Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/17892/2019 (P)

THE IMMIGRATION ACTS

Decision under rule 34
On 14 August 2020

Decision & Reasons Promulgated
On 20 August 2020

Before

UPPER TRIBUNAL JUDGE O'CALLAGHAN

Between

GOLAM [K]
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Decision made under rule 34 of the Tribunal Procedure (Upper Tribunal) Rules 2008

DECISION AND REASONS

Introduction

1. This is an appeal against the decision of Judge of the First-tier Tribunal Seelhoff ('the Judge') sent to the parties on 2 March 2020 by which the appellant's appeal against the decision of the respondent to refuse to grant him leave to remain on long residence and human rights (article 8) grounds was dismissed.

2. By a decision sent to the parties on 28 May 2020 the appellant was granted permission to appeal on all grounds.

3. The appellant's legal representatives are Thamina Solicitors, London.

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Rule 34

4. This decision is made without a hearing under rule 34 of the Tribunal Procedure (Upper Tribunal) Rules 2008 ('the 2008 Rules').

5. In light of the present need to take precautions against the spread of Covid-19, and the overriding objective expressed at rule 2(1) of the 2008 Rules, and also at rule 2(2)-(4), UTJ Gill indicated by a Note and Directions sent to the parties on 30 June 2020 her provisional view that it would be appropriate to determine the following questions without a hearing:

   (i) Whether the making of the First-tier Tribunal's decision involved the making of an error of law, and if so

   (ii) Whether the decision should be set aside.

6. The parties were requested to inform the Tribunal if, despite the directions, a face-to-face hearing was required. Both parties agreed that the error of law consideration could properly be undertaken without a hearing.

7. The parties filed written submissions upon which they rely. The appellant's submissions of 13 July 2020 were authored by Mr. A Metzer QC and the respondent's submissions of 20 July 2020 by Mr. S Whitwell. The Tribunal is grateful for the care and effort taken by the parties in the preparation of the written submissions.

8. In the circumstances, being mindful of the importance of these proceedings to the appellant and to the overriding objective that the Tribunal deal with cases fairly and justly, I am satisfied that it is just and appropriate to proceed under rule 34.

Anonymity

9. The Judge did not issue an anonymity direction and the parties did not seek one before me.

The appellant

10. The appellant is a national of Bangladesh and is aged 39. Whilst in this country he secured a Master's degree in Business Administration. Dependent upon his appeal are his wife and their two children, a son aged 6 and a daughter aged 3.

11. He arrived in the United Kingdom with entry clearance as a Tier 4 (General) Student on 28 October 2009 and enjoyed leave to enter until 31 August 2013. His leave was subsequently varied to leave to remain as a Tier 4 (General) Student until 16 January 2016. An in-time application for leave to remain as a Tier 2 (General) Migrant was refused on 7 March 2016 and the decision was upheld following administrative review.

12. The appellant applied for leave to remain outside of the Immigration Rules ('the Rules') on 16 May 2016 and varied the application on several occasions, finally on 1 October 2019 as an application for indefinite leave to remain on long residency

grounds under paragraph 276C of the Immigration Rules ('the Rules'). The respondent refused the application by means of a decision dated 17 October 2019.

The First-tier Tribunal decision

13. The appeal came before the Judge sitting at Hatton Cross on 21 February 2020. The appellant was represented and gave evidence.

14. As evidenced by the grounds of appeal filed with the First-tier Tribunal and the skeleton argument prepared for the hearing before the Judge, the appellant's primary focus of argument initially rested upon long residence under the Rules. However, upon being provided with a copy of the Court of Appeal judgment in *R (Ahmed) v. Secretary of State for the Home Department* [2019] EWCA Civ 1070; [2020] 2 All E.R. 73 the appellant withdrew his appeal on this ground: see [10] of decision.

