IAC-FH-CK-V2

Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Numbers: IA/00139/2020**
[HU/50062/2020]

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
Via Microsoft Teams	**On the 22 December 2021**
On 2 December 2021	

Before

UPPER TRIBUNAL JUDGE ALLEN

Between

MOHAMMAD MAHBUBUL HAQUE
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Z Jafferji, instructed by Law Valley Solicitors
For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Bangladesh. He appealed to the First-tier Tribunal against a decision of the Secretary of State of 23 June 2020 refusing his application for leave to remain in the United Kingdom.

2. The appellant first arrived in the United Kingdom on 28 September 2008 with a student visa valid to 30 June 2010. He made a number of successful applications as a dependant on his spouse's application for further leave, including an application made on 28 February 2013 where leave was granted from 2 May 2013 to 26 June 2016. He made an

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application, again as a dependant on his spouse, this time on the basis of her Tier 1 Highly Skilled application, on 24 June 2016. This application was refused on 21 October 2016. The immigration history in the decision letter records that the decision was dispatched on 14 November 2016 and a request for an administrative review was received on 27 November 2016 and the decision was maintained on 23 December 2016. He made a further application on 18 January 2017 as a dependant on his spouse's application for leave. This was rejected on 2 June 2017. On 20 June he applied for leave to remain outside the Immigration Rules and varied this subsequently, on 13 September 2018, to an application for indefinite leave to remain on the basis of long residence. This application was refused on 21 February 2019, and a subsequent appeal against that decision was unsuccessful. His current application for indefinite leave to remain outside the Immigration Rules was made on 1 November 2019.

3. The judge noted that on 31 January 2017 the respondent wrote to the appellant inviting him to enrol his biometrics. This letter was sent to an address which he confirmed as his correct address. The judge was satisfied that it was sent to him at the correct address. There was no separate entry to confirm that the letter was received but equally there was no separate entry to show that the letter was undelivered.

4. A GCID entry recorded that the appellant had contacted the Home Office to say that he had not received the biometrics letter. The Home Office sent him a second letter on 26 February 2017 in the same terms as the first. This was also, the judge noted, sent to the correct address. She observed that there was no separate entry to confirm that the letter was received but equally there was no separate entry to show that the letter was undelivered.

5. The appellant again notified the respondent to say he had yet to receive a biometrics enrolment letter and a GCID entry dated 11 April 2017 set this out. A third biometrics letter was sent, dated 11 April 2017. This was in different terms from the first two letters and contained a warning about the consequences of failing to register the biometrics. It was also sent to the correct address, the judge noted.

6. The judge did not accept the submission that limited reliance could be placed on the documents as they had been, as it was put, cobbled together, there were holes in the account and difficulties with the dates. The judge observed that the appellant's emails were logged on the Home Office system and a CID entry with an action (namely the sending out of a further letter) was generated. The Home Office has been able to provide copies of the letters sent and the dates followed shortly after the CID entries. In short, as the judge concluded, the correspondence chronology as far as the Home Office was concerned tallied. The judge considered that it was difficult to see what more could have been done other than send the letters to the appellant's correct address and considered that there was no reason for her to doubt that the information had been recorded inaccurately. It had not been alleged that it had been fabricated.

7. The judge observed that the appellant bore the responsibility of ensuring that he dealt with all matters relating to his residence in the United Kingdom. She said that he would have understood the importance of ensuring his stay was in accordance with the Rules having gone through previous applications already. She said that she accepted he wrote to the respondent but it would have been obvious to him after not having received the letters that something was amiss and the onus was on him to try to resolve matters.

8. The judge also referred to the CID reference to the appellant's claim being closed in November 2018. It was argued by Mr Jafferji, who also appeared below, that the Home Office had thought the claim was still outstanding. The judge considered that there was insufficient information about this date for her to reach any conclusions about what it meant. She considered that at most the appellant could say that the Home Office closed their records on that date but without more information about it she could not say that it supported the claim that his application was outstanding.

9. The judge went on to say that the respondent was not obliged to consider paragraph 39E in the circumstances of the case and even if it had been considered it was difficult to see how it could have made a material difference given the respondent's assertion that the appellant had been resident in the UK unlawfully since the expiry of his last lawful leave on 23 December 2016 and his application for leave outside the Rules in June 2018.

10. The judge went on to consider the claim with regard to risk on account of membership of the BNP. She was not satisfied that the appellant was able to demonstrate that there would be very significant obstacles because of his BNP membership. There was limited evidence to show that he was of any ongoing interest to the authorities, he had been able to leave Bangladesh to come to the United Kingdom to pursue his education/career and there was limited information to suggest that the authorities had any interest in him now in any event. He had not submitted an asylum claim and had been directed that he could do so, in the refusal letter. She did not accept that his membership of the BNP would not lead to very significant obstacles on return.

