



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/05766/2019 (V)

THE IMMIGRATION ACTS

Heard by a remote hearing
On the 28 July 2021

Decision & Reasons Promulgated
On the 6 September 2021

Before

UPPER TRIBUNAL JUDGE REEDS

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

AND

MA

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr McVeety, Senior Presenting Officer.

For the Respondent: Mr R. Solomon, Counsel instructed on behalf of the appellant

DECISION AND REASONS

Introduction:

1. The Secretary of State appeals with permission against the decision of the First-tier Tribunal (Judge Atreya) (hereinafter referred to as the "FtTJ") who allowed the appellant's human rights appeal in a decision promulgated after a hearing on the 15 January 2021. There is no date on the decision, but it is common ground that the appeal was promulgated as it resulted in these proceedings being initiated by the Secretary of State.

2. The FtTJ made an anonymity direction for the reasons set out at paragraph 1 of his decision. I am mindful that considerations arise in this matter as to the appellant's mental health concerns. I observe Guidance Note 2013, No. 1 which is concerned with anonymity directions, and I note that the starting point for consideration of such directions in this chamber of the Upper Tribunal, as in all courts and tribunals, is open justice. Rule 14(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008 ('the 2008 Rules') contains a power to make an order prohibiting the publication of information relating to the proceedings or of any matter likely to lead members of the public to identify any person whom the Upper Tribunal considers should not be identified. Rule 14(7) of the 2008 Rules contains a presumption that information about mental health cases and the names of the people concerned in such will not be disclosed in the absence of good reason. I am satisfied that in the circumstances which arise to be considered in this matter, that the interests of justice require that the appellant is not named in these proceedings. I therefore confirm the decision made by the FtTJ when making the the anonymity direction.
3. The hearing took place on 28 July 2021, by means of *Skype for Business* which has been consented to and not objected to by the parties. A face-to-face hearing was not held because it was not practicable, and both parties agreed that all issues could be determined in a remote hearing. The advocates attended remotely via video as did the appellant so that he could listen and observe the hearing. There were no issues regarding sound, and no technical problems were encountered during the hearing, and I am satisfied both advocates were able to make their respective cases by the chosen means.
4. Whilst this an appeal brought by the Secretary of State, I intend to refer to the parties as they were before the FtTJ.

Background:

5. The history of the appellant is set out in the decision of the FtTJ, the decision letter and the evidence contained in the bundle.
6. The appellant is a national of Bangladesh. The appellant entered the United Kingdom on 28 September 2007 with entry clearance as a student valid from 11 September 2007 to 31 January 2011. He was subsequently granted further leave to remain under the Tier 1 Post Study route valid from 21 October 2010 to 21 October 2012. The appellant completed his MBA in the UK in July 2010.
7. On 19 October 2012 he made an application as a Tier 4 student which was refused on 24 May 2013 on the basis that he had failed to provide specified documents, namely bank statements. His appeal against this decision was initially dismissed by way of a FtT decision promulgated on 28 February 2014. After an appeal, the appellant's appeal was allowed by UTJ Pinkerton on 19 May 2014. UTJ Pinkerton was satisfied that the appellant did supply evidence of sufficient funding with his application. It transpires that the licence of his

Tier 4 sponsor was revoked on 18 July 2014 (see GCID note 21/11/2014). Therefore on 21 November 2014 the respondent decided to grant leave to remain for a period of 60 days until 20 January 2015 to enable the appellant to find a new tier 4 sponsor. However his BRP later received on 12 December 2014 erroneously granted him leave to remain from 9 December 2014 until 20 January 2015 which was 41 days and not 60 days. The appellant sought an extension until 20 February 2015 as the period of leave also included the Christmas period but only an extra period of 2 days until 23 January 2015 was agreed.

8. On 20 January 2015 the appellant applied for leave to remain as a Tier 4 (General) student migrant.
9. On 14 April 2015 the appellant indicated he would like to withdraw the application but needed to know where to make the application.
10. On 15 April 2015 he withdrew the application by writing the respondent. However on 16 April 2015 his application was rejected owing to the appellant's failure to provide his biometrics.
11. On 11 May 2015 (and within 28 days) the appellant submitted an FLR(O) application for leave to remain outside the rules which was sent to the wrong address but was then resubmitted to the correct address on 19 May 2015 and within 33 days not 22 May 2015 as asserted in the decision letter.
12. On 23 July 2015 the appellant varied the above application by applying for leave to remain based on his private life in the UK. This application was refused and certified on 16 January 2016 but was not served until the 9 or 11 June 2018. It is said that in February 2016 and November 2017 he was informed that the respondent was still considering his application.
13. On 20 June 2018, the appellant wrote to the respondent asking him to reconsider the decision and withdraw the certification.
14. On 6 March 2019 the respondent refused the claim, but this time gave an in country right of appeal.
15. It was this decision which the appellant appealed before the FtTJ. The decision letter set out that on 23 July 2015 he had made a human rights claim in an application for leave to remain in the UK on the basis of his private life. The decision letter set out his immigration history. As the appellant did not claim any family life in the UK the decision maker considered his application under the rules applicable to private life (under paragraph 276ADE). It was noted that his application did not fall for refusal on grounds of suitability.
16. As to his eligibility, it was noted that he was a national of Bangladesh, who was over 18 years of age and who had entered the UK on 28 September 2007 and therefore lived in the UK for 11 ½ years but it was not accepted that he lived

continuously in the UK for at least 20 years and therefore could not meet paragraph 276ADE(1)(iii) or (iv) and (v).

