IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case Nos: UI-2024-001055
UI-2024-001057
UI-2024-001058

FtT Nos: HU/56972/2022;
IA/10355/2022
HU/56974/2022; IA/10356/2022
HU/56976/2022; IA/10357/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 16 December 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE BAGRAL

Between

SN (1)
MU (2)
SU (3)
(ANONYMITY ORDER)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr R Halim, Counsel, instructed by Chancery Solicitors
For the Respondent: Mr D Wain, Senior Presenting Officer

Heard at Field House on 30 September 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Appellants are granted anonymity.

No-one shall publish or reveal any information, including the name or address of the Appellants, likely to lead members of the public to identify them. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

Introduction

1. The appellants seek to appeal a decision of First-tier Tribunal Judge F Allen ("the Judge") dismissing their human rights appeals on 28 December 2023.

2. The first two appellants are wife and husband and the third appellant is their son. The first two appellants arrived in the UK with entry clearance conferring leave to enter as students on 11 November 2009 and 23 February 2011 valid until 5 October 2015 and 30 October 2014 (extended to 5 October 2015) respectively. They met in the UK and married in Bangladesh on 16 July 2014. Their son was born in the UK (2018) and at the date of hearing before the Judge he was 6 years old. The appellants have made unsuccessful applications to remain in the UK on human rights ground - the last application was made on 31 August 2020. It is the refusal of that application on 18 September 2022 that was the subject of the appeal before the Judge.

Anonymity

3. The Judge issued an anonymity order under rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014. I have not been asked to rescind that order and I consider that it is appropriate to maintain it for the reasons observed by the Judge at [10] of her decision.

Decision of the First-tier Tribunal

4. At the hearing the appellants were represented by Mr Halim as they are before me. The respondent was not represented. The Judge heard evidence from the first two appellants. The Judge applied the relevant guidance in view of the first appellant's vulnerabilities. The first appellant has a diagnosis of a single episode depressive disorder, severe, without psychotic symptoms and generalised anxiety disorder.

5. The Judge at [18] observed the respondent accepts the first appellant's diagnosis, and set out the respondent's case as follows:

- There is suitable medical treatment available with reference to the CPIN;
- The appellant has an extensive family support network who can assist her to access any treatment she requires;
- if not, whether there are very significant obstacles to the first and second appellants integration into Bangladeshi life and the requirements of 276ADE(1)(vi) are met; and
- if not, whether removal of the appellants would, having regard to the best interests of the third appellant, result in unjustifiably harsh consequences for the appellants such that removal would breach Article 8 ECHR.

6. The Judge set out the findings made in a previous appeal and by reference to Devaseelan took them as her starting point. At [38] the Judge set out the basis on which the appellants sought to persuade her to depart from the findings in the previous appeal on the "new basis… that there [was] a real risk of a breach of Article 3 and 8 ECHR due to the significant deterioration in the first appellant's mental health including several attempts at suicide and self-harm". In support of that claim the appellants relied on a medico-legal report from Consultant Forensic Psychiatrist Dr Galappathie (as well as other medical and expert evidence) and a report from an Independent Social Worker (ISW) Jane Bartlett.

7. The Judge first turned to address the first appellant's Article 3 ECHR claim on medical grounds. The Judge accepted the first appellant is seriously ill, but having considered the expert and background evidence found that treatment was available in Bangladesh and that the first appellant had close family there who could assist her to access medical treatment. The Judge found the second appellant also had close family members in Bangladesh who could provide the appellants with additional support and that the parents of the first and second appellant did not take issue with their marriage. The Judge rejected the contention that either the first or second appellant came from a conservative background and did not accept that their respective families believed that mental health issues were caused by evil spirits.

8. The Judge placed little weight on Dr Galappathie's conclusions about the potential effects of removal on the first appellant including the risk of deterioration of her mental health and risk of suicide because he had not factored into his assessment protective factors such as family support. The Judge was not satisfied there was a real risk of the first appellant committing suicide on return to Bangladesh and found that with the support of her family she would engage in treatment on return. Accordingly, the Judge concluded the first appellant had not established that her removal would violate her rights under Article 3.