15. The core of the appellant's case as ultimately advanced before the Judge was that the medical condition of his son was such that (i) the appellant would have very significant obstacles to integrating into Bangladesh upon leaving the United Kingdom, paragraph 276ADE(1)(vi) of the Rules, or alternatively (ii) very exceptional circumstances arose consequent to his son's medical condition as to make return to Bangladesh disproportionate in relation to his article 8 rights. The submission identified by the appellant's skeleton argument of 21 February 2020 is consistent with that orally advanced before the Judge and details:

> '29. It is submitted that the respondent did not consider that under paragraph 276ADE(1)(vi) there would be very significant obstacles on integration of the child in Bangladesh. The child lived all his life in the UK and has severe disability issues, which must be addressed at this early stage in his life. This in the view of the experts whose reports that the tribunal should consider. Irrespective of his age, it is because of his disabilities that he will not be able to integrate in a country that is for all intents and purpose foreign to him. Had it not been for his disabilities then we would have agreed with the respondent's view that he will be young enough to integrating Bangladeshi society and at school there and find new peers to interact with. However, he has severe interaction problems and there is a long way to go and as advised by the expert reports, he is going to need a lot of support and professional care and attention. So, it is submitted that in this case this child would have **catastrophic integration problems** because of his disabilities if he were returned to Bangladesh with his parents.' [Emphasis added]

16. In his consideration of the appellant's private life rights the Judge expressly identified that he was to consider the medical health of the appellant's son, who has been diagnosed with autism, in his assessment as to whether there would be very significant obstacles to the appellant's integration upon return to Bangladesh. The Judge noted the extent and nature of the documents relied upon by the appellant at [8] of his decision:

> '8. … Reviewing the documents in that section, I note that the most recent document is a letter from a speech and language therapist introducing herself to the appellant's parents, there is a Targets and Planning report

from the child's school dated 12 November 2019 which does contain a section on his special educational needs, there are some generic appointment letters from October 2019, there is a school visit report from 8 October 2019 from the speech and language therapy unit, there is a school report from autumn 2019, there is a similar speech report from April 2019, there are further appointment letters, there is a school report from December 2018, a speech and language therapy report from September 2018, some appointment letters from 2017 and a further copy of the autistic spectrum disorder report from November 2016, and from pages 99-101 of the bundle there are three pages of media reports on autism awareness in Bangladesh.'

17. The Judge conscientiously considered the evidence presented in relation to the appellant's son and considered his ability, and the ability of his father, to integrate into Bangladeshi society upon return, at [20]-[26]. The Judge clearly concluded that when taken as a whole the evidence was simply inadequate to meet the burden of proof placed upon the appellant and he provided detailed reasons for his conclusion, *inter alia:*

> '20. In terms of the appellant's son I have considerable difficulties in evaluating the impact removal would have on him because of the lack of comprehensive or recent reports from medical professionals or educational professionals responsible for his care addressing the potential impact of removal. Autism as a condition has no cure so the appellant's son will be facing the consequences of his autism whether he lives in the UK or in Bangladesh. The appellant's son is not receiving treatment for his condition per se but rather educational support from what can be seen in the papers. The appellant himself acknowledged that the only treatment his son gets is speech and language therapy.
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> 21. The appellant himself seemed to acknowledge that such treatment does exist in Bangladesh albeit he had indicated it would be very expensive. The appellant is a healthy man of working age educated to Master's level in the UK. One would expect him to be employable on return to Bangladesh and that he would be employable in a good job which should facilitate his accessing support. The appellant has family in Bangladesh including his parents, his mother-in-law and siblings.
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> 22. It is a common feature of autistic children that they struggle to cope with and adapt to change however there is nothing in the papers before me which shows a current evaluation of how difficult the appellant's son might find it to acclimatise to life in Bangladesh. The most recent report would be the school report in the appellant's bundle which notes that he has one-to-one support in terms of his education, that he responds better to familiar adults, that he has sensory needs with food which means his preference is for food with the texture of mashed bananas although he also eats mushy Weetabix and porridge. The report notes that he needs help with washing, dressing, eating and using the toilet. There is nothing which explains the difficulties he has getting to know adults or adapting to change and so it is difficult to assess whether this would have any significant impact on return. The appellant and his wife would of course support their son on return to Bangladesh so the two most familiar adults would be available to him.

