigration rules paragraph 276ADE(1)(vi). The significant difficulties needed to be assessed on the medical grounds, not on integration issue.”

24. The First-tier Tribunal Judge started his consideration of Article 8 by observing that although this was a human rights based challenge, it had to be *“viewed through the lens of the Immigration Rules”* (paragraph 15). The Judge then considered the wording of paragraph 276ADE, and insofar as 276ADE(1)(vi) contained reference to *“very significant obstacles to the applicant’s integration into the country to which he would have to go if required to leave the UK”* directed himself to observations in **AK (Sierra Leone) [2016] EWCA Civ 813** in respect of integration, and to observations in **Treebowan & others [2017] UKUT 00013 (IAC)** in respect of very significant obstacles.

25. Further to this, the key passages of the Decision are then set out in these terms:

“16. The appellant was born in Bangladesh and lived there until he was almost 23 when he came to the UK to study. He speaks the language of his country and was educated there. He has been in the UK for nine years. He is now 32. He remains close to his parents and family in Bangladesh. He told me he last spoke to them on the morning of the hearing. I find that if he returns he

will be able to live at home with his family who will support him emotionally and practically, they will not cast him out because of his condition.

17. *There is no evidence that the appellant at present is not able to live independently or requires any walking or other aids or assistance to participate fully and equally in social, economic or cultural activities. While it is apparent that ankylosing spondylitis is a chronic or lifelong disease there is no medical evidence whatsoever with respect to the appellant's prognosis whether or not he has treatment; there is no evidence of the likelihood of the condition becoming debilitating and leading to disability in the appellant's case. The background evidence at RB suggests that 70-90% of people with AS remain fully independent or minimally disabled in the long term. However, some people eventually become severely disabled as a result of the bones in their spine fusing in a fixed position and damage to other joints such as the hips or knees.*

18. *The independent evidence before me with regard to societal attitudes in Bangladesh towards those with disabilities indicates some prejudice and ignorance. Because of this accessibility in public transportation, public buildings and the built environment is not as it is here in the UK. Nevertheless were this appellant to return to Bangladesh I find, on the basis of the background evidence, that there is no reason to suppose he will be marginalised because of his medical condition. I find that he will be able to get out and about and operate independently day-to-day, as he does now in the UK, and he will be able to build up relationships with old friends and acquaintances and make new ones. On the basis that 70-90% of people with AS remain fully independent or minimally disabled in the long term it is more likely than not that he may never lose his independence, as he fears."*

26. In consequence of this analysis the Judge went on to conclude that on balance he found that *"the appellant would not have very significant obstacles to integration"* (paragraph 19) and accordingly did not satisfy the Immigration Rules with reference to paragraph 276ADE(1)(vi). Thereafter the Judge went on to consider Article 8 beyond the scope of the Immigration Rules: see paragraphs 20 and 21. It is clear in particular at paragraph 21 that the Judge had regard to the public interest and the applicable jurisprudence. In part, paragraph 21 is in the following terms:

"21. In coming to the proportionate balancing exercise, I have taken account of the fact that the Immigration Rules were not met. While the appellant speaks some English after having studied here for a few years, he is not financially independent and

cannot pay for his medical treatment, he has not had leave since January 2015 – before his diagnosis of ankylosing spondylitis – and in any event his leave has always been precarious which means that little weight should be given to the private life he has established. I find that there is not sufficient evidence to indicate that the appellant will not be able to build up a private life in Bangladesh, even if he does not have access to Cimzia [the medication that he was receiving through the NHS].”

27. The Judge went on to conclude “*that there are no exceptional circumstances which would render a refusal of breach of Article 8 because it would result in unjustifiably harsh consequences for the appellant*”, and that the Appellant’s Article 8 claim was “*not sufficiently strong to outweigh the public interest in maintaining the economic wellbeing of the country by means of effective and consistent immigration control.*” The Judge concluded that the Respondent’s decision was proportionate.
28. It is clear from the Decision that in embarking upon the above analysis, the Judge in the premises had careful regard to the evidence in the appeal. At paragraphs 10-13 he set out extracts from the supporting documentary evidence. Further, as noted above, the Judge made clear findings of fact - adopting those of Judge Povey to which he added his own findings.
29. However, it is to be acknowledged that the Judge was mistaken in stating that the most recent medical evidence was a letter from the Appellant’s GP dated 17 January 2018 (paragraph 10). Included in the Respondent’s bundle was a more recent letter dated 7 September 2018 from a consultant rheumatologist at the Department of Rheumatology at Barts Arthritis Centre in the Mile End Hospital (Respondent’s bundle at D79).
30. The consultant’s letter of 7 September 2018 is brief. In my judgement it neither adds nor detracts from those matters referred to in the GP’s letter of 17 January 2018. I quote its content in its entirety:

