IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-003418

First-tier Tribunal No: HU/50323/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

7th November 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE SKINNER

Between

MAHBUB ALAM
(NO ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr M. West, counsel, instructed by Law Lane Solicitors
For the Respondent: Mrs A. Ahmed, Senior Home Office Presenting Officer

Heard at Field House on 17 October 2023

DECISION AND REASONS

Introduction

1. The Appellant is a national of Bangladesh. He appeals from the decision of First-tier Tribunal Judge Meyler ("the Judge") promulgated on 28 March 2023 ("the FTT Decision"), whereby she dismissed the Appellant's appeal against a refusal by the Respondent dated 10 January 2022 of his human rights claim. Permission was granted by Upper Tribunal Judge O'Callaghan on 8 September 2023 on both grounds relied on in the "Renewal Grounds" dated 17 August 2023.

2. I have not been asked to make an anonymity order. Having regard to the importance of the open justice principle, there is no basis for doing so in the circumstances of this case of my own motion.

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3. The hearing of this appeal took place in person at Field House. The bundle I had at the hearing contained the original grounds of appeal that had been relied on when the Appellant sought permission to appeal from the FTT, but unfortunately did not include the Renewal Grounds mentioned above. They overlap to a significant degree but are not identical and Mr West helpfully explained them to me orally at the hearing and has since supplied a further copy.

The FTT Decision

4. Before the First-tier Tribunal ("the FTT") the Appellant relied on both Article 3 and Article 8 ECHR. His grounds of appeal before this Tribunal challenge the decision only in so far as it relates to Article 8. Given the way in which the Grounds are formulated however, as set out below, it is necessary to consider briefly parts of the Judge's reasons in relation to the Article 3 claim also.

5. After setting out the Appellant's immigration history, details of the hearing, the Appellant's evidence and a short summary of the Respondent's refusal letter, the Judge set out her findings of fact at paras. 23-32, her assessment of the Article 3 claim at paras. 33-40, her assessment of paragraph 276ADE of the Immigration Rules at paras. 41-48 and her assessment of Article 8 outside of the Immigration Rules at paras. 49-72.

6. The Judge's findings section merits setting out relatively fully. Omitting certain irrelevant parts, she found as follows:

> "23. I find that the appellant is accommodated by a friend and he has several supportive friends in the UK, including Mr Alamgir Kabir Fahad, whom he has known since 2010 from university. Mr Fahad and several other friends provide emotional and financial support to the appellant. The appellant lived in the UK for 14 years, initially as a student from 2009, but then overstayed his visa from 2015. He has made repeated applications to attempt to regularise his status.
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> 24. I find that the appellant suffers from anxiety and depression with recurrent depressive disorder... He had a major depressive episode in September 2020. The last consultation on the clinical records placed before me is dated 16 December 2020. In October 2020, the appellant was on Mirtazapine…for depression and Venlaxafine…for anxiety. On 4 November 2020 he was assessed as at low risk and ongoing depression due to social isolation and financial difficulties. His Care Plan involved continuation of current medication, discussion of financial support, meeting with OT and an outpatient review in 4 months' time. In November 2020 he attended A&E with suicidal ideation… He was seen by the psychiatrist and discharged with follow-up. The last medical records show that the appellant is taking Mirtazapine 15 mg and Citalopram 40 mg. I find that most anti-depressants and anxiolytics are available from pharmacies in Bangladesh, including Citalopram, Venlaxafine, Olanzapine and other SSRIs, according to the respondent's latest CPIN on medical health care in Bangladesh.
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> 25. On the day of the hearing, evidence of the appellant's counselling was placed before me… The appellant attended 16 Counselling sessions with Waterloo Multi-ethnic Counselling until 31 May 2021. The letter from Mr Radvar-Zangeneh, his Counsellor, states that the appellant presented at assessment with low mood and reported that he was hearing "scary voices". He attended 16 sessions until 31 May 2021. He stated his family in

Bangladesh tortured and abandoned him because he didn't accept the arranged marriage when he was young. He was holding the trauma since then. As a result of the traumatic experiences and hearing voices, and having nightmares, he is scared of sleeping. He can't sleep properly, so he is so exhausted. In addition, his immigration case was rejected by the Home Office, and he doesn't have any support, which affects his mental stability. Having many difficulties and living in uncertainty have a negatively impacted his mental health. Being engaged in therapy sessions and sharing his thoughts and feelings helped him be more stable, and improvement was seen. The appellant agreed to continue to use skills learnt and focus on here and now rather than past. His generalised anxiety score reduced from 16 to 9 (mild anxiety) by the end of the sessions, although his depression remained moderate (16) throughout the sessions. The counsellor suggested that Mr Alam engage in long term therapy for his trauma.