11. As regards the loan and the problems he claimed to be at risk of experiencing on return from those to whom he owed money, she considered that he would be able to live in a new area on return and the debt would not pose a very significant obstacle to his return.

12. As regards his health issues, the judge gave thorough consideration to these matters and concluded that the appellant was managing his condition with medication which was available in Bangladesh, as was psychiatric support. She appreciated that he would not be able to rely on family support on his return to Bangladesh and it would be difficult for him to manage return with his extant mental health problems, but she was not satisfied that his mental health was so severe that it would preclude him

from being able to return to Bangladesh and participate in society after a reasonable period of adjustment.

13. As regards other very significant obstacles, she noted that his parents had formally abandoned him, and she observed that as he had lived in Bangladesh since birth before coming to the United Kingdom he could speak the language and was familiar with society and culture and had some ties to Bangladesh. He had not explained why he would be unable to establish contact with any previous contacts in Bangladesh given he had worked there. He had extensive experience of work both in Bangladesh and in the United Kingdom. She concluded that the difficulties he faced did not constitute very significant obstacles to his return.

14. As regards Article 3, she did not find that his mental health problems had reached the minimum level of severity as set out in the first stage in the test set out in J [2005] EWCA Civ 629. As regards Article 8, she did not accept that, bearing in mind relevant matters such as his health problems and his immigration history, the balance fell in his favour but concluded that the public interest in immigration control even accounting for the factors she had identified tipped the balance in the respondent's favour. The appeal was, as a consequence, dismissed.

15. The appellant sought and was granted permission to appeal on the basis that the judge had erred with regard to the issue of the receipt of the biometrics enrolment letters, arguing that with the judge accepting that the letters were not received by the appellant the rejection of his application as invalid for failure to enrol biometrics must be wrong. There was inconsistency in the GCID notes as to the number of letters sent, the Secretary of State had not established that the biometrics letters had actually been posted or the method of posting and the rejection of the application on 2 June 2017 was not lawful.

16. As regards the issue of very significant obstacles to integration, the judge had only considered the relevant factors in isolation rather than in the round, had erred with regard to the assessment of the appellant's mental health problems and had come to unlawful conclusions on Article 8 outside the Rules, having based her assessment on the same flawed assessment as had been argued with regard to the very significant obstacles findings.

17. Permission to appeal was granted on all grounds.

18. I heard oral submissions from Mr Jafferji and Ms Everett and in addition, Mr Jafferji relied on the grounds and Ms Everett relied on the Rule 24 response. In the circumstances, I do not consider it necessary to set out their submissions in detail though I am grateful for those submissions and of course they have helped me in coming to the conclusions that I have reached in respect of this appeal.

19. The first issue concerns the biometrics letters point. The difficulty, as I see it, with the judge's findings in this regard, is that, as was argued by Mr Jafferji, the judge found that the letters had been sent by the respondent

but she also appeared to accept the appellant's evidence that he did not receive the letters. This can be seen from paragraph 18(f) of her decision. I think there if force in Mr Jafferji's argument that the judge failed to deal with the actual issue advanced by the appellant as to the effect of a lack of receipt by him of the letters. If he did not receive them, then they were not of any effect and the application could not properly be rejected as being invalid. The judge did not, as she might have done, make a finding that she did not accept the appellant's evidence that he had not received the letters and by concluding as I find she did that he did not receive them, her findings with regard to the validity of the application for a failure to enrol biometrics are flawed.

20. I also see force to the argument that the judge's assessment of whether or not there were very significant obstacles to the appellant integrating into Bangladesh is flawed by the relevant matters being considered separately rather than cumulatively. Ms Everett is of course right to argue that the judge had to consider these matters individually, but there is lacking in her decision a bringing together of her conclusions on the various matters which led her to decide that there were not very significant obstacles to integration in this case. There is also, I think, some force to the argument that the evidence summarised at paragraph 14 of the grounds from the expert report was not properly considered. This must be added to the concerns of the appellant's friend Shafia Chowdhury about his suicidal ideation. It may be that the judge was right that individually the various matters which the appellant put forward as comprising very significant obstacles to his integration would not succeed individually, but there are a number of matters of concern which require to be taken together in order for a proper evaluation to be made.

21. As a consequence, I consider that the judge did materially err in law as contended, and it will be necessary for the decision to be remade. I consider that this will most appropriately be done in the First-tier Tribunal, and therefore the matter is remitted to that Tribunal for a full rehearing at Taylor House before a judge other than Judge Feeney.

<u>Notice of Decision</u>

The appeal is allowed to the extent set out above.

No anonymity direction is made.

Signed
Upper Tribunal Judge Allen

Date 16 December 2021