9. Turning to Article 8 within and outside of the Rules, the Judge concluded that with the support of their family and friends in the UK and in Bangladesh, the first and second appellant who were both highly educated could integrate with their son on return to Bangladesh. The Judge concluded that it was in the best interests of the third appellant to continue to live in Bangladesh with his parents and gave little weight to the conclusions of the ISW regarding the impact of removal on the appellants as she had failed to consider the appellants would have family support in Bangladesh. Undertaking the proportionality assessment the Judge concluded that no exceptional circumstances arose.

Grounds of Appeal

10. The appellants rely on grounds of appeal drafted by Mr Halim. The grounds are lengthy and identify six errors of law as the basis of challenge and are:

(i) Irrational finding as to the first appellant's relationship with her family.
(ii) Failure to consider poor mental health as an explanation for inconsistency.
(iii) Making a finding based on no evidence.
(iv) Illogical findings.
(v) Failure to make a finding on ability to pay for medical treatment.
(vi) Irrational reasons for rejecting Dr Galappathie's view.

11. On renewed application Upper Tribunal Judge O'Brien granted the appellants permission to appeal by a decision dated 23 July 2024 in the following terms:

> "2. It is arguable that the judge reached conclusions illogically and/or without evidence. In particular, that the first appellant's family in Bangladesh would be supportive if she had a mental health crisis and assist her to access any medical treatment she required [55], and that the first appellant's family would not believe that mental health issues were caused by evil spirits [58]. The judge arguably failed to make necessary findings: having concluded that necessary medical treatment was available, whether the appellant would have to pay for that treatment and, if so, whether she would be able to afford it.
>
> 3. Whilst I have considered above those grounds with the most obvious arguable merit, taking the pragmatic approach recommended in para 48 of Joint Presidential Guidance 2019 No 1: Permission to appeal to UTIAC, I grant permission on all grounds."

12. The respondent did not file a Rule 24 response.

Discussion

13. Both representatives made submissions. Mr Halim relied on his detailed grounds of appeal and Mr Wain responded to each ground in turn. I do not recite the submissions here. They are reflected where necessary in my reasoning below. In an otherwise carefully reasoned decision, I consider that the Judge materially erred in law. The representatives agreed that the grounds overlap to an extent, which means I may not necessarily consider them in order, and nor is it necessary to traverse each and every point raised within them. I consider the following grounds, and their cumulative effect, is sufficient to vitiate the Judge's decision requiring it to be set aside.

Ground 1 – Irrational finding as to the first appellant's relationship with her family.

14. Upon careful consideration I consider ground 1 is meritorious. This ground challenges the Judge's adverse credibility finding at [55] in relation to the first appellant's evidence that her family in Bangladesh did not know about her self-harming and suicidal behaviour. At [55], the Judge said this:

> "55.The first appellant said in evidence that her mother does not know that she has tried to harm herself and tried to commit suicide and would not be able to accept that she has mental health issues and could die if she knew. The first appellant said that her mother has diabetes and a problem with her leg with one toe amputated but no evidence of this has been provided. I do not accept this evidence. It is quite clear from the evidence that the first appellant and her mother are very close and are in regular contact. The first appellant had spoken to her a couple of days before the hearing and the risk management plan as set out by Joe *[sic]* Luke (CBT Therapist) on 12 October 2022 sets out that a protective factor for the first appellant is her parents and part of the risk management plan is to call her family. This would not be possible if her family were completely unaware of any mental health issues or risks of self-harm or suicide. I find that this evidence has been introduced by the first appellant to counter any finding that her family would support her on return to Bangladesh. I find that if returned to Bangladesh the first appellant would be returning to a close family who would be supportive and assist her to access any medical treatment she requires..."
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> [my emphasis]

15. It is clear at [55] that the Judge essentially gave two reasons for rejecting the evidence of the first appellant that her family were unaware of her mental health condition. First, because the first appellant had a close relationship with her mother and they were in regular contact and, second, because the first appellant had agreed with Jo Luke to call her family as a means of managing her risk. Mr Luke's letter comprises of two-pages and the operative sentence therein is as follows:

> *"[The first appellant] has strong protective factors in her son, husband and parents and agreed to a risk management plan (speak to her husband or call family)".*

16. I agree with Mr Halim, that Mr Luke here, neither in express nor implied terms, suggests that the first appellant's family is aware of her mental health difficulties, and consequently, I accept that no such reasonable inference could have been drawn from that evidence. As Mr Halim correctly points out, that as a matter of logic, family members can act as protective factors even in cases where they are not aware of a mental health condition of the family member concerned. From my reading of [55] I find it difficult in the circumstances to escape the conclusion that the Judge inferred a fact from the evidence of Mr Luke (namely, that her family were aware of her condition), which could not logically be drawn from that evidence. Mr Wain submits that the Judge here was simply weighing up the evidence, but I am not convinced that it is as clear cut as that.