17. As regards paragraph 276ADE(1)(vi), the respondent stated that it was not accepted that there would be very significant obstacles to his integration into Bangladesh if he were required to leave the UK because he spent the formative years living in Bangladesh, he claimed speak English and Bengali which were both recognised languages in Bangladesh and claimed to have visited Bangladesh as recently as March 2011 and claimed also to have family living there. The respondent concluded that he could not meet the requirements of paragraph 276ADE(1)(vi).
18. When considering GEN 3.2 of Appendix FM, the respondent considered whether there were any exceptional circumstances which would render refusal a breach of Article 8 because it would result in unjustifiably harsh consequences for the appellant, the respondent concluded that he had previously been offered guidance and advice on how to proceed if he was needing support him in his claim to commit suicide and also had to proceed with an asylum claim if he felt he was in fear of his life or in fear of being persecuted if returned to Bangladesh. It was noted that he did not pursue those avenues open to him. The details of support that would be available was set out and also the details for how to make a claim for asylum at the screening unit.
19. It was therefore concluded by the respondent there were no “exceptional circumstances” in his case and thus the application did not fall for a grant of leave to remain outside of the rules.
20. The appellant appealed that decision to the FtT (Judge Atreya) on the 15 January 2021. In a decision promulgated on a date following the hearing she allowed the appeal on human rights grounds, having found that the appellant met the requirements of paragraph 276ADE (1) (vi) and that there were “very significant obstacles to his integration” into Bangladesh (at paragraphs [70]-72]). As the judge found that that was “positively determinative of his Article 8 appeal,” applying TZ (Pakistan) and PG(India) v SSHD [2018] EWCA Civ 1109, the judge found it would be disproportionate for the appellant to be removed. Thus she found that the decision was a breach of Article 8 of the ECHR and thus allowed the appeal.
21. Permission to appeal was sought and permission was granted by FtTJ Andrew on 26 March 2021 the following reasons:
 - “Ground 1: the judge found that the respondent could meet the immigration rules but in doing so gave inadequate reasons. I find this is an arguable error of law.
 - Ground 2: as a result the judge finding the appellant met the rules there is no proper consideration of Article 8. Indeed the judge is not considered section 117B.

Ground 3: there has been no consideration by the judge of the impact on United Kingdom resources of allowing the appeal.

Accordingly, I find that there arguable errors of law in the decision.”

The hearing before the Upper Tribunal:

22. In the light of the COVID-19 pandemic the Upper Tribunal issued directions *inter alia*, indicating that it was provisionally of the view that the error of law issue could be determined without a face-to-face hearing and that this could take place via Microsoft teams. Both parties have indicated that they were content for the hearing to proceed by this method. Therefore, the Tribunal listed the hearing to enable oral submissions to be given by each of the parties. I am grateful for their assistance and their clear oral submissions.

The submissions on behalf of the respondent:

23. Mr McVeety appeared on behalf of the Secretary of State. He relied upon the grounds and that he did not seek to make any further oral submissions. However where at paragraph 21 of the grounds the respondent referred to the appellant having been working illegally and that enforcement papers were served upon him whilst working as a waiter. This was advanced on the basis that the FtTJ had failed to take that into account under the public interest factors. Mr McVeety accepted that there had been no evidence before the FtT to support such an assertion.

24. I therefore shall set out the written grounds:

25. Ground 1:

- (1) the judge did not provide adequate reasons as to why the appellant met the requirements of paragraph 276ADE (1)(vi).
- (2) His findings at paragraph 70 – 72 are limited and “unsubstantiated against the facts as noted throughout the determination and relevant jurisprudence.”
- (3) At paragraph 4 of ground 1 it is said that the “judge’s finding on very significant obstacles under paragraph 276 ADE (1) (vi) is “unsubstantiated against the facts.
- (4) paragraph 63 and 66 conflict whether the appellant is or is not in contact with his family in Bangladesh. The judge finds it is not but then is able to conclusively say that the appellant’s mother has no money which suggest the appellant was to be in contact with.
- (5) the appellant went to Bangladesh in 2011 and if destitute how did he manage it? He has family in Bangladesh and the judge “does not reconcile the material facts against the assessment that they will be very significant obstacles on return and simply accept the appellant’s account without the requisite anxious scrutiny.”

- (6) paragraphs 20 – 30 also demonstrate the appellant’s skills and language and family ties to Bangladesh and he has shown a fortitude to come to the UK to study and adapt. Letters of support from the appellant’s friends are mostly Bangladeshi suggest the appellant has not lost his Bangladeshi customs or heritage whilst in the UK. There is therefore no reason why he would not be able to reintegrate in Bangladesh. These were relevant factors which were omitted from the consideration as to why he could not return there.
- (7) there is no evidence that loan sharks would have sufficient reach if he were to internally relocate, and the judge fails to address why the appellant did not make protection claim regarding the loan shark debt and its and it is entirely unclear why the judge would find that the appellant could not return, or would be reliant on family to support him or why he could not borrow money from them to pay back the loan shark.
- (8) there is insufficient evidence or reasoning that the appellant would face very significant obstacles on return taking into account his qualifications, his Bangladeshi heritage, culture and customs in notwithstanding his mental health and there are no exceptional circumstances or very significant obstacles to return and the judge’s findings are inadequate.

