



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/01749/2020**

THE IMMIGRATION ACTS

**Heard at Manchester CJC (via Microsoft
teams)
On the 19 January 2022**

**Decision & Reasons
Promulgated
On the 21 March 2022**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

NB

(Anonymity direction made)

and

Appellant

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Simak instructed by Direct Access.

For the Respondent: Mr Tan, a Senior Home Office Presenting Officer.

DECISION AND REASONS

Background

1. The appellant is a citizen of Bangladesh born on 8 March 1951. Her immigration history shows she entered the United Kingdom lawfully with a visit visa valid from 11 July 2019 until 11 July 2020. On 19 December 2019 the appellant submitted an application for leave to remain in the United Kingdom on the basis of her private and family

- life, her medical condition and other related issues, including connection to her family members in the UK.
2. A decision of the First-tier Tribunal dismissing an appeal against the Secretary of States refusal was set aside by the Upper Tribunal in a decision promulgated on 15 October 2021;1 the Senior Home Office Presenting Officer on that occasion accepting the judge below had erred in law in a manner material to the decision to dismiss the appeal.
 3. There are a number of preserved findings from the First-tier Tribunal decision being those relating to the family composition, appellant's immigration and medical history, the appellant's lack of capacity to take an active role in the proceedings, the existence of family and private life, and the finding that returning the appellant to Bangladesh will be an interference with such private and family life.
 4. Setting out the preserved issues in greater detail, the appellant has family both in Bangladesh and in the United Kingdom. In her application for a visit visa the appellant stated that her immediate family members in the UK was the partner of her daughter, a Mr PJ a British citizen, her daughter SB a British citizen and her other son MR who is also a British citizen. In Bangladesh the appellant refers other family members including a sister, TJ, who is a Lecturer of Political science with Bangladesh at Surma College and her son FA who is a journalist as a Staff reporter of The Daily Inqilab and who also has his own business. The appellant previously lived in a property owned by the family in Bangladesh with her son and daughter-in-law.
 5. The appellant's immigration history is set out above. In relation to the appellant's medical history, the First-tier Tribunal Judge notes the medical condition is not disputed by the Secretary of State. The evidence made available to the First-tier Tribunal concerning the appellant's medical condition is set out in the earlier decision.
 6. The First-tier Tribunal Judge first addresses the medical evidence when considering the proceedings where it is written:
 12. The Appellant did not attend the hearing either in person or via video link. This was because the Appellant's representative had, as part of the bundle of evidence, produced a report in respect of the Appellant's ability to present evidence given her health issues. I have before me a Consultant Psychiatrist report which had been prepared by Dr Kishore Chandiramani dated 7 January 2021. I noted that he had received instructions to carry out a psychiatric assessment of the Appellant, firstly in respect of her mental capacity to give evidence in court and participate in the proceedings, and also an assessment of the family dynamics i.e.: how the Appellant was around her daughter, son-in-law and grandchildren, and how important their presence was in her life, and what effect a potential separation from them would have on her. The report considered her medical history, including a review of her notes, and also her background and personal history. The Psychiatrist also undertook a mental state examination and concluded that she lacked capacity to give evidence and participate in legal proceedings. He indicated that she was unable to understand the issues in question and was unable to weigh up the pros and cons of different options. In addition to this it was concluded that she was unable to retain information long enough to arrive at a decision and also unable to communicate her decisions apart from saying that she would like to live with her daughter who lives in Stoke-on-Trent.

13. It was also noted that it was likely that she would still have some residual psychotic symptoms in the form of disinhibited behaviour and strange thoughts, and it was possible that these quasi psychotic features were related to her having significant cognitive impairment related to vascular dementia.