17. I observe Mr Halim's reference to the First-tier Tribunal's decision refusing permission to appeal in which it did not dispute that at [55] the Judge made a mistake of fact, but it reasoned it was not material. My understanding of ground 1, however, is that there is no justified rationale for the Judge's reasoning at [55] between her factoring in the evidence of Mr Luke to her then drawn conclusion that the first appellant's family were likely to be aware of her mental health difficulties. It is rather this error in logic than a

mistake of fact that led Judge O'Brien to make express reference to [55] in his grant of permission as being one of the grounds with the most obvious arguable merit.

18. Having reviewed the evidence in light of the submissions of the parties, I cannot be certain from the Judge's reasoning at [55] that she did not draw an inference from the evidence of Mr Luke, to support her conclusion that the first appellant agreeing to contact her parents meant, that this "… would not be possible if her family were completely unaware of any mental health issues or risks of self-harm or suicide". That inference could not be properly drawn from the evidence. I therefore consider that this is an error in logic, which this Tribunal ought to properly interfere with (see: SB (Sri Lanka) [2019] EWCA Civ 160).

19. I am satisfied the error is material because the Judge's impugned finding permeates through to other material findings that ultimately led her to dismiss the appeal. For example, the Judge's conclusion that the first appellant's family would assist her to access medical treatment in Bangladesh (at [55]) is predicated upon the Judge's earlier finding that the first appellant's family are aware of her mental health condition. The error further permeates through to the Judge placing little weight on the report of Dr Galappathie at [61] and the ISW's report at [78] (in respect of proportionality under Article 8) because neither expert considered the availability of family support, which the Judge was satisfied was available to the appellants in Bangladesh.

20. Both representatives agreed that ground 1 is a core ground of appeal, and the merit of the other grounds flow from this ground being established. I turn to address the other grounds that I consider have merit.

Ground 3 -Making a finding based on no evidence.

21. This ground is confined to the Judge's conclusions at [58]. At [58] the Judge said:

> *"I do not accept that either appellant comes from a conservative background and their families would believe that mental health issues are caused by evil spirits. As set out above the first appellant's parents ensured their daughter's education, she was able to travel to and live in the UK to pursue her studies just aged 18 and meet, fall in love and marry a man of her choice. Additionally, the first appellant's mother worked for an NGO. The second appellant's family clearly saw the benefit of education and again did not prevent his marriage to a woman from a different region who he had met abroad."*

22. Mr Halim submits that the Judge here assumed that only *"conservative"* families in Bangladesh would believe that mental health problems are caused by evil spirits. Mr Halim argues that there was no evidential foundation for that conclusion and that the Judge did not consider the expert evidence of Md Solaman Tushar that: *"[m]ental health is still not considered an issue among the lower or middle class... Mental health stigma is common throughout Bangladesh and there are many*

superstitions surrounding mental health conditions. Some believe that evil spirits cause mental health issues…". This evidence Mr Halim submitted could not be construed as asserting that such beliefs were limited to those from a *"conservative"* background. Mr Halim further referred to the CPIN that was before the Judge which stated that *"mental illness in Bangladesh is highly stigmatized"*, and that *"[c]onsiderable social stigma attaches to reporting mental illness"* (paras. 9.1.1 and 10.1.7 respectively).

23. Mr Wain conceded the Judge fell into error in failing to consider the expert report and background evidence that was before her on this point, but submitted this was not material because it was open to the Judge to find (as per ground 1) that the first appellant had family support through which she could access mental health services in Bangladesh. Mr Wain properly accepted nonetheless that his opposition to ground 3 was unlikely to withstand scrutiny if I accepted the error in respect of ground 1. I agree.