26. Ground 2:

- (1) it is submitted that the FtTJ’s erroneous finding that the appellant meets the rules has infected his reasoning and the public interest and proportionality considerations. The very limited proportionality findings are flawed and do not adequately employ the mandatory considerations under S117A-D of the 2002 Act.
- (2) The appellant has had no valid leave since 2015 although it is accepted there was a delay in decision-making.
- (3) In respect of the claimed debts to the loan shark his reliance on friends and financial support impacts on the assessment of whether he will or can maintain himself without recourse to public funds. This has not been done even though it is a relevant and weighty factor.
- (4) The appellant’s claim to be destitute is not evidenced and he produced no bank statements.
- (5) It is submitted that the “judge’s findings are entirely contrary to the public interest and place unfair blame on the Home Office in its legitimate aims and efforts to enforce fair and effective immigration control (paragraph 60) and the requirement to need to balance the need for an effective immigration control and the importance of the economic well-being of the country (see Younas (section 117B; Chikwamba; Zambrano Pakistan UTIAC 24 March 2020 where a section is cited to support the claim that “it is clear that the public interest in effective immigration control overrides the appellant’s limited evidence of private life in the UK and the judge’s reasons on this point wholly inadequate.” Furthermore the appellant has

failed to produce a causal link between the Home Office actions and the debt and the judge overlooked the evidential requirements which would have been easy to procure such as bank statements (paragraph 70).

- (6) Against these factors the judge does not explain what the exceptional circumstances are to warrant a discretion in the appellant's favour. Article 8 does not confer a right of individuals to choose where they prefer to live (citing Huang).
- (7) There are neither very strong, compelling or exceptional reasons to engage Article 8 outside the rules or to outweigh the public interest in maintaining fair and firm immigration control. Citing Agyarko the grounds state "the critical issue will generally be whether, given due weight to the strength of the public interest in the removal of the person the case before it, the Article 8 claim especially strong to outweigh it. In general... A very strong and compelling claim is required to outweigh the public interest immigration control." On the facts, this point is not made out in the appellant's favour."
- (8) There has not been a full assessment of the appellant's case against the burden on the resources of the UK regarding his health needs, financial uncertainties and private life considerations must be properly balanced against a very strong public interest.

27. Ground 3:

- (1) By reference to paragraphs 31, and 64 - 66 it is clear that the appellant has utilised the NHS at public cost and if he were to remain the judge does not consider the impact on the UK resources and that the UK cannot medicate the world. There is no assessment of the appellant's treatment in the UK at UK taxpayers expense. This is especially important when the evidence has shown set out in the presenting Ofc's submission that the appropriate care is available abroad.
 - (2) The grounds cite Akhalu (health claim; ECHR Article 8)[2013] UKUT 400.
28. In his oral submissions he confirmed that it was a "reasons challenge" and not a "perversity challenge".
29. In answer to the submission made by Mr Solomon that it was not stated nor was it clear what the term "unsubstantiated" meant he clarified this as stating that the judge had allowed a protection claim under Article 8 and the judge had to give full reasons and that finding the appellant credible was not sufficient and that was what "unsubstantiated" referred to in the written grounds.
30. No further submissions were made on behalf of the respondent.

The submissions on behalf of the appellant:

31. Mr Solomon of Counsel, who had appeared on behalf of the appellant at the FtT hearing, appeared on behalf of the appellant and relied upon the written submissions contained in his Rule 24 response.
32. Those submissions can be set out as follows:
33. The judge does not materially err in allowing the appeal under Article 8 within the Rules with reference to *Paragraph 276ADE(1)(vi)* as the judge accepted that *Article 8 is engaged*, and the appellant had established significant private life in the UK [58]. The FtT] gives adequate reasons for doing so namely that:
 - (i) he has now lived in the UK for over 13 years [58];
 - (ii) through over 13 years of residence, study, and community of close friends he has established strong ties [59][74]; and
 - (iii) the respondent accepted the appellant has established a degree of private life in the UK [25][32][49]. It is submitted that at paragraph 2 of the grounds seeks to erroneously resile from the respondent's acceptance of private life at the hearing (albeit contradicted by paragraph 10, wherein it is acknowledged the respondent accepted the appellant had established a degree of private life).
34. It is submitted that the judge correctly directed herself in law regarding the requirements of the Rules namely very significant obstacles to integration [69], and acknowledges the high threshold involved in the test at [70][74]. The allegation throughout the grounds that the judge has made a material misdirection of law is unparticularised.
35. The judge *gives* adequate reasons for concluding there would be very significant obstacles to integration [72] (paragraph 10 of the grounds) namely that:
 - (i) the appellant is depressed and in significant debt as a consequence of the respondent's erroneous/unlawful decision making and delays [70];
 - (ii) he is estranged from family members who blame him for the financial loss he finds himself in [70];
 - (iii) he does not have the means to repay the debt and there are now court proceedings in relation to the debt he owes [70];
 - (iv) he may be beyond the age of government employment and has no work history having never previously worked in Bangladesh [70];
 - (v) he is in fear of the person to whom he owes money to and there have been threats made and a legal notice issued in relation to the debt [70];
 - (vi) he will return to Bangladesh with no accommodation, significant debt, no money or assets, and no family support [71].