7. When considering the evidence relating to medical issues later in the decision the First-tier Tribunal Judge wrote:

Medical evidence

33. As well as considering the objective evidence, I have also had the benefit of the psychiatric report as detailed above and prepared on behalf of the Appellant for the purposes of the proceedings. As stated, the Appellant's mental health condition per se, particularly in terms of her capacity to present evidence today is not in dispute by the Respondent.
34. The report presents the Appellant's medical history and there is a letter within the bundle that outlines, as stated by the Appellant's son-in-law, how she was referred to hospital in Stoke-on-Trent following a GP check instigated by her family who were concerned about her appearing confused since her arrival on the visit visa. Her epilepsy and risk of falls was confirmed, and she was given medication. I note at that stage her son-in-law reported a past psychiatric illness, diabetes and hypertension which were not documented, and the request was made to consider referring to psychiatry in needed.
35. I further note from the report prepared in that respect of her physical conditions the Appellant's son-in-law had reported to the psychiatrist that the Appellant had an epileptic seizure in August 2014 while travelling in a car as a passenger with her daughters family on the M1 motorway. She required emergency admission to hospital and remained there for about two weeks.
36. Whilst in hospital the Appellant's behaviour was reported to the psychiatrist by her son-in-law as being confused and aggressive i.e. throwing objects around at other patients. A brain scan was undertaken, and she received a diagnosis of cerebrovascular disease as well as a kidney problem. The investigations and procedures undergone are identified in the discharge summary from Milton Keynes hospital dated 3 September 2019 contained within the bundle although I note that no operations or procedures were undertaken, and no medication was checked by the pharmacy. On discharge it was recommended that a CT scan be considered and repeated once the patient was more settled, as well as a review be undertaken by her GP. There is also in the bundle a pharmacy/nursing summary outlining her current medication which remains unchanged and that was then added to upon admission. A referral appears to have been made to the community mental health team in September 2019 however it is not clear whether this was followed up given the letter presented indicates that attempts were being made to contact the Appellant to arrange an appointment.
37. The psychiatric report indicates that the Appellant remains confused and requires assistance in daily care and activities. It is reported that she can recognise members of her family but at the medical appointment she agreed that she seemed more forgetful lately and complained of pain in her arm. The psychiatrist referred to a history of abuse and neglect in Bangladesh, as did the letters in the medical notes produced, which was given as part of her history by her son-in-law and daughter to him. It also appeared that the Appellant had some psychotic features whilst in Bangladesh which the psychiatrist stated may relate to her cerebrovascular disease as she was on antipsychotics when she came to the UK. It was also reported, when

referencing her capacity to give evidence, that it was likely she still has some residual psychotic symptoms in the form of disinhibited behaviour and strange thoughts and that he was also possible that these quasi psychotic features were related to her having significant cognitive impairment related to vascular dementia.

38. It was reported that despite being unable to retain information long enough to arrive at a decision and being unable to communicate her decisions, she was able to say that she wished to live with her daughter and felt her family was comfortable and also supportive to her...

8. For the purposes of this appeal I was able to hear oral evidence from PJ the appellant's son-in-law, MR the appellant's son, and SB the appellant's daughter all of which has been taken into account.

Discussion

9. The Secretary of State's position is set out in the Reasons for Refusal letter and a review undertaken by a Presenting Officer based in Manchester on 27 July 2020.

10. In the refusal letter of 13 January 2020 it was noted the appellant did not have a partner or dependent children of 18 years or under and so the application was not considered under Appendix FM in relation to family life.

11. It was not considered the appellant could meet the requirements of paragraph 276ADE(1) of the Immigration Rules on the basis she had only lived in the UK for five months and not the requisite minimum 20 years required by 276ADE(1)(iii), was over the age of 18 and therefore unable to meet the requirements of paragraph 276ADE(1)(iv), was not aged between 18 and under 25 and therefore could not meet the requirements of paragraph 276ADE(1)(v) of the Immigration Rules and that it was not accepted that the appellant will face very significant obstacles to integration into Bangladesh if she was to leave the UK because she had spent the majority of her life living outside the UK and it was not accepted that she would have lost all ties, be they family, social, cultural or spiritual, to her country of origin, meaning the appellant was unable to satisfy the requirements of paragraph 276ADE(1)(vi) of the Immigration Rules.

12. In relation to article 8 outside the Rules and the question of whether there are exceptional circumstances in the case that would warrant a grant of leave to remain, the decision-maker considered the medical evidence available at that time and considered the standard of medical facilities in Bangladesh when compared to those available in the United Kingdom before concluding the NHS documents provided did not specify that the appellant was unable to travel or that she was currently receiving urgent treatment. It was said that the condition disclosed in the medical reports was not life-threatening and that even a short break in treatment while she relocated was unlikely to have a hugely detrimental effect on her condition. It was concluded that suitable medical treatment is available in Bangladesh and that the appellant had not provided evidence to show she will be denied

medical treatment or will be unable to travel to the same if required. It was therefore not found the appellant was able to meet the requirements of article 3 ECHR or any exceptional category that may enable her to do so.

- 13.** In relation to article 8 ECHR, the decision-maker analysed the claims by the appellant that she had been subjected to historical abuse from her daughter-in-law in Bangladesh and a hostile familial environment, and the claim that on return to Bangladesh she would face ill-health, isolation and likely further abuse. In relation to that claim the decision-maker writes:

“Although you have indicated that you and will face a risk of persecution/discrimination if refused, you have not made a protection claim and this decision relates to the application you have made on the basis of your family and private life in the UK and compassionate circumstances.