24. I am satisfied that a material error was made by the Judge by failing to consider the evidence within the context of the expert and background evidence which upon any reading did not confine the harbouring of superstitious beliefs to conservative and traditional families in Bangladesh. There is no reference at [58] to that evidence which raises the question on what evidential foundation the Judge based her conclusion and leads to the inevitable conclusion that the Judge made an assumption about cultural norms prevailing in Bangladesh. That approach was impermissible and resulted in a consequential error, namely, that the Judge made findings that were unsupported by the evidence. I find this ground is also made out.

Ground 5 - Failure to make a finding on ability to pay for medical treatment.

25. I consider a further error is established by the Judge's failure to make necessary findings as to whether the first appellant would be able to afford to pay for the treatment she requires in Bangladesh. Whilst at [50] to [52] the Judge reached sustainable findings by reference to the expert evidence that treatment is available in Bangladesh, it is not disputed that she did not specifically consider whether the first appellant was either required to pay for treatment, and if so, whether she could afford it. There is also no dispute that the inadequacy of government healthcare and the cost of treatment was considered by the expert and is indeed referred to in the background evidence, which Mr Halim quotes at length in the grounds, however, I am inclined to agree with Mr Wain, that the Judge was plainly alive to the inadequacies as she referred to some of the evidence relating to that at [47] to [52], but Mr Wain was not able to point to any references in the decision where the Judge analysed the evidence in respect of the first appellant's ability to pay for the treatment that she requires.

26. Mr Wain's answer to this is that it was sufficient for the Judge to find that the first appellant would have access to treatment by the provision of financial support from family in the UK and in Bangladesh, but this in my view is not a catch-all finding. Not only is it insufficiently reasoned in view

of the evidence as to the likely costs of treatment, and whilst that evidence was not extensive, I consider the Judge nonetheless erred in failing to adequately consider the evidence and/or failed to consider an issue material to the question of accessibility of treatment. Whilst Mr Wain did not specifically refer to this in his submissions, I have taken into account that the Judge may have had in mind that the first appellant came from a relatively wealthy family, but I agree with Mr Halim that this is not explicit from the decision itself and the Judge was required to make it plain if that formed part of the rationale of her findings.

Ground 6 - Irrational reasons for rejecting Dr Galappathie's view.

27. Whilst the primary basis of this ground concerns the Judge's treatment of Dr Galappathie's opinion that the first appellant would not be able to access treatment because of her deteriorated mental state on return, the body of this ground also takes issue with the Judge's failure to consider the view of the ISW in respect of the second appellant's ability to provide support to the first appellant (para.35). Whilst I do not accept all of Mr Halim's criticisms in full, I am satisfied that this ground is made out to the following extent.

28. At [61], [63] and [78] the Judge said this:

> "61. Dr Galappathie's opinion is that the first appellant would be unable to establish herself on return to Bangladesh and is unlikely to be in a position to access and engage in mental health treatment. Dr Galappathie states that being returned to a county *[sic]* where she fears not having any support and being left struggling to support her family and where she fears diminished prospects and living conditions for her child would be highly distressing. I find that Dr Galappathie in reaching this opinion has not engaged with the appellant having her husband and other family members around her providing her with support and helping her to establish herself and access medical treatment. Additionally, that the appellant's husband and her family in Bangladesh are strong protective factors and form part of her risk management plan. Given this I place little weight on Dr Galappathie's conclusions about the potential effects of removal on the appellant including the risk of deterioration of her mental health and risk of suicide."
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> ...
>
> 63. The appellant has engaged with medical practitioners, support agencies and sought private treatment in the UK and I find that there is no reason why, if needed, she would not with the support of her family engage with treatment in Bangladesh.
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> ...
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> 78. I have considered the ISW report of Jane Bartlett but find that Ms Bartlett has failed to consider as part of her report that the appellants would be returning to a country where they have an extensive family network who will be there to provide support to the appellants. I therefore give little weight to her conclusions on the impact of removal on this family."