23. I was invited to find that the two news reports included in the appellant's bundle somehow demonstrated that there was a lack of treatment for autism in Bangladesh. The difficulty I had with this is that the appellant's father acknowledged the existence of special schools and supportive facilities but simply indicated that they have been told they were too expensive by family friend (sic).

24. I do not accept that the figures of £2000 to £3000 a month given by the appellant are likely to be correct for the cost of special schooling in Bangladesh. I would need proper documentary evidence in order to support such figures that would appear to be very high for that economy. In terms of the two articles I have been provided, I have been provided with an article which suggests that often doctors were unaware of the clinical features of autism, its management and can sometimes not understand the disorder. In this case the appellant's son has a full diagnosis already so many of the problems outlined in the article simply would not be relevant. The report does note that schools are reluctant to have autistic students and notes a lack of curriculum autistic students again this case has to be seen in the context of the fact that there is a pre-existing diagnosis.

25. The second article talks of high numbers of children potentially with autistic spectrum disorders in Bangladesh but again this is a news report which taught anecdotally about the problems one family had in understanding their diagnosis but again the situation we have in this case is a family where the child has been diagnosed when the appellant's [and] presumably his wife have already educated themselves about the condition.'

18. Consequent to such assessment of the evidence before him, the Judge considered the appellant under paragraph 276ADE(1)(vi) and concluded at [26]:

'26.Without more specific information and reports focused on the potential challenges to the appellant's son in relocating to Bangladesh I do not consider that I am in a position to make a finding that there would be very significant obstacles to his integration on return to Bangladesh. It is important to remember that the test is not whether or not he would be as well supported in Bangladesh as he would be in the UK.'

19. The Judge therefore found that the evidence relied upon by the appellant came nowhere close to establishing that his son would suffer very serious obstacles in integrating upon relocation to Bangladesh, let alone suffering the asserted 'catastrophic' problems.

20. In considering article 8 rights outside of the Rules, the Judge concluded, at [27]:

'27. In terms of article 8 outside the rules I note that there is minimal weight to be attached to the appellant's own private life. He and his family would be removed as a unit as there is no basis for the rest of them to continue living in the UK and accordingly there would be no interference in family life. In terms of the son's freestanding private life I note that he has not been lawfully resident (although as a child he should not be penalised for this) in the UK and that his condition appears to have prevented him building the ties one would expect a child of his age to build in the UK. Whilst he might struggle [on] return to cope with the change that does not enhance any

> private life he might have in the UK. Bearing in mind the weight to be attached to the public interest in immigration control I am satisfied that in all the circumstances of this case, and on the evidence before me, refusal is proportionate and justified.'

Grounds of Appeal

21. The grounds of appeal were not drafted by Mr Metzer. They were drafted by counsel who did not represent the appellant before the Judge and are narrow in scope.

22. Ground 1 asserts that the Judge failed to make findings under section 55 of the Borders, Citizenship and Immigration Act 2009 and places reliance upon the Supreme Court judgment of *Zoumbas v. Secretary of State for the Home Department* [2013] UKSC 74; [2013] 1 W.L.R. 3690.

23. Ground 2 asserts that the Judge failed to lawfully consider the appeal before him in light of the test laid down as to 'integration' by the Court of Appeal in *Secretary of State for the Home Department v Kamara* [2016] EWCA Civ 813.

Decision

24. Before considering the grounds of appeal it is appropriate to observe that they present no challenge to the Judge's rational criticism of the quality of the evidence relied upon before him. There is a singular lack of relevant medical or professional evidence as to the difficulties, or otherwise, the appellant's son may or may not have in integrating upon relocating to Bangladesh. The Judge's conclusions as to the very limited objective documentary evidence as to treatment and schooling in Bangladesh, in the form of the news articles, is again rational in the circumstances and is unchallenged.