In support of your claim you have provided no exceptional circumstances to why you cannot return back to your country of origin, Bangladesh, where you have spent majority of your life which includes your childhood and your adult hood. This means you are familiar with the language, environment and culture, which will assist you to integrate socially in Bangladesh which will not be difficult due to your knowledge of the country.

You have not shown that you would be unable to maintain yourself in Bangladesh as you do in the UK. You have not shown that you require any support in order to maintain and accommodate yourself and start a family and private life again. You have told us that you are residing with your daughter SB, your son-in-law Mr P R J, that you live in the property owned by Mr P R J and that you have close ties to your other adult children in the UK. If those family members are supporting you financially then that financial support can continue from the UK even if you are living overseas

Furthermore, it will not be difficult for you to integrate back there because you have not spent sufficient amount of time in the UK to get used to the British Society and way of living. You must have ties remaining in your country of origin, so you will have their support in returning to start your family life again and you have provided no evidence they will not support you financially and emotionally.

- 14.** The decision-maker also states any private life in the UK have been developed in the full knowledge the appellant had no right to remain in the United Kingdom, that there was nothing to prevent her exercising her right to family and private life in Bangladesh, that it was open to her to return to the UK with the correct entry clearance or as a visitor, that the Secretary of State has a right to control the entry of non-nationals, that the appellant has adopted an ability to adapt to life in another country as she has in the UK indicating an ability to reintegrate into Bangladesh on return, and that there are no exceptional circumstances in the appellant’s case.
- 15.** The Secretary of State undertook a review following receipt of the appellant’s material in which she stated that for the avoidance of doubt, it is submitted that Bangladesh has a functioning healthcare system.
- 16.** In relation to the section entitled ‘Schedule of issues’ it is written:

Schedule of issues

2. Although the Appellant's Skeleton Argument (ASA) does not set out a schedule of issues as such, we have identified the following issues raised under its heading 'ARGUMENT':-
 - (i) Does the appellant meet the requirements of Appendix FM, or if not, how approximate is the appellant to meeting those requirements? (paras 1-4 ASA)
 - (ii) Does the appellant meet the requirements of paragraph 276ADE(1)(iv) (paras 5-11 ASA), incorporating the issue of whether she was the subject of mental and physical abuse at the hands of her son/daughter in law in Bangladesh?
 - (iii) Does the appellant meet the requirements of the Exceptional Circumstances test under GEN.3.2.? (paras 12-18 ASA)
 - (iv) In the event that the appellant does not meet any of the above requirements, is she entitled to a grant of leave outside of the Immigration Rules? (paras 22-25 ASA)
 - (v) How do the provisions of s117B apply to the present appeal? (paras 26-29 ASA).

Counter Schedule

3. To address each issue: -
 - (i) it is maintained that the appellant does not meet the requirements of Appendix FM as a dependent adult relative because it can only be obtained through an application for entry clearance (Section E-ECDR1.1). It is not accepted that, even if the Tribunal were to consider whether such an application might theoretically succeed at the date of hearing, the provisions of E-ECDR.2.4 or E-ECDR.2.5 would be satisfied. It is not accepted therefore that the appellant was approximate to meeting the requirements of Appendix FM.
 - (ii) The respondent does not accept that the requirements of para 276ADE(vi) are met. Whilst it is accepted that, at the age of 69, the appellant has experienced various health issues, it is not accepted that these were not treated, or are not treatable, in Bangladesh. Regard has been given to the allegations in the statements provided that the appellant was the subject of mental and physical domestic abuse at the hands of her son and/or daughter in law in Bangladesh, such that she was neither properly fed nor medicated, and subject to physical beating of such gravity it's been described by one witness as torture. As this has not yet been the subject of decision by the respondent, it is effectively a 'new matter' but one to which we do not withhold consent. However, it is submitted that (a) no medical evidence has been provided corroborating that prior to arrival in the United Kingdom the appellant was malnourished, inappropriately medicated, or subject to beating or torture in Bangladesh, (b) none of the statements provided make any reference to the witnesses addressing their concerns with the family members allegedly perpetrating the abuse or reporting them to the authorities of Bangladesh, and (c) as noted in the RFRL, the appellant has not made a protection based claim to remain in the UK.

It is submitted, in any event, that the appellant's financial and family ties to Bangladesh were positively evidenced in her last Visa Application Form (VAF) (annex E), including ownership of her own home in Sylhet and a son (FA) employed as a journalist and businessman, whose financial circumstances were evidenced and whose email address and phone number was provided for the purposes of

processing the appellant's visa application. It is further noted from reference to the appellant's previous applications for visit visas to the UK in 2014 and 2017 (annexes F and G) that FA undertook to bear the costs of the proposed visits. It is submitted that the appellant's sons positive involvement in her visa application/s over the course of several years this inconsistent with the narrative of the alleged domestic abuse now claimed.