36. In concluding there would be very significant obstacles to integration, the judge *takes into account material matters* as above and that the appellant is an adult man who is highly educated to MBA level and who has spent the majority of his life in Bangladesh [70]. Further, she takes into account that he speaks the language of Bangladesh and has lived there from birth to adulthood [70].
37. Mr Solomon submitted that the judge does not materially err as alleged in the grounds, as follows:
- a. the matters referred to at paragraphs 6 and 11 (skills, language, family ties, qualifications, heritage, etc) are clearly considered by the judge, who also finds he is estranged from family;
 - b. the matters referred to at paragraph 4 (conflict regarding family contact), paragraph 5 (how visit Bangladesh in 2011 if destitute) and paragraph 7 (fortitude, Bangladeshi community, friends' support) are mere disagreement and amount to an attempt to reargue the substantive merits of the appeal, without identifying legal error. Further these matters were not argued at the hearing. The judge cannot be criticised for failing to engage with arguments not raised at the hearing including internal relocation (paragraph 8). Nevertheless, the appellant never claimed to be destitute in 2011;
 - c. In any event, the judge does not have to address every argument raised by a party (paragraph 9, no protection claim).
38. It is unclear what is meant in the grounds by stating that the judge's findings at paragraphs 70 to 72 of the determination are "*limited and unsubstantiated*" (paragraph 1, also see paragraph 3).
39. The judge's reasons for concluding there would be very significant obstacles to integration are based on the findings of credibility and fact at paragraphs 48 to 69 of the determination, as follows:
- a. The judge accepts the appellant is a *reliable and truthful witness* and gives adequate reasons for doing so namely that he gave detailed, measured, and balanced oral evidence, he did not avoid answering questions, he answered them in a straightforward and non-evasive way, he did not exaggerate his evidence, and his evidence on the whole has been consistent throughout [48]; (ii)
 - b. *The judge finds that:*
 - i. the appellant is of positive good character with no convictions nor did the respondent suggest he has breached immigration laws or was otherwise undesirable [50](the decision letter accepts the application does not fall for refusal on grounds of suitability), he entered the UK lawfully in 2007, had valid lawful leave until 2015 and thereafter he has had authority to remain in the UK (his immigration history was not disputed by the respondent)[49][50][51-56];

- ii. the appellant speaks the English language fluently [4], he has studied and achieved postgraduate qualifications in the UK including an MBA [59];
- iii. being a foreign student requires a significant investment of funds and the appellant has not relied on any public funds since being here [62], he has worked in the UK but the respondent denied him permission to work a number of years ago [62], there are various supporting letters from individuals who support the appellant [60], he is supported and accommodated by friends because the appellant is destitute [61](she accepts his oral evidence absent any bank statements [62]), the support from friends is temporary in nature and he has no funds of his own to rely on [63];
- iv. there has been delay in decision making (which was accepted by the respondent)[49], there have been significant delays on the respondent's part and erroneous decision in 2013 which was not resolved until 2014 as well as a shorter than 60 days period being issued to the appellant to find another college [53, 54, 57], there has been a clear and unambiguous lengthy delay where the decision which was refused and certified was not served until *June 2018* which was then substantively refused with a right of appeal on *6 March 2019* [56-57];
- v. the appellant had a plan to qualify in Health and Social care but because of erroneous decision making on the part of the respondent in 2013 and various delays/erroneous decision making the appellant had to borrow money at high interest rates and is now in debt and owes money because of time, money and fees and owes a loan shark money as well as his family [66], he is destitute and in debt because of home office fees and delays in the decision making and there is a causal connection between the home office inaction and his debt [62];
- vi. he is isolated and not in contact with his family [63], his family relationships are strained because of his debt and failures to return to Bangladesh with qualifications and work [66], he is in debt to a loan shark who has served legal notice to recover the money (he produced evidence from a barrister making clear that he is in significant debt including the final legal notice [68] and the respondent did not dispute that a legal notice has been issued [70](a copy of which was included in the appellant's voluminous appeal bundle [6])) and his family has abandoned him and are not in a position to support him [67];
- vii. as a result of delays and debt the appellant is now depressed (which view is strengthened by the evidence from the GP and Consultant Psychiatrist) [64-65].

40. It is further submitted that as the appeal is allowed under Article 8 within the Rules, the judge does not materially err by not considering Article 8 outside the Rules [75] including Section 117B. This is because the judge correctly directs herself that where the Rules are satisfied, this will be positively determinative of the appeal [73-74], see TZ (Pakistan) and PG (India) v The Secretary of State for the Home Department [2018] EWCA Civ 1109 at paragraph 43: “...where a person satisfies the Rules, whether or not by reference to an Article 8 informed requirement, then this will be positively determinative of that person's Article 8 appeal, provided their case engages Article 8(1), for the very reason that it would then be disproportionate for that person to be removed.”;
41. In the alternative, any error in this regard is immaterial since the judge’s reasons and findings above adequately address proportionality, **Huang**, and **Agyarko** including the public interest considerations in Section 117B;
- a. Further or alternatively, the *respondent’s grounds of appeal* fail to disclose a material err of law, as follows:
- i. paragraph 14 (accepts delay but no valid leave since 2015), and paragraphs 17 and 18 (debt attribution) are mere disagreement and amount to an attempt to reargue the substantive merits of the appeal, without identifying legal error;
 - ii. financial independence includes reliance on others for support (paragraph 15, debts and reliance on friends);
 - iii. the judge clearly addresses the destitution claim by finding the appellant credible in his evidence notwithstanding the absence of bank statements [62] (paragraph 16);
 - iv. paragraph 19 (**Younas**) fails to adequately identify any legal error and is immaterial in the circumstances;
 - v. paragraph 20 (causal link) ignores the judge’s clear finding in this regard [62];
 - vi. paragraph 21 (illegal working) is a new matter, never raised at the hearing, in the brief refusal letter or the respondent’s small 12-page appeal bundle [6](it is denied by the appellant);
 - vii. Given the judge allowed the appeal under Article 8 within the Rules, she did not have to consider exceptional circumstances warranting discretion in the appellant’s favour (paragraph 22).
42. Thus it is submitted that the impact on United Kingdom resources of utilising the NHS is not a material consideration in the circumstances. Alternatively, this argument was not relied on previously and the judge ought not to be criticised (see brief refusal letter [10-11], summary of the respondent’s oral submissions at the hearing [25-33] and the presenting officer’s typed note of the hearing [attached to the respondent’s grounds]). The grounds amount to an attempt to reargue the substantive merits of the appeal, without identifying legal error. In

any event, the appellant has paid (i) the Immigration Health Surcharge when applying and (ii) privately for the report from the Consultant Psychiatrist.