26. The Listening Place offers face-to-face support by appointment for those who feel life is no longer worth living. The appellant attended the Listening Place from 8 September 2021 to 19 January 2022… I find that the counselling the appellant has received has assisted his mental health, as he has now been discharged from counselling/therapy, because his anxiety/depression/suicide risk levels were deemed to be such that he no longer required that therapy/counselling. Although there is no up-to-date evidence from his GP as to whether the appellant is currently on any medication for his mental health, the assertion made to Dr Kabir in August 2022 suggests that the level of medication/treatment/intervention for his mental health has reduced in the last 2-3 years, which is consistent with the assessment of his therapists upon discharge from counselling therapies. All this suggests that the counselling therapies has achieved an improvement in the appellant's mental health condition and a degree of learning to manage his conditions through coping techniques he has been taught during counselling/therapy sessions.

27. I have already referred to the Psychology Report by Dr Kabir, a Clinical Psychologist from Kallyan Psychiatric Hospital, in Dhaka, Bangladesh, dated 15 August 2022, following a private self-referral, which I have set out above. Dr Kabir did not specify how the consultation/assessment took place but one must assume it must have taken place through remote means of communication, as Dr Kabir is based in Bangladesh. Dr Kabir does not state that he has considered the appellant's GP records, although he states that he has considered his NHS psychiatric and counselling report. Dr Kabir does not refer to any awareness of his duty to the court or the CPR / Istanbul Protocol.

28. Dr Kabir recorded that the appellant reported severe depression and moderate anxiety and stress on the standardized DASS-21 psychometric test. Based on the assessment, Dr Kabir concluded that the appellant has hallucinations and delusions, severe depression and suicidal ideation, and high stress. I find, according to the appellant's GP notes placed before me, that the appellant has not been medically treated for hallucinations, delusions or psychosis and I therefore reject the suggestion that the appellant suffers from psychotic symptoms. His mood was found to be depressed, and a moderate level of psychomotor agitation, due to stress. He was worried about his current situation, which made him more vulnerable to his mental health problems. Depression and anxiety however is consistent with the appellant's medical records and with his history of medical treatment in the UK and those are pre-existing diagnoses I accept.

> 29. Dr Kabir opined that if the appellant managed his psychological and emotional crises, he would usually be very dependable, likely to keep his word and fulfil his duties, and was capable of promptly addressing any organisation's needs. I find that this shows that the appellant is able to work if he receives some support and adequate medication for his conditions.
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> 30. Dr Kabir states that he has considered the appellant's NHS psychiatric and counselling report and states that these treatments are not currently available and are not good enough treatment for patients in Bangladesh due to a lack of facilities. I reject that assertion, as I have already stated, there is adequate medication available in pharmacies in Bangladesh. Counselling and therapy are extremely expensive treatments that patients must pay for, but the appellant cannot afford them, he states.
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> 31. Dr Kabir suggests that the appellant continue his treatment and engage in more counselling in the UK, where he is currently receiving free treatment. If he doesn't get continuous, proper treatment, it will get worse over time and cause serious mental damage. He was referred to the NHS for further treatment.
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> 32. I find that the appellant will be able to access painkillers and/or orthopaedic care for his leg and back pain in Bangladesh, if needed. I therefore find that the appellant would be able to access adequate medical treatment in Bangladesh, which he may have to pay for. At the date of the hearing, the appellant does not require and is not receiving any counselling or therapy in the UK. I find that the appellant has several friends who have been prepared financially to support the appellant in the UK; I find that there is no basis for thinking that that support would stop if he were to move to Bangladesh. I have taken note of the fact that the appellant had a poor relationship with his father in Bangladesh, however he also has a brother and two sisters he could turn to for support, in my finding. He also had a very positive relationship with his uncle and although that uncle has now passed away, his uncle's family may also be in a position to offer some practical support."

7. The Appellant's Article 3 claim was based on his mental ill-health. The Judge concluded at para. 37 that the Appellant had not established that any suicidal attempts he had made are from impulses which he would not be able to control because of his mental state. There was no real risk of suicide. At para. 38, the Judge considered the availability of appropriate medical treatment in Bangladesh. The Judge referred in this respect to paragraph 10.1.6 of the Respondents July 2022 CPIN on Medical treatment and Healthcare in Bangaldesh "which shows that medication for depression and severe depressive episode is available from private pharmacies in Dhaka, including Fluoxetine, Sertraline, Venlafaxine and Loanzapine." The Judge acknowledged that medical care in Bangladesh may not be equivalent to that available in the UK nor free of charge. At para. 39, the Judge held that the test for breach of Article 3 had not been met.