- (iii) It is not accepted that the appellant meets the requirements of the Exceptional Circumstances test under GEN.3.2. (para 12-18 ASA) for the reasons given in the RFRL 13 January 2020. As noted above, whilst it is accepted that, at the age of 69, the appellant has experienced various health issues, it is not accepted that these were not treated, or are not treatable, in Bangladesh. It is submitted that Bangladesh is a functioning healthcare system (see Annex J (Country Information and Policy Note, Bangladesh: medical and healthcare issues v1.0 May 2019) (https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/800181/CPIN.Bangladesh-Medical_and_Healthcare.v1.0_May_2019.pdf))
- (iv) In the event that the appellant is found not to meet any of the above requirements, it is submitted that she is not entitled to a grant of leave outside the immigration rules. It is submitted that the appellant has not credibly demonstrated that her physical and moral integrity will be compromised by return to Bangladesh.
- (v) If applying the provisions of s117B apply to the present appeal, it is submitted that (1) is agreed (see 17(iii) of the ASA), (2), (4) and (5) are answered unfavourably, since there is no evidence the appellant can speak English and her status in the UK has at all times since arrival as a visitor been precarious, and (6) does not apply. Although it is asserted in the ASA at the appellant (under s117B(3)) is financially independent, we note that she has received treatment from the NHS since arrival in the UK (pp83-84 of the appellant's bundle refer) and is in the process of repaying the debt incurred.

- 17.** On behalf of the Secretary of State Mr Tan raised a procedural issue in his submissions in relation to the weight that could be given to the evidence of MR who he submitted was present in the same room as SB when she gave her evidence. There was visible evidence of an exchange between them during the course SB giving her evidence. I have, however, compared that evidence to the other evidence available as a whole.
- 18.** During the course of the evidence reference was made to the appellant suffering abuse from the family members in Bangladesh. This issue is commented upon above and the only direct source of the same appears to be from the appellant herself who it is said is confused and as a result of the identified issues could not separate fact from fiction, which is relevant to the weight that can be put upon such claims.
- 19.** There is within the bundle a report from an Independent Social Worker, Peter Horrocks, dated 29th December 2021. Having recorded the interviews with various family members Mr Horrocks sets out his conclusions/recommendations in section 5 of the report in the following terms:

5.0 Conclusions/Recommendations

- 5.1 The children of NB living in the UK invited their mother to visit them following her suffering a stroke in 2018. On NB arrival in the UK in 2019, the family members were shocked about the deterioration she had undergone in the period of a year and she was then admitted to hospital. Amongst other medical conditions she was identified as having suffered from malnutrition and dehydration and further information indicated that she had suffered from abuse as well as being neglected in the home of her son and daughter in law in Bangladesh. NB has a complex range of physical health difficulties, combined with mental health problems, including dementia. She lacks capacity to meet any aspects of her own practical and intimate care needs and is fully dependent on the care given to her by others. Since her arrival in the UK, NB overall condition has stabilised and she is described as experiencing a good quality-of-life as could be hoped for under the circumstances. She lives with her daughter, son in law and their three children in an emotionally warm and loving environment, where practical, emotional and her social care needs are met to a high degree. She feels loved and wanted.
- 5.2 In the event that NB was forced to return to Bangladesh, the only option would be for her to return to live with her son and daughter-in-law, where she was previously neglected and abused. The likely outcome would be a rapid deterioration in her mental and physical health, which in turn would lead to premature death. The children and their families in the UK have already witnessed the consequences of the lack of care and the abuse she received in Bangladesh and they do not wish to experience the remaining short time she has left to live in an abusive and neglectful environment. They want NB to have as good a quality of life as could be hoped for and feel very responsible for her well-being. SB and her family enjoyed the presence of NB in their family home and she has become a highly valued family member since her arrival. S, S F and T are committed to helping and supporting their mother and if required there would be alternative care arrangements available. S and PJ also provide financial support for NB.
- 5.4 I very strongly recommend that it will be in the best interests of NB for her to be granted legal status to remain in the UK.
- 5.5 I very strongly recommend that it will be in the best interests of SB and PJ and their family for NB to be granted legal status to remain in the United Kingdom.
- 5.6 I very strongly recommend that it will be in the best interest of S and his family for NB to be granted legal status to remain in the UK.
- 5.7 I very strongly recommend that it will be in the best interest of F and her family for NB to be granted legal status to remain in the UK.
- 5.8 I very strongly recommend that it will be in the best interests of T and her family for NB to be granted legal status to remain in the UK.
- 20.** There is no paragraph 5.3 in the report hence the numbering above and the references are, other than to NB, SB and PJ, to other members of the family in the UK.
- 21.** In an earlier section of the report at paragraph 3.3, specifically referred to by Mr Tan it is written:
- 3.3 NB had previously suffered from a stroke towards the end of 2018 and her children invited her to visit them, because she had not been well. They were also aware that the care had been given to her in Bangladesh was not satisfactory. On arrival she told her children that her daughter-in-law in