43. In his oral submissions, he submitted that the challenge in the grounds is that the judge had failed to give adequate reasons. However for the reasons set out in the rule 24 response the judge had given adequate reasons having accepted the appellant's evidence as to the strength of his private life.
44. He submitted that the judge directed herself properly in law as set out at paragraph [69]. When asked if there had been any self-direction to the applicable test when considering whether there were "very significant obstacles" Mr Solomon submitted that there was no reference to any case law but there was no need to do so and that the judge had sufficiently directed herself to the term by referring to the "high threshold" at paragraph [70]. Thus he submitted there was no misdirection in law.
45. As to the substance of the challenge of whether there were "inadequate reasons" the judge had given adequate reasons for her conclusions and the reasons are summarised at paragraphs [70 - 72]. They were as follows:
 - the appellant was depressed and in significant debt as a consequence of the respondent's erroneous/unlawful decision-making and delays [70];
 - he is a strange and family members who blame him for the financial loss he finds himself in [70]
 - he does not have the means to repay the debt and there are now court proceedings in relation to the debt he owes [70]
 - he may be beyond the age of government employment, and he has no work history having never briefly worked in Bangladesh [70]
 - he is in fear of the person to whom he owes money to and there have been threats made and a legal notice issued in relation to the debt [70]
 - he will return to Bangladesh with no accommodation, significant debt, no money or assets, no family support [71].
46. Mr Solomon submitted that the judge gave adequate reasons, and the cumulative nature of the reasons are set out in the judge's decision. There is no perversity challenge to those findings.
47. By reference to his rule 24 response at page 2 (d), he submitted the judge taken account of material considerations and that the appellant was an adult man who was highly educated MBA level and was spent the majority of his life in Bangladesh (at[70]). She also took into account that he spoke Bengali and had lived there from birth to adult hood.
48. When considering the respondent's grounds at paragraphs 6 and 11 (skills, language, family ties, qualifications and heritage et cetera) they are all clearly considered by the judge who also finds that he is estranged from his family.

49. When considering ground 1 and paragraphs 4 (conflict regarding family contact), paragraph 5 (how we visited Bangladesh in 2011 if destitute) and paragraph 7 (fortitude, Bangladeshi community, friends support) are disagreements with the decision and amount to attempt to reargue the substantive merits of the appeal, without identifying any legal error. Furthermore and importantly those matters were not argued at the hearing and the judge should not be criticised for failing to engage in arguments that were not raised at the hearing including internal relocation (see paragraph 8 of ground 1). The appellant never claimed to be destitute in 2011 and his problems arose in 2012 – 2013 onwards.
50. Mr Solomon submitted that the judge did not have to address all arguments as set out in R(Iran).
51. He further submitted that there was a “vague suggestion” in the grounds that the FtTJ’s conclusions at paragraphs [70 – 72] are limited and unsubstantiated. However if it meant that the conclusions were unsupported by evidence that is not the position. It is clear that the judge set out his factual findings on the evidence at paragraphs 48 – 69 and then summarise them when considering the issue of “very significant obstacles” and that this was the right approach. The judge accepted the appellant to be a reliable and truthful witness who had given detailed evidence, and this was reflected in the credibility findings (at [48]). The FtTJ noted that the respondent did not dispute the immigration history as advanced by counsel (at[49]) and also accepted there had been delay in decision-making in the appellant’s case, and also accepted that he established a degree of private life in the UK (at [49]) and at [50) found the appellant to be of “good positive character” and the respondent did not suggest that he breached immigration laws or was otherwise undesirable.
52. As regards his immigration history, the delay and the effect of this was also accepted by the FtTJ as set out at [54]-[57]. Mr Solomon submitted that this was the “historic injustice” referred to in the skeleton argument and that the erroneous decision-making had caused the problems for the appellant.
53. As to S117B factors, the appellant spoke English fluently, and at [62] he had worked in the UK until denied permission that he had not relied on any public funds since being in the UK and that at [63] he was currently financially supported and accommodated by friends but had no funds of his own to rely on.
54. Mr Solomon submitted that the judge accepted the appellant’s account as to why he had had to borrow money from the loan shark and that he was destitute and in debt and that there was a “causal connection between the Home Office in action and his debt.” It was because of the debt he had no means to support himself upon return and was in fear of loan sharks. It was the debt that contributed to his estrangement from the family who believe the money had been spent on life in the UK are not his studies and had led to estrangement. Mr

Solomon submitted that the respondent not dispute the legal notice set out in the appellant's bundle. The judge found that as a result of the delay the appellant had been diagnosed with depression.

55. As regards ground 2, Mr Solomon submitted that as the judge had found the appellant met the rules he did not have to consider Article 8 outside of the rules. However in the alternative, any error would be immaterial given the judge's findings of fact which would address the proportionality issues under S117B. The burden on the state was addressed by the judge finding that the appellant was financially independent having been supported by friends and accommodated by them. There were no claims on the public funds. The issue of delay was accepted and were all matters which the judge had dealt with.
56. Mr Solomon's final point was that the grounds were an attempt to reargue the appeal and relies upon arguments that were not advanced before the FtT nor raised the decision letter therefore the judge should not be criticised for not addressing them. This is particularly the position relating to ground 3 (and the assertions made about the NHS debt) and in any event was wrong as the appellant had paid the immigration surcharge.
57. Mr Solomon invited the tribunal to uphold the decision.
58. At the conclusion of the submissions reserved my decision which I now give.