29. First, the common theme which runs through the Judge's assessment of the weight she attributed to the expert evidence is based on her finding that the appellants will have the support of family members in Bangladesh. This I find is infected by error for the reasons given in respect of ground 1. Second, I accept as Mr Halim submits, that Dr Galappathie's conclusions were not predicated on the first appellant having no support on return, but rather, his conclusions were based on the deterioration of her mental state on return, and the effect of her depression and anxiety on her decision-making. At para.91 of his report Dr Galappathie stated *inter alia*:

> "91. ... In my opinion, if [the first appellant] was returned to Bangladesh, it is unlikely that she would be in a position to access and engage in mental health treatment, even if this was available for her, and therefore be able to establish herself upon return to Bangladesh. In my opinion, being returned to the country where she fears not having any support and being left struggling to support her family and where she fears diminished prospects and living conditions for her child, would be highly distressing. Her mental health would be likely to rapidly deteriorate owing to feelings of failure and hopelessness for the future, as outlined earlier, making it unlikely that she would seek out treatment and engage with this treatment, even if this was available for her and thus, establish herself over there. This is supported by previous attempts to commit suicide and self-harm for these reasons. In my opinion, her anxiety would make her feel anxious and fearful, which will affect how she copes. Additionally, research has also identified that depression and anxiety can have an adverse impact on decision making. It has been found that those with depression are less likely to seek out information to help them make decisions. Individuals, who are depressed are also less likely to make productive decisions. Furthermore, research has also identified that depressive symptoms are associated with impaired everyday problem-solving ability directly and indirectly mediated via impairments in learning, memory, reasoning, and speed of processing. Therefore, in situations where she is rendered vulnerable, placed under high levels of stress, and fears isolation, her depression and anxiety will negatively impact her ability to cope and manage. In my opinion, even if the recommended treatment were available for her in Bangladesh, it is unlikely that she would have the mental stability to engage and benefit from the treatment available due to her mental health problems and her deepened sense that she had failed her family and her fears for the future prospects and wellbeing of her child and family, and therefore is unlikely to be able to establish herself in Bangladesh."

30. Whilst the Judge appears to summarise Dr Galappathie's opinion to this extent at [60], she did not proceed to adequately engage with that evidence because her decision is predicated on her finding that the first appellant would have the support of her family.

31. Third, I agree with Mr Halim that the Judge did not engage with the opinion of the ISW's report at para. 4.24, that the stress of a return to Bangladesh would impair the second appellant's ability to provide support to his wife and indeed their son. This evidence in my view was relevant to the Judge's assessment of whether the second appellant would be a "strong protective factor" on return to Bangladesh as she found he would be at [62]. Further still, the Judge attributing little weight to the ISW's

report on the basis of the availability of family support cannot stand as it is infected by ground 1. Whilst I acknowledge that the Judge did grapple with some of the expert evidence, and nor was she required to address all the interstices of the evidence, I am not satisfied that her consideration was adequate or that she did not leave out of account material evidence relating to the principal issues in the appeal. Mr Wain did not advance detailed submissions in opposition to this ground because he fairly recognised that it was dependent on the above grounds being made out.

32. The errors of law argued by the appellants, as set out above, are therefore established. As these conclusions underpin the overall decision on the appeal, and are material, the Judge's decision must be set aside. It is not necessary therefore to consider grounds 2 and 4, which are in my view less persuasive.

33. Applying the principles set out in the Practice Direction and the Practice Statement, according to the guidance given in Begum (Remaking or remittal) Bangladesh [2023] UKUT 46 (IAC), the parties are in agreement the appeal in the circumstances ought to be remitted with no findings of fact preserved. I consider it appropriate to remit the appeal to the First-tier Tribunal for complete re-hearing. This is because it is unclear that the appellants have yet had the benefit of a fair hearing in the First-tier Tribunal. The appellant did not raise any procedural unfairness, but nonetheless, that potential loss of a fairly conducted two-tier decision-making process justifies remitting the appeal to the First-tier Tribunal. I was not invited to preserve any findings and considered than none ought to be preserved in view of my conclusion in respect of ground 1.

34. New matter: Mr Halim indicated at the hearing that the third appellant has now reached the age of 7 and is entitled to Indefinite Leave to Remain as a qualifying child. There is no dispute between the parties that this constitutes a new matter. Mr Wain confirmed that the Secretary of State grants consent for this issue to be considered on the rehearing of this appeal.

Notice of Decision

(i) The decision of the First-tier Tribunal contains material errors of law and is set aside.
(ii) The case is remitted to the First-tier Tribunal for re-hearing with no findings of fact preserved, to be heard by any judge other than Judge Allen.

R Bagral
Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

10 December 2024