Bangladesh had been physically abusive towards her and they discovered from other sources that she may have been sexually abused and that became visible in her sexualised behaviour. They also discovered that she was not being taken care of properly by her daughter-in-law and this information was confirmed following her admittance to hospital. The last time any of the children in the UK had seen her was on a visit to Bangladesh in 2018 and there was a noticeable deterioration in her health over the period of only one year, which they saw on her arrival in 2019.

- 22.** The evidence regarding NB's treatment in Bangladesh therefore comes from a number of indirect sources. It cannot be disputed that upon examination by doctors in the UK NB was seen to be dehydrated and displaying evidence that she had not been cared for 'properly'. There is also a reference to psychosis and inappropriate behaviour by her which may be that referred to in the report as being sexualised behaviour. Indeed, the witness SB referred to experiencing such at the hands of NB since NB's arrival in the United Kingdom.
- 23.** A person suffering psychosis and dementia who is confused with their environment and who may perceive individuals around them to be strangers can be a very difficult person to care for without proper training. In light of the medical evidence and the evidence as a whole it is not unreasonable to find that NB was not being cared for in the same way that she has now been cared for by the family in United Kingdom, by some members of her family with whom she lived in Bangladesh.
- 24.** In relation to the medical treatment that the appellant required in Bangladesh, there is clear evidence that she was able to access treatment as there is reference to her having been prescribed medication for psychosis in Bangladesh. The appellant's son in Bangladesh is a journalist with a business of his own and, as noted in the refusal letter, undertook to meet the costs of the appellant's previous visits to the United Kingdom and clearly is an individual with the resources available to ensure his mother receives medical treatment in Bangladesh as required.
- 25.** The Secretary of State referred to the CPIN concerning availability of medical treatment in Bangladesh which shows treatment being both available and accessible.
- 26.** The first issue identified in the pleadings was the ability of the appellant to meet the requirements of the adult dependant relative rule. That rule is in place to enable adult dependent relatives to be able to join their family in the United Kingdom if the specific requirements of the rule can be met.
- 27.** The adult dependant relative visa rules prior to 2012 concentrated on financial dependence where the family member was over 65 or if under 65 where there were exceptional circumstances. The current rule aimed to decrease the burden on the taxpayer through NHS and social care costs, taking into account where needs could be met in an individual's home country. Further, the rule aimed to avoid imbalance between those relying just on wealth.

- 28.** The requirements of the rule that an applicant must be outside the UK to apply is noted which means NB fails at the first hurdle she is in the United Kingdom and made no such application before coming to the UK. To make an application under the Adult Dependent Relative rule NB will be required to return to Bangladesh to apply in the proper way.
- 29.** In relation to the extent by which NB is unable to satisfy the requirements of the Rule, it is accepted that the relative in the United Kingdom with whom NB is living as a British citizen but, for the reasons noted below, it is not made out that only the UK based relatives can provide her care needs.
- 30.** If an application was made NB will be required to prove (a) that she needed long- term care to do every day personal and household tasks because of illness, disability or age, (b) that the care that NB needs is not available or affordable in Bangladesh, (c) that those she will be joining in the UK will be able to support, accommodate and care for her without claiming public funds for at least five years and (d) she is over 18 years of age.
- 31.** In *Britcits v SSHD* [2017] EWCA Civ 368 the Court of Appeal said that the 2012 immigration rules concerning the admission to the UK of adult dependant relatives were not ultra vires, unreasonable or contrary to Article 8. In the course of their judgment, the CA noted that considerations which focussed on what care is both necessary and reasonable for an applicant to receive in their home country include issues as to the accessibility and geographical location of the provision of care and the standard of care. They are capable of embracing emotional and psychological requirements verified by expert medical evidence. There is not always family life engaging Article 8 at the moment of application between an adult child and an elderly parent wishing to come to the UK - it will depend on all the facts as to the relationship and its history.
- 32.** In *Ribeli v ECO Pretoria* [2018] EWCA Civ 611 the Court of Appeal after indicating that the Upper Tribunal had been right to allow the respondent's appeal where there was no independent evidence that the care necessary was not available in South Africa, said that when considering Article 8 the crucial point was that the appellant's daughter could reasonably be expected to go back to South Africa to provide the emotional support her mother needed as well as to provide practical support.
- 33.** The evidence of NB's presentation, including dementia, psychosis, and the medical assessment, supports the contention of the family that she needs long-term care to meet her every day personal and household tasks. The reality of the situation is that her dementia is unlikely to improve such that she will be able to live an independent life.
- 34.** The evidence available shows that the family in the UK will try to support NB without claiming public funds for the requisite periods.
- 35.** It is not disputed that NB is over 18 years of age.