8. In relation to Article 8 within the Immigration Rules, the Judge considered whether under paragraph 276ADE(1)(vi) there were very significant obstacles to his re-integration in Bangladesh, holding as follows:

> 45. … I find that the appellant spent all of his childhood in Bangladesh. He came to the UK in 2009 as a student and completed a degree in Business Management. I accept that the appellant has become used to life in the United Kingdom, that he has a lot of friends who support him emotionally

and financially and that he has developed a private life relationship with the therapists and clinicians who have provided counselling and medical treatment for him on the NHS.

46. I nevertheless find that the appellant remains accustomed to the culture and customs of his home country. The appellant claims to have no family or friends in Bangladesh, however I find that if returned there, he would be able to re-establish relationships with his brother and sisters and with his uncle's family as well as with his mother. I find that, in the same way that he has forged many friendships with people of his own and other cultures, including British people of Turkish origin, he would also be able to make new friendships and to find practical support. I find that the appellant could maintain contact with his many friends in the UK through modern means of communication and that they could continue to support him emotionally and financially. Some of them may visit him face-to-face when they return to visit their own families and may even be able to put him in touch with their own families and friends in Bangladesh as a source of practical support upon return. If he chose to, the appellant could take up the option of making a voluntary return, with a lump sum to aid his reintegration back to Bangladesh.

47. The appellant has spent his entire childhood and some of his adult life in Bangladesh. He is part of the culture. Although he may find it hard to readapt initially, I find that he would not face very significant obstacles, as a result of the fact that he has some friends of Bangladeshi origin in the UK who have accommodated, maintained and supported him. I find that these friends and his other UK-based friends would be able to provide some support for him on a temporary basis, and put him in touch with their own extended families and contacts in Bangladesh for support and employment prospects, until he gets himself on his own two feet. Having lived in Bangladesh previously all his life until he came to the UK in 2009 at the age of 19 years, I find that the appellant remains familiar with the language, culture and lifestyle in Bangladesh."

9. Having found that the Appellant did not meet the requirements of the Immigration Rules, the Judge turned to consider whether there were any exceptional circumstances rendering the refusal of leave to remain a breach of Article 8 because it would result in unjustifiably harsh consequences for him. As to this the Judge found as follows:

a. While the Appellant lawfully resided in the UK for 6 years, he has since overstayed for a further 8 years;

b. His stay in the UK has always been precarious;

c. He has siblings in Bangladesh and extended family he will be able to rely on and will also be able to rely on the support of his friends who have supported him in the UK;

d. In light of the Appellant's medical condition and length of stay in the UK, the Appellant enjoys a private life in the UK;

e. Removal would amount to a serious interference with that private life and be in accordance with the law and pursuant to a legitimate aim (the Judge stated that there would not be a serious interference, but, as the

Appellant did in the Grounds, I consider that to be an obvious typographical error);

f. On the critical issue of proportionality:

   i. His overstaying reveals a disregard for the rule of law and immigration control and weighs heavily in the balance against his interest in remaining in the UK;
   ii. He has otherwise stayed out of trouble, he has completed a Business Management degree and improved his English, which will improve his employment prospects upon return;
   iii. he has no known family in the UK;
   iv. he remains familiar with the language, culture and customs of Bangladesh;
   v. he will need to find a job and may need to pay for his medical treatment;
   vi. he will be able to stay with one of his siblings or with his uncle's family, with whom he previously lived and who supported him to come to the UK;
   vii. some of the appellant's friends in the UK will be able to support him by putting him in touch with their family, extended family and friends, who may also be able to accommodate and support him until he gets on to his own two feet;
   viii. his friends in the UK will continue to support him if necessary;
   ix. he will be able to access appropriate medication and treatment in Bangladesh.