25. A further and striking problem arising from the grounds of appeal is that they are constructed upon the documentary evidence relied upon without any clear identification that the Judge found such evidence to be wholly unsatisfactory in permitting the appellant to meet the burden of proof placed upon him. As there is no challenge to the Judge's findings as to the documentary evidence, this Tribunal must consider the evidence placed before the First-tier Tribunal as inadequate and is not permitted to seek to travel down the hazardous path of identifying the potential strength of whatever future evidence may be obtained.

26. Ground 1 is a complaint that the Judge did not expressly have regard to the best interests of the appellant's son and made no findings pursuant to section 55 of the 2009 Act. The core of the ground is identifiable at para. 7:

> '7. Respectfully, there has been no independent assessment of the child's position applying the principle summarised in *Zoumbas*. The child's best interests have been considered as part and parcel of the parent's balancing scales and, in doing so, it is arguable that the assessment has been contaminated by the other factors that FTJ Seelhoff held against the appellant himself.'

27. At para. 6 of the grounds the author specifically places reliance upon §10(7) of Lord Hodge's judgment in Zoumbas, namely that 'a child must not be blamed for matters for which he or she is not responsible, such as the conduct of a parent', though the Tribunal notes that the Judge expressly observed this legal principle, at [27] of his decision.

28. The Tribunal notes the written submissions of Mr. Metzer, which have been authored in his usual careful and helpful manner. Beyond observing that the Judge did not make an independent assessment of the child's best interests, and so there not having been a 'primary consideration' of his best interests, little more is said.

29. The difficulty for the appellant in advancing this ground is that whilst there was no express assessment as to the child's best interest, it is clear that the Judge sought to consider them in the context of the child remaining with his parents who provide him with love and care. The question as to where the family reside, which is linked in this matter to the ability of the child to integrate upon relocation to Bangladesh, was ultimately decided by the inadequacy of the evidence relied upon. With the appellant being unable to meet the burden placed upon him to establish very significant obstacles for him, and his son, to integrate upon return to Bangladesh then no reasonable Judge could find anything other than the best interests of the son are to reside with his family and return with them to their home country. This ground enjoys no merit.

30. The second ground of appeal relies upon a purported failure by the Judge to self-direct himself in relation to the broad evaluative judgment to be made to integration as identified by the Court of Appeal in Kamara. However, as observed above this ground is rooted upon the documentary evidence being capable of identifying the asserted 'strain' upon the appellant's child integrating upon his relocation. As already noted, there is no challenge to the Judge's reasoning and conclusion as to the inadequacy of the documentary evidence relied upon. The Judge reasonably concluded that the 6-year old child would be returning to Bangladesh with his parents and whilst he may have some struggles, they were not sufficient to establish very significant obstacles. No other alternate conclusion could properly be reached consequent to the unchallenged assessment of the evidence even if there had been express consideration of the Court of Appeal's judgment in Kamara. Taking this ground at its highest, even if there were an error it cannot be considered material.

31. For the short reasons detailed above, the grounds advanced are simply incapable of possessing the substance required to establish material errors of law in circumstances where the evidence relied upon is incapable of permitting the appellant to meet the burden of proof placed upon him. This is a matter where permission to appeal ought properly not to have been granted by the First-tier Tribunal because it has given the appellant and his family false hope. The appellant may have better served to properly heed the concerns of the Judge as to the evidence collated to date and consider whether appropriate medical or professional evidence could or could not be secured to sustain a cogent submission as to integration under paragraph 276ADE(1)(vi) of the Rules.

32. For the reasons detailed above, the appeal must be dismissed.

Notice of decision

33. The making of the decision of the First-tier Tribunal did not involve the making of a material error on a point of law.

34. The decision of the First-tier Tribunal, dated 2 March 2020, is upheld and the appeal is dismissed.

Signed: *D O'Callaghan*
Upper Tribunal Judge O'Callaghan

Date: 14 August 2020

TO THE RESPONDENT
FEE AWARD

The appeal is dismissed, and no fee award is payable.

Signed: *D O'Callaghan*
Upper Tribunal Judge O'Callaghan

Date: 14 August 2020