- 36.** The relevant question is therefore whether the care NB needs is available in Bangladesh.
- 37.** Dementia and the effects of old age are not conditions limited to any particular part of the world by geography or more identified demographics. Elderly people in Bangladesh as with many in that part of the world suffer from dementia. There are a number of services providing assistance for those requiring dementia care in Bangladesh such as the William Beveridge Foundation. The Foundation's work on dementia care in Bangladesh in addition to raising awareness of the condition, is aimed at establishing a necessary knowledge base and to extend care and treatments across the country. There is clear evidence that NB has been able to access psychiatric help in the past, as evidenced by the prescription of drugs to treat psychosis, and it was not made out that suitable treatment would not be available or accessible to NB in Bangladesh, particularly in light of the situation of her son who lives there.
- 38.** I accept there is not currently the availability of care homes looking after those who suffer from dementia in a residential basis in Bangladesh as there are in the United Kingdom, but insufficient evidence was provided by NB to show that such homes do not exist or are inaccessible.
- 39.** There are a number of specialist nursing agencies in Bangladesh to, if the family do not wish to place a relative suffering from dementia in a residential environment, offering specialist nurses who come to the patient's home and provide necessary nursing within the familiar family setting. There was insufficient evidence to show that such services would not be available to NB with the support of her family if she returned to Bangladesh.
- 40.** I accept that some individuals in Bangladesh may have traditional religious and social values and may not like the idea of old age homes, believing instead that the elderly should be accepted as integral parts of their sons families, but in this appeal, NB lacks capacity and may be better off in terms of her immediate needs of being in specialist accommodation providing, entertainment and emotional support, albeit outside her biological family.
- 41.** Whilst it is accepted that in Islam it is the duty of the children to take care of their parents the argument in this case is that the son and daughter-in-law in Bangladesh should not undertaken such a duty adequately. If the traditional religious view is a factor behind SB's wish to care for her mother, in addition to an emotional bond between them, that is commendable but cannot overrule the law per se.
- 42.** There is also the issue that socio-economically changes in Bangladesh such as economic development, social development, women working outside the home, and the material difference between the world that exists today and that which did when traditional view was were formed, coupled with new ideals and values as education increases, together with the needs of an individual, are likely to make it more acceptable for an elderly person to be accommodated within the

residential setting. There is no evidence that the family in Bangladesh would object to such a proposal or that the appellant's son in Bangladesh, with whatever support could be provided from the UK, would be unwilling to facilitate the same.

- 43.** There are old-age homes in Bangladesh such as HelpAge International Bangladesh, Subrata Caregiving Centre, Old Rehabilitation Centre in Gazipur, Old Home, Dhaka etc.
- 44.** I find the appellant has not established that the care she needs is not available and not affordable in Bangladesh. NB therefore fails to show she could meet the adult dependent relative rule by a considerable margin, as she is unable to meet a fundamental requirement of the Rule.
- 45.** In relation to the second question whether the appellant meets the requirements of paragraph 276 ADE (1)(iv) of the Immigration Rules, the requirements of this subparagraph read:

(vi) subject to sub-paragraph (2), is aged 18 years or above, has lived continuously in the UK for less than 20 years (discounting any period of imprisonment) but there would be very significant obstacles to the applicant's integration into the country to which he would have to go if required to leave the UK.

- 46.** Subparagraph (2) is not applicable to this appeal. NB is over 18 years of age, has lived in the UK for less than 20 years, making the issue whether there will be very significant obstacles to her integration into Bangladesh.
- 47.** As noted above, there do appear to be concerns about NB's state of health in the family home in Bangladesh. It is not clear to what extent these concerns have been discussed with the family in Bangladesh who provided such, as there may be a perfectly proper explanation for NB's presentation such as the recognised deterioration in her mental state or refusal of nutrition or assistance/care offered. It is recognised that in those suffering from dementia appetite can lessen and some may refuse to eat at all. Within the NHS solutions such as being fed through a tube may be available which would not have been available in a domestic setting in Bangladesh. The availability of specialist old-age homes who can meet the requirements of dementia patients does not mean that NB can rely upon any difficulties she experienced previously in a different environment to support a claim of very significant obstacles.
- 48.** Ms Simak relied upon the decision of the Court of Appeal in Kamara [2016] EWCA Civ 813 in support of her argument that such obstacles existed. In giving the lead judgement Sales LJ at [14] wrote:

14. In my view, the concept of a foreign criminal's "integration" into the country to which it is up proposed that he be deported, as set out in section 117C(4)(c) and paragraph 399A, 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.