“Diagnosis

1. *Ankylosing spondylitis.*

Current medication

1. *Cimzia 200mg fortnightly.*

Yaesin is managing well. He finds that his symptom is becoming slightly worse in the cold weather but otherwise there has been no new concern.

His monitoring blood tests have been satisfactory.

I will see him again in another 9 months or so.”

31. The best that might be said about this letter by way of support for the Appellant’s case is that it shows that the Appellant’s condition whilst being treated in the UK is satisfactory – which necessarily is the starting point for his expressed concerns about what might happen without such treatment. However, this is not materially different from the substance of the materials to which the Judge did have regard. Nor did the Judge ‘overlook’ the possible impact if treatment in the UK stopped: indeed this was at the core of the Appellant’s case.
32. In all such circumstances I find the mistake at paragraph 10 in failing to identify or otherwise refer to the most recent item of medical evidence was not material in the overall consideration of the case.
33. That said, I would briefly observe that it seems surprising that there was such limited evidence from the Appellant’s consultant. The Appellant’s consultant was, after all, the specialist supervising the Appellant’s treatment. Instead the Appellant relied more particularly on evidence from his GP. Indeed, even in filing further documents with the Upper Tribunal (in anticipation of consideration in the event that an error of law were to be found), the Appellant has included nothing further from any specialists.
34. Further to the above, the Appellant otherwise in substance seeks to impugn the Judge’s evaluation of the evidence – with reference in particular to the findings at paragraphs 16-18.
35. In the premises it is to be noted that the Judge in adopting the findings of Judge Povey acknowledged:

“Ankylosing spondylitis is a progressive disease for which there is no cure, rather treatment is aimed at managing the symptoms and slowing rather than stopping further deterioration” (finding 6 at paragraph 6).
36. Paragraph 6 of the grounds of appeal accept that the Appellant’s health is currently stable, asserts that such stability depends on continuous monitoring and drugs, and refers to the evidence from a hospital in Bangladesh as to the unavailability treatment and drugs in Bangladesh. In

itself this paragraph does not express any criticism of the First-tier Tribunal Judge. In any event, it seems to me it is clear that in his analysis at paragraphs 17 and 18 the Judge proceeded on the premise that the Appellant would not be able to continue the treatment that he has been having in the United Kingdom. However, the Judge found that there was no evidence to indicate that the risk of serious deterioration in his underlying medical condition was any greater for the Appellant than that for the general population of AS sufferers.

37. The pleading at paragraph 7 of the grounds that the Judge did not give "*enough weight to the medical evidence*" is in substance an expression of a disagreement with the Judge's conclusion and does not identify a specific error of law.
38. Equally it seems to me that it cannot be said that the Judge has disregarded the Appellant's medical circumstances when considering the issue of integration pursuant to paragraph 276ADE(1)(vi) of the Immigration Rules. Necessarily, the Appellant's case under the Rules was that there was an obstacle to integration by reason of his medical condition. The Judge made findings open to him on the evidence that the Appellant had not established that that was the case. I can see no substance for criticism of the Judge's analysis. Moreover, in my judgement it is adequately clear that there are no obstacles to integration. I acknowledge that there is a chance - possibly increasing over time - that the Appellant's underlying medical condition will result in him living a circumscribed life - as indeed it might also do if he remains in the United Kingdom. However, he will be returning to his family in Bangladesh - both of his parents and his siblings; it is a family that he indicated was essentially a middle class family - all of his siblings were still in education and his father works in a responsible role in the healthcare sector. He also continues to have friends in Bangladesh, and indeed provided a supporting letter from one such friend living in the Appellant's country of origin and nationality.
39. Ultimately, there was no real substance to the Appellant's appeal before the First-tier Tribunal. Just as ultimately there was no substance to it when it was before Judge Povey.
40. More particularly, for the reasons given I find no error of law in the decision of Judge Eban. The decision of the First-tier Tribunal stand accordingly.
41. Before leaving the decision I feel that it is appropriate to make some further observations. I do so parenthetically and with the caveat that such

matters have not been the subject of submissions - having not formally been before the Tribunal.