Decision on error of law:

59. There are three grounds advanced on behalf of the respondent. Before dealing with the merits of the appeal I make some observation on those grounds as drafted. There are a number of paragraphs which do not make any attempt to identify a material error of law but attempt to reargue the appeal without any reference to the evidence before the FtTJ and the factual findings made. In this regard, paragraphs 4-7 of ground 1 fall into this category. Paragraphs 63 and 66 do not conflict; the appellant's account, which the judge accepted was that as a result of the debt and failure to return to Bangladesh with qualifications and work he was estranged from his family and at [63] the judge found that he was isolated and not in contact with his family. There is no conflict when the factual findings are properly considered. Paragraph 5 refers to the appellant's visit to Bangladesh in 2011 and then asks; if the appellant was destitute how did he manage this? He clearly has cousins in Bangladesh." However as Mr Solomon points out, the evidence related to the events that occurred after 2011 therefore paragraph 5 of Ground 1 is based on an entirely different factual premise. Similarly paragraphs 6 and 7 and 11 are no more than a disagreement with the findings made.
60. Other parts of the grounds refer to issues that were not raised before the FtTJ. In this category paragraph 8 of ground 1 refers to internal relocation but this was never raised as an issue before the FtTJ. In relation to Ground 2, paragraph 21, refers to a illegal working but as conceded by Mr McVeety, he could find no

evidence upon which to base such an assertion. In relation to ground 3, it was not argued on behalf of the respondent that he had utilised the NHS at public cost and where it was argued at paragraph 29 that the judge failed to address the burden on the UK taxpayer in accordance with the case law cited at paragraph 30, this was not advanced on behalf of the respondent before the FtT.

61. Other parts of the grounds refer to case law which has no real relevance (see Ground 1 paragraph 19 referring to the decision in Younas and the case references made to ground 3.
62. The grounds read as if they were the skeleton argument to be advanced before the FtT rather than grounds focusing on the appeal that took place before the FtT.
63. I have therefore sought to identify from the grounds what are the key points relied upon. As Mr McVeety submitted in his oral submissions, the grounds advance a “reasons challenge” and that the FtTJ failed to give adequate reasons for finding that the appellant met the requirements of paragraph 276ADE (1) (vi) which relates to whether there were “very significant obstacles to his integration into the country to which he would have to go if required to leave the UK.” In this regard Mr McVeety clarified that he was not seeking to advance a “perversity challenge” or that there was any irrationality on the part of the FtTJ.
64. When considering the submissions, it is important in my judgement to consider the evidence that was before the FtTJ and the assessment of that evidence.
65. The FtTJ plainly accepted the appellant’s evidence and expressly gave reasons for reaching that view at paragraph [48]. The judge found the appellant to be “a reliable and truthful witness” who gave “detailed, measured and balanced oral evidence”. The judge found that the appellant did not seek to exaggerate his evidence and that his account had been consistent.
66. Mr McVeety on behalf of the respondent submitted where the grounds refer to the appellant’s claim as “unsubstantiated” that this meant that the judge’s findings that the appellant was credible was not sufficient to support his factual findings. I cannot accept that submission. The judge had the opportunity to hear the evidence before her and for it to be the subject of cross-examination. The judge was entitled to reach the conclusion that she did at [48] and there is no need for the judge to require any further supporting evidence having found that she accepted the appellant’s evidence on the particular factual matters in dispute.
67. It is also plain that some of the factual background was not in dispute between the parties. The judge recorded at paragraph [49] that the respondent did not dispute the appellant’s immigration history, and this was relevant to the weight the FtTJ gave to the issue of delay and that of historical injustice and there was no dispute that there had been significant delay in the decision-making process

on more than one occasion. Also, contrary to the grounds, the respondent accepted that the appellant had established a private life in the UK (at [25], [32] and [49]).

68. Against that background the FtTJ made the following factual findings:
- (1) Article 8 was engaged and that the appellant had established a significant private life in the UK having lived in the UK for over 13 years (at [58]).
 - (2) During the length of his residence, he had undertaken studies and established close and strong ties with his community and close friends (at [59] and [74]).
 - (3) He was a positive good character with no convictions nor was it suggested by the respondent that he breached immigration laws or was otherwise undesirable (at [50]. The appellant had lawful leave until 2015 and thereafter had authority to remain in the UK (at [49],[50], [51-[56]).
 - (4) The appellant spoke English fluently (at [4]) and studied and achieved a postgraduate qualification in the UK (at [59]).
 - (5) The appellant's immigration history summarised at paragraphs [50] - [56] was accepted and that the significant delays were due to the respondent in 2 respects; the decision in 2013 was not resolved until 2014 and a shorter than 60-day period was issued to the appellant. In addition there had been a "clear and unambiguous delay" where the decision was refused in 2015 not served until June 2018 and then substantively refused with a right of appeal on 6 March 2019 (at [57]).
 - (6) Being a foreign student required a significant investment of funds and the appellant had not relied on any public funds since being in the UK (at [62]). The appellant had worked in the UK but having been denied permission to work a number of years ago he had been supported by friends because he was destitute (at [60]-[62]).
 - (7) As a consequence of the delay in the decision-making process, the appellant got into debt having borrowed money at a high interest rate and owed money to a loan shark as well as his family. This had led to family relationships becoming estranged and had lost the opportunity to qualify in health and social care. A further consequence of the delay and ensuing debt was that the appellant's health had suffered as set out in the medical evidence (at [57], [62], [64], [65], [66], [67]).
 - (8) The appellant was isolated and not in contact with his family (at [63]).
 - (9) His relationships with family were strained as a result of his debt and failure to return to Bangladesh with qualifications and work (at [66]).
 - (10) As a result of the delay, the appellant was in debt to a loan shark and had served legal notice to recover the money. The appellant did not have the means to repay the debt and there are now court proceedings in relation to

the debt he owes. The respondent did not dispute that the legal notice had been issued (at [68] and [70]).