- 49.** NB was born, grew up in, and lived in Bangladesh, including having her family there, until she came to the United Kingdom in later life. The argument that NB would not be able to find a job or be able to effectively live life as a normal individual would, particularly in light of her mental health issues and dementia, is to suggest that only those who retain their mental faculties and ability to function can satisfy this requirement. I do not find such an argument made out.
- 50.** Whilst the test may have been expressed in objective terms how the “broad evaluative judgement” referred to by Sales LJ is undertaken has to be at a very specific case sensitive level. The question has to be whether NB will be able to integrate into life in Bangladesh taking into account how she presents. It is unreasonable to expect that any different test can be applied. The Court of Appeal made no specific findings that a person suffering diminished responsibility must be able to succeed.
- 51.** NB would have been able to satisfy the requirements identified above without any further consideration while she retained her faculties and level of understanding. If she is returned to Bangladesh and lived within the home of her family, as she did previously, there was no evidence that she was not integrated, even though dependent upon her son and daughter-in-law. If NB lives within a specialist residential home, which there is no evidence would not be available and accessible to her, it is not made she would not be able to integrate into that environment to the extent that a person with her identified medical needs could be expected to do.
- 52.** I do not find it made out that there will be very significant obstacles to NB’s reintegration into Bangladesh.
- 53.** In relation to GEN.3.2. of Appendix FM of the Immigration Rules, this reads:

GEN.3.2.

(1) Subject to sub-paragraph (4), where an application for entry clearance or leave to enter or remain made under this Appendix, or an application for leave to remain which has otherwise been considered under this Appendix, does not otherwise meet the requirements of this Appendix or Part 9 of the Rules, the decision-maker must consider whether the circumstances in sub-paragraph (2) apply.

(2) Where sub-paragraph (1) above applies, the decision-maker must consider, on the basis of the information provided by the applicant, whether there are exceptional circumstances which would render refusal of entry clearance, or leave to enter or remain, a breach of Article 8 of the European Convention on Human Rights, because such refusal would result in unjustifiably harsh consequences for the applicant, their partner, a relevant child or another family member whose Article 8 rights it is evident from that information would be affected by a decision to refuse the application.

(3) Where the exceptional circumstances referred to in sub-paragraph (2) above apply, the applicant will be granted entry clearance or leave to enter or remain under, as appropriate, paragraph D-ECP.1.2., D-LTRP.1.2., D-ECC.1.1., D-LTRC.1.1., D-ECPT.1.2., D-LTRPT.1.2., D-ECDR.1.1. or D-ECDR.1.2.

(4) This paragraph does not apply in the context of applications made under section BPILR or DVILR.

54. Subparagraph (4) is not applicable.

55. As the purpose of GEN.3.2 this to ensure any decision is compatible with article 8 ECHR this also incorporates the third issue raised by Ms Simak in her pleadings, identified by the Secretary of State, whether BN is entitled to a grant of outside the Immigration Rules which would only be pursuant to article 8 ECHR as no other discretion grounds for granting leave was identified. As article 8 issues are being considered this also incorporates consideration of section 117 B.

56. It is necessary to adopt a structured approach when considering these issues which requires the consideration of the Razgar 's guidelines and the following questions:

- Will the proposed removal be an interference by a public authority with the exercise of the applicant's right to respect for his private or (as the case may be) family life?
- If so, will such interference have consequences of such gravity as potentially to engage the operation of article 8?
- If so, is such interference in accordance with the law?
- If so, is such interference necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others?
- If so, is such interference proportionate to the legitimate public end sought to be achieved?

57. NB relies on both her family and private life in the United Kingdom.

58. Whilst I accept that NB's children are adults with independent lives of their own, her dependence upon her daughter SB and her son in law PJ demonstrates an emotional and physical dependency sufficient to engage article 8 on the basis of family life, which is a question of fact in each case. I find this relationship has developed as a matter of necessity.

59. I do not find it made out that there is family life recognised by article 8 between NB and her son MR in the United Kingdom as he lives elsewhere with his own family and although he provides economic support and visits to assist where required family life ties between him and his mother were broken when he came to the UK to live independently, although I accept that he forms a large part of his mother's private life and she his.