10. In the circumstances, there would be a degree of hardship, but not such as to amount to exceptional circumstances.

11. The Judge then turned to what she described as the "statutory human rights assessment". As to this, the Judge held as follows:

a. Effective immigration control is in the public interest. The fact that the Appellant does not meet the Immigration Rules is a weighty factor.

b. It is in the public interest that those who seek to remain in the UK are able to speak English. As the Appellant has completed a degree in English, this does not weigh against him.

c. It is in the public interest that those who seek to remain in the UK are financially independent. "The appellant is not financially independent. He depends financially on his friends. This is a consideration that weighs heavily against the appellant".

d. The fact that the appellant is unable to satisfy the requirements for the grant of leave prescribed by the Immigration Rules is a very weighty consideration.

e. Little weight is to be accorded to a private life established at a time when the Appellant's immigration status is precarious.

f. The Appellant knows that his visa expired in 2015 and had no expectation of being able to remain indefinitely.

g. The Appellant has failed to identify any friendships that go beyond those normally seen between friends.

h. The high threshold of unjustifiably harsh consequences has not been reached;

i. There are no significant obstacles to the Appellant returning to Bangladesh and it would not be unreasonable for him to do so;

j. The Appellant has failed to show that he will not be adequately treated for his medical conditions in Bangladesh. He can access community groups and personal contacts through his friends in the UK who will support him through his practical and health challenges on return.

k. A fair balance must be struck between the competing interests of the Appellant and the public interests in removal. The Appellant will be able to form a network of supportive friends and contacts around him upon return to Bangladesh. There is no reason to think the Appellant will be left to suffer and much less to die on his own.

l. Having considered all the facts, they do not give rise to sufficiently adverse effects on the Appellant's physical and moral integrity such as to prevail over the public interest in removal.

Appeal to the Upper Tribunal

12. In his Renewal Grounds the Appellant relies on two grounds of appeal:

a. Under Ground 1, he submitted, first, that there was an error in finding that the Appellant was not financially independent and in weighing that heavily against him (hereafter "Ground 1A") and secondly, that the Judge did not consider the flexibility permitted in the "little weight" provisions of section 117B of the Nationality, Immigration and Asylum Act 2002 and instead put herself in a straightjacket ("Ground 1B");

b. Under Ground 2, the Appellant submitted that in considering whether there were very significant obstacles to re-integration the Judge failed to consider the Appellant's mental health.

13. As already noted, permission to appeal on these grounds was granted by Judge O'Callaghan on 8 September 2023. He considered that the two grounds were arguable, thought he noted that it would be for the Appellant to establish materiality.

14. The Respondent filed a response to the appeal pursuant to rule 24 of the Upper Tribunal Procedure Rules on 26 September 2023. In summary, she:

a. accepted that the Judge had erred in relation to finding the Appellant not to be financially independent, but submitted that this was immaterial, as financial independence could only, on the Supreme Court authority of Rhuppiah [2018] UKSC 58, be a neutral factor;

b. did not accept that the Judge had put herself in a 'straightjacket' in relation to the little weight provisions as alleged; and,

c. accepted that the Judge had not specifically referred to the Appellant's mental health in the section on very significant obstacles to re-integration, but again submitted that this was immaterial because she had comprehensively considered the Appellant's mental health previously in the decision.

15. That is the basis on which this appeal comes before me to determine whether the decision of the First-tier Tribunal is affected by material error of law.

Discussion

Ground 1A

16. It is common ground, and I agree, that the Judge erred in finding that the Appellant was not financially independent. Rhuppiah, cited above, decided that financial independence in section 117B(3) of the 2002 Act means independence from the state. The Appellant's financial reliance on his friends is accordingly irrelevant.

17. The question then is whether that is material. Mr West, on behalf of the Appellant, submitted that it was material because the Judge had given it "great weight" and it was therefore not possible to second-guess what she would have done had she given it less weight. As noted, the Respondent in her rule 24 response (and also in her oral submissions through Ms Ahmed) submitted that given that financial independence is, per Rhuppiah a factor which is neutral, this Tribunal can be satisfied that, had the error not been made it would not have made any difference to the outcome.

18. I agree with the Respondent. This is a case in which, in light of the other elements of the Judge's assessment of the Appellant's case, it is possible to be satisfied that this error could not have made any difference to the outcome, even to the high standard required by Detamu v Secretary of State for the Home Department [2006] EWCA Civ 604 at [14] and [18]. The Judge gave, as she was entitled to do, little weight to the Appellant's private life and great weight to the public interest in the proper control of immigration. Having concluded that the Appellant's mental health had improved in recent times, that he could obtain the necessary medication in Bangladesh and that his ability to speak English was a neutral factor, the Appellant's financial independence, as a neutral factor, could not have properly tipped the balance in his favour. He would have been nearer the tipping point than when the Judge wrongly gave great weight to his lack of financial independence, but the Appellant is, on any rational view, still far from what a successful Article 8 claim requires once that is stripped out of the balance and treated as a neutral factor.