- (11) The appellant is in fear of the person to whom he owes money and there have been threats made (at [70]).
 - (12) The appellant may be beyond the age of government employment and has no work history having never previously worked in Bangladesh (at [70]).
 - (13) The appellant's family have abandoned him and are not in a position to support him (at [67]).
69. On the basis of those factual findings when viewed cumulatively the FtTJ was satisfied that they were of such weight and significance that they would entail very serious hardship and she was satisfied that he met the "very high threshold" necessary to demonstrate that they were "very significant obstacles to his integration" to Bangladesh. The FtTJ's assessment under the rules was summarised at paragraph [70]-[73] of the decision.
70. Whilst the judge did not expressly set out the case law on the issue of "very significant obstacles", the judge did direct herself to the appropriate threshold as a "high threshold to satisfy" both at [70] and at [74] and sought to identify in the decision the factual elements which she was satisfied met the high threshold.
71. The relevant law that was applicable when considering the issue of whether there are "very significant obstacles to integration" is set out in the decision of SSHD v Kamara [2016] EWCA Civ 813, where Lord Justice Sales in considering a foreign criminal's "integration" into the country where he is to be deported, stated at [14] that the idea "integration" calls for a "broad evaluative judgment"
72. In Treebhawon [2017] UKUT 00013 (IAC) the Tribunal found that mere hardship, mere difficulty, mere hurdles, mere upheaval, and mere inconvenience, even where multiplied, are unlikely to satisfy the test of very significant obstacles.
73. That decision was the subject of further discussion in the decision of Parveen v SSHD [2018] EWCA Civ as follows:

"Since the grant of permission this Court has had occasion to consider the meaning of the phrase "very significant obstacles to integration", not in fact in paragraph 276ADE (1) (vi) but as it appears in paragraph 399A of the Immigration Rules and in section 117C (4) of the Nationality Immigration and Asylum Act 2002, which relate to the deportation of foreign criminals. In *Kamara v Secretary of State for the Home Department* [2016] EWCA Civ 813, [2016] 4 WLR 152, Sales LJ said, at para. 14 of his judgment:

"In my view, the concept of a foreign criminal's 'integration' into the country to which it is proposed that he be deported ... is a broad one. It is not confined to the mere ability to find a job or to sustain life while living in the other country. It is not appropriate to treat the

statutory language as subject to some gloss and it will usually be sufficient for a court or tribunal simply to direct itself in the terms that Parliament has chosen to use. The idea of 'integration' calls for a broad evaluative judgment to be made as to whether the individual will be enough of an insider in terms of understanding how life in the society in that other country is carried on and a capacity to participate in it, so as to have a reasonable opportunity to be accepted there, to be able to operate on a day-to-day basis in that society and to build up within a reasonable time a variety of human relationships to give substance to the individual's private or family life."

9. That passage focuses more on the concept of integration than on what is meant by "very significant obstacles". The latter point was recently addressed by the Upper Tribunal (McCloskey J and UTJ Francis) in *Treebhawon v Secretary of State for the Home Department* [2017] UKUT 13 (IAC). At para. 37 of its judgment the UT said:

"The other limb of the test, 'very significant obstacles', erects a self-evidently elevated threshold, such that mere hardship, mere difficulty, mere hurdles and mere upheaval or inconvenience, even where multiplied, will generally be insufficient in this context."

I have to say that I do not find that a very useful gloss on the words of the rule. It is fair enough to observe that the words "very significant" connote an "elevated" threshold, and I have no difficulty with the observation that the test will not be met by "mere inconvenience or upheaval". But I am not sure that saying that "mere" hardship or difficulty or hurdles, even if multiplied, will not "generally" suffice adds anything of substance. The task of the Secretary of State, or the Tribunal, in any given case is simply to assess the obstacles to integration relied on, whether characterised as hardship or difficulty or anything else, and to decide whether they regard them as "very significant".

74. Thus the FtTJ assessed the obstacles relied upon and considered whether she regarded them as "very significant."
75. I accept the submission made by Mr Solomon that contrary to the grounds the judge did take into account the other relevant factors including his age, length of previous residence in Bangladesh and that he had been educated to the level of an MBA (at [70]). The judge also took into account that he retained both cultural and language links to Bangladesh. Notwithstanding those factors which were identified as supportive factors in integration, the FtTJ having identified the all of the relevant facts and for the reasons summarised at paragraphs [70 - 73] FtTJ found that even taking into account those supportive factors, on the particular factual circumstances of this appellant's case, the overall circumstances taken together met the high threshold to demonstrate that they were very significant obstacles to his integration.
76. Whilst Mr McVeety advanced the grounds on the basis of inadequacy of reasons, the FtTJ set out the reasons in detail and by reference to the evidence that was before the tribunal. Mr McVeety submitted that he did not seek to

challenge the reasons given on the basis that they were either irrational or perverse. It follows that the reasons given at paragraphs 70-72, which relied upon the fact finding and analysis of the evidence carried out in the earlier part of the decision, were based on findings which were reasonably open to the FtTJ to make on the evidence before her. Consequently it has not been demonstrated the judge failed to give adequate reasons for reaching the decision that she did under the Rules.