60. In relation to grandchildren, it is not made out that NB has stepped into the shoes of a parent or assumed a parental role with any grandchildren which she is more unlikely to be able to do based upon the medical evidence.
61. There is little evidence of any substantial private life in the UK although all the protected ties relied upon by NB have been taken into account.
62. I accept that if NB is removed from the United Kingdom there will be an interference which will have consequences sufficient to engage article 8.
63. I accept that any such interference will be in accordance with the law and necessary in a democratic society. The issue under this heading is the fifth of the Razgar questions whether the interference pursuant to the legitimate aim to be achieved is proportionate.
64. It must be remembered that article 8 does not give a person the right to choose where they wish to live. It is about protecting an unlawful interference with a protected right. 'The test under article 8 is an objective one, whatever the subjective feelings of the person may be' – see *Ribeli v. Entry Clearance Officer, Pretoria* [2018] EWCA Civ 611 (27 March 2018).
65. NB is unable to demonstrate that she could meet the requirement of the Adult Dependent Relative Rule which was held by the Court of Appeal not to breach article 8 in its requirements.
66. It is important at this stage to consider the provisions of section 117 of the Nationality Immigration and Asylum Act 2002.

117A Application of this Part

- (1) This Part applies where a court or tribunal is required to determine whether a decision made under the Immigration Acts—
 - (a) breaches a person's right to respect for private and family life under Article 8, and
 - (b) as a result would be unlawful under section 6 of the Human Rights Act 1998.
- (2) In considering the public interest question, the court or tribunal must (in particular) have regard—
 - (a) in all cases, to the considerations listed in section 117B, and
 - (b) in cases concerning the deportation of foreign criminals, to the considerations listed in section 117C.
- (3) In subsection (2), “the public interest question” means the question of whether an interference with a person's right to respect for private and family life is justified under Article 8(2)

- 67.** This is not a deportation case but is a case involving the right to respect for private and family life making section 117 applicable.
- 68.** Section 117 B reads:

117B Article 8: public interest considerations applicable in all cases

- (1) The maintenance of effective immigration controls is in the public interest.
 - (2) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are able to speak English, because persons who can speak English—
 - (a) are less of a burden on taxpayers, and
 - (b) are better able to integrate into society.
 - (3) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are financially independent, because such persons—
 - (a) are not a burden on taxpayers, and
 - (b) are better able to integrate into society.
 - (4) Little weight should be given to—
 - (a) a private life, or
 - (b) a relationship formed with a qualifying partner, that is established by a person at a time when the person is in the United Kingdom unlawfully.
 - (5) Little weight should be given to a private life established by a person at a time when the person's immigration status is precarious.
 - (6) In the case of a person who is not liable to deportation, the public interest does not require the person's removal where—
 - (a) the person has a genuine and subsisting parental relationship with a qualifying child, and
 - (b) it would not be reasonable to expect the child to leave the United Kingdom.
- 69.** The appellant cannot speak English and it was not made out that she will be able to integrate into society in general in the UK; although if she was able to remain with SB and PJ she would no doubt be able to integrate into their household and whatever life was created for her in light of her dementia and mental health issues.

- 70.** SB will not be financially independent although in relation to both issues it was not made out that NB will become a burden on the taxpayer in terms of her accommodation and day-to-day needs, although if she continues to deteriorate to the extent that she needs greater input by the NHS, including inpatient treatment in a dementia or palliative care ward or residential nursing setting, insufficient evidence was provided to show that PJ would have the resources to meet such substantial costs over a lengthy period of time. There is therefore the possibility that if permitted to stay in the United Kingdom NB might become a burden upon the NHS or aspects of the social care provision in the United Kingdom.
- 71.** It is not suggested NB has been in the United Kingdom illegally as she entered lawfully with a visit Visa, made the application for leave to remain on 19 December 2019 during the period the visit Visa was valid which had the effect of extending her leave pursuant to section 3C of the Immigration Act 1971. Such leave remains extant until the appeal process has been determined.
- 72.** It cannot be disputed, however, that NB's immigration status in the United Kingdom has always been precarious warranting little weight being attached to it. I note, however, that little weight does not mean no weight.
- 73.** NB has no genuine and subsisting parental relationship with a qualifying child.
- 74.** NB clearly has a secure genuine and loving family relationship in the UK that she would prefer to maintain and be able to maintain as do those family members who came to court to speak on her behalf. I have considered their stance in relation to this issue in accordance with the guidance provided by the House of Lords in *Beoku-Betts v SSHD* [2008] UKHL 39.
- 75.** The situation that prevails in this case is one that will face an increasing number of families with elderly relatives in various parts of the world. It is accepted that research, treatment, and support for dementia patients may be better in the UK than in other parts of the world, but that is not the required test. If a person is claiming that to return them from the UK to their home state would have a severe adverse impact upon their health as a result of suffering from dementia I find it necessary for them to establish they can satisfy the test set out in *AM (Zimbabwe)* [2020] UKSC 17. In this appeal insufficient evidence has been provided to show NB will be able to satisfy that test.