42. I have noted above the somewhat 'irregular' route by which this protection appeal essentially became a vehicle for the Appellant to repeat a twice-refused human rights claim. Seemingly no point was taken by the Respondent in the RFRL in this regard, and no point appears to have been articulated before the First-tier Tribunal.
43. The Appellant has filed further materials before the Upper Tribunal upon which he would have sought to rely in the event that the Tribunal concluded that there was an error of law. To that extent there is at least some indication of an intent or preparedness to run the substance of his case for a fourth time.
44. I have not heard argument on those materials. Nonetheless it seems to me appropriate to note that on initial perusal they appear in large part to be a repeat of the materials that have already been considered. For example, the personal statement of the Appellant's father dated 17 February 2019 appears to be a duplicate of the statement previously made by the Appellant's father dated 22 January 2018, but merely re-dated. Similarly, there is a letter from the civil surgeon for Brahmanbaria dated 18 February 2019 which is in identical terms to the letter from the civil surgeon of Brahmanbaria dated 25 January 2018; the only discernible difference is that the identity of the civil surgeon has changed - the substance of the letter has not altered at all. The Appellant has otherwise produced two appointment letters which add nothing to his case, and a printout of his GP records which does not obviously add anything different to the various GP letters that were previously before the First-tier Tribunal. There is nothing further from the Appellant's consultant.
45. There is one letter that is different: a letter from the Department of Rheumatology at the Bangabandhu Sheikh Mujib Medical University. This is in similar but slightly different terms to a letter previously relied upon by the Appellant from the Apollo Hospital in Dhaka. What is of note in respect of both of these letters is that they refer to an understanding that the Appellant is "*is in advance stage of ankylosing spondylitis*" and it is said in the Apollo letter that this appears to have been decided "*after discussing the case with the concerned doctors we understand that this patient has an advanced case of ankylosing spondylitis*". However, it is not made remotely clear on what basis the writers of either of these letters have reached the conclusion that the Appellant is in an advanced stage of his condition. Such a notion apparently runs contrary to the consultant rheumatologist's letter of 7 September 2018 which opined that the Appellant "*is managing well*" and apart from a slight worsening of

symptoms in the cold weather “*otherwise there has been no new concern*”. This is in the context of the evidence otherwise indicating that the Appellant was not using any aids for walking.

46. As noted above I did not hear argument on these matters. It is not for me to make any findings of fact. Nonetheless it seems to me appropriate to identify any problematic issues in this regard lest the case go any further.
47. It also seems to me appropriate to raise such observations for the consideration of both parties in circumstances where the instant application for protection has every appearance of having been abusive (in the sense that there was no substance to any such application and it appears to have been essentially a device to rerun a case already lost twice), and the filing of further evidence herein hints at the possible contemplation of a yet further application for leave to remain, or otherwise the making of further submissions to the Respondent. It seems to me that a considerable degree of circumspection should be exercised by the Appellant - and any advisors - before advancing a yet further claim on essentially the same or similar grounds, and equally that any such application can be expected to be met with a degree of circumspection on the part of the Respondent before it might be considered to amount to a fresh claim.
48. The context cannot be ignored. Pending consideration of his protection claim and appeal the Appellant has been able to continue accessing healthcare at public expense - indeed a wish to continue to access such free healthcare is overtly at the core of his case. There must come a point where he either brings forward something of adequate substance in respect of either Article 3 or Article 8, or it is recognised that he has no basis to continue his stay - and his access to free medical treatment - in the United Kingdom.

Notice of Decision

49. The decision of the First-tier Tribunal contained no error of law and accordingly stands.
50. The Appellant’s appeal remains dismissed
51. No anonymity direction is sought or made.

Signed:

Date: 30 March 2019

Deputy Upper Tribunal Judge I A Lewis