Ground 1B

19. By Ground 1B, the Appellant submits that the Judge imposed a straightjacket on herself by not considering the extent to which the 'little weight' that is required to be given to a private life developed during periods of precarious leave or no leave contained a degree of flexibility.

20. This submission is based on what the Judge did not say, rather than anything that the Judge expressly said that indicated that she was not aware of the degree of flexibility inherent in the concept of “little weight”. It is however well established that in their specialised field, FTT Judges are taken to know and be seeking to apply relevant authorities without needing to refer to them specifically, unless it is clear from their language that they have failed to do so. Their decisions should accordingly be respected unless it is quite clear that they have misdirected themselves in law. See AH (Sudan) [2007] UKHL 49 at [30] and AA (Nigeria) [2020] EWCA Civ 1296 at [34]. There is nothing in the Judge’s decision which makes it clear from her language that she misdirected herself in the way suggested by the Appellant. There is nothing erroneous about her statement in para. 67 of the FTT Decision that she was “mandated by Statute to accord little weight to the appellant’s private life established in the UK while his leave was precarious or unlawful”. That is simply a paraphrase of what s.117B(3) says. It does not mean that the Judge imposed a straightjacket on herself or considered that the phrase did not inhere a degree of flexibility.

21. I accordingly reject Ground 1.

Ground 2

22. By this ground, the Appellant suggests that the Judge failed to take account of his mental ill-health in determining the question of whether there were very significant obstacles to his re-integration in Bangladesh. This is said to have been essential given in particular the stigmatisation of mental illness in Bangladesh evidenced by the Respondent’s CPIN.

23. The Respondent rightly accepts that the Judge did not mention the Appellant’s ill-health in considering whether there were very significant obstacles to his return. I am highly doubtful however that the Judge, despite not having spelled out her thinking in relation to this, did not take it into account. She referred in this section of the FTT Decision to both the relationship that the Appellant had built up with his therapists and clinicians, which relationship was built up in the context of his being treated for mental ill-health and, having spent the previous 16 paragraphs considering the Appellant’s mental health, I consider it very likely that when the Judge referred in para. 47 to the fact that the Appellant may find it hard to readapt initially to life in Bangladesh she had well in mind that this would be in significant part because of his mental health. Nonetheless, for present purposes I am prepared to assume in the Appellant’s favour that this was not the Judge’s approach and that she left his mental health out of account in considering the question of very significant obstacles, and that that was an error of law.

24. Nonetheless, I am of the clear view that, in light of the Judge’s findings in relation to the Appellant’s mental health, such an error in this case is wholly immaterial to the outcome. As at the date of the hearing, the Judge considered that there had been an improvement in the Appellant’s mental health as a result of the treatment he had been receiving. To a degree he had learned to manage his conditions through coping techniques he had been taught and his medication had been reduced. Such medication as he now required was available in Bangladesh. Mr West relied on the prevalence of stigma in Bangladesh towards those suffering from mental illness. As Ms Ahmed noted however, there was no mention of this issue or the evidence on which the Appellant now relies in the Appellant’s Appeal Skeleton Argument, or, it would appear from the Judge’s summary of the Appellant’s case, orally before her. Be that as it may, on the

findings of the Judge as to the Appellant's current mental state, there is no reason to think that the presence of a stigma towards mental health in Bangladesh would either cause him to be unable to access the medication he knows he requires, or to establish friendships and other private life connections. The evidence in the CPIN on which Mr West relied (para. 10.1.) simply suggests that stigma, together with a lack of awareness of potential treatments and restricted access in parts of Bangladesh is a reason why people do not seek treatment. It does not suggest that the lot of those with mental illness who do access treatment is significantly worse as a result. The Appellant knows that he benefits from treatment and can, on the Judge's unchallenged finding that such treatment is available, access it. In my judgment, it is inevitable that had the Judge expressly considered whether the Appellant's mental health amounted to or gave rise to a very significant obstacle to his reintegration in Bangladesh, by virtue of stigma or otherwise, she would have been bound to have found that it did not.

25. I accordingly reject Ground 2.

26. For completeness and the avoidance of doubt, I would add that, had I found that this error was material, I would nonetheless have preserved the Judge's unchallenged findings, and remade the decision myself (as Mr West accepted that I was entitled to do) on the basis of those findings. For essentially the same reasons as those set out in paragraph 24 above, I would have dismissed the appeal.

Notice of Decision

The decision of the First-tier Tribunal involves the making of errors of law. They are however immaterial and accordingly I decline to set aside the First-tier Tribunal's decision, which accordingly shall stand.

Paul Skinner

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

29 October 2023