77. As to ground 2, if the FtTJ did give adequate reasons for reaching the conclusion that the appellant met the immigration rules then as Mr Solomon submitted, the FtTJ was entitled to apply the approach set out in TZ (Pakistan) v Secretary of State for the Home Department [2018] EWCA Civ 1109 at paragraph 34 and having found the requirements of the rules was met to find that it would be disproportionate to remove the appellant from the UK. On that basis the FtTJ was entitled to allow the appeal under Article 8 of the ECHR.
78. Even if the FtTJ was an error by allowing the appeal under the rules, on the factual findings made I accept the submission made by Mr Solomon that the FtTJ would have been entitled to allow the appeal outside of the rules and that the factual assessment as rationally open to the FtTJ to make, would have properly addressed the proportionality of the decision under challenge.
79. The grounds in this respect submit that the judge did not apply the section 117 public interest considerations. Any legal misdirection would not render the decision in error if the findings of fact made by the judge provided a sound basis on a proper application of the law to dispose of the appeal in the way that she did.
80. When addressing the public interest factors section 117A(2) (a) requires the tribunal to have regard to the considerations listed in section 117B. The FtTJ accepted that the appellant spoke English and contrary to the grounds the judge found as a fact that the appellant had not relied on public funds since arrival in the UK and that he had been financially independent having been supported by friends in the UK and therefore the public interest in section 117B(2) and (3) was not engaged. However they are neutral factors and do not detract from the public interest in the maintenance of effective immigration control (see the decision in Rhuppiah v SSHD [2018] UKSC at [57] per Lord Wilson).
81. When assessing the strength of the public interest the factual findings and assessment made by the FtTJ took into account the issue of delay and found there to have been a significant period of delay by the respondent and found also that the delay had caused a number of negative outcomes for the appellant. The FtTJ set out that assessment at paragraphs [50]- [56] and at [57] concluded that there had been significant delay on the respondents behalf; firstly the erroneous decision in 2013 and the “clear and unambiguous lengthy delay” following the application in 2015 which is not served until 2018 and then substantively refused in March 2019.

82. The FtTJ found that the effects of the delay to be such that they had a significantly adverse effect upon the appellant. It affected his mental health, and this was supported by the medical evidence (at[64]) and that the appellant was unable to qualify in his chosen field due to the “erroneous decision making”. It also led the appellant having to borrow significant sums which led to the appellant being in debt and being in fear of the loan sharks (at [66]) and led to estrangement from the family. As the judge noted the evidence in relation to the debt was not challenged by the respondent at the hearing (at[70]).
83. These are the issues of historical injustice relied on by the appellant which the FtTJ accepted. The issue of delay and its effect upon the appellant was a matter which the judge was entitled to find as relevant to the Article 8 assessment (see Patel (historic injustice; NAA 2002 part 5A) [2020] UKUT 35 and that the public interest in the maintenance of effective immigration control may be given less weight than it ordinarily might under S117B(1).
84. Ground 3 refers the public interest in utilising the NHS. However as set out earlier, this was a point that was not argued before the FtTJ and as Mr Solomon submits, the appellant had paid immigration surcharge and also had pay for private treatment.
85. It is now well established that it is necessary to guard against the temptation to characterise as errors of law what are in truth no more than disagreement about the weight to be given to different factors, particularly if the judge who decided the appeal had the advantage of hearing oral evidence. The assessment of such a claim is always a highly fact sensitive task. The FtT judge was required to consider the evidence as a whole and she plainly did so, giving adequate reasons for her decision.
86. Even if the decision could be characterised as a generous one, it has not been demonstrated by the respondent that on the particular factual circumstances of this appellant’s case and on the evidence before the FtTJ that the decision was either inadequately reasoned or that he failed to apply the correct legal principles in substance. In the light of the grounds of challenge, it has not been demonstrated that there was any inadequacy in the reasons given by the FtTJ.
87. For these reasons I consider that the grounds of appeal do not disclose any errors of law requiring the judge's decision to be set aside. The judge clearly had regard to all the evidence and was entitled to make the positive findings that she did. Consequently, the FtTJ was entitled to conclude that the appellant had shown that there were “very significant obstacles to his integration” and that that his removal to Bangladesh would breach his human rights under Article 8 of the ECHR. The FtTJ carried out a full assessment reaching conclusions on that evidence which were reasonably open to her to make.

88. For those reasons, I am satisfied that it has been demonstrated that the decision of the FtTJ did not involve the making of an error on a point of law and that the decision should stand.

Notice of Decision.

The decision of the First-tier Tribunal did not involve the making of an error on a point of law and therefore the decision of the FtT to allow the appeal shall stand. The Secretary of State's appeal is dismissed.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellants are granted anonymity. No report of these proceedings shall directly or indirectly identify them or their family members. This direction applies both to the Appellants and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed *Upper Tribunal Judge Reeds*

Dated 3/8/2021

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be received by the Upper Tribunal within the appropriate period after this decision was sent to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent.
2. Where the person who appealed to the First-tier Tribunal is in the United Kingdom at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is 12 working days (10 working days if the notice of decision is sent electronically).
3. Where the person making the application is in detention under the Immigration Acts, the appropriate period is 7 working days (5 working days if the notice of decision is sent electronically).
4. Where the person who appealed to the First-tier Tribunal is outside the United Kingdom at the time that the application for permission to appeal is made, the appropriate period is 38 days (10 working days if the notice of decision is sent electronically).
5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday, or a bank holiday.
6. The date when the decision is "sent" is that appearing on the covering letter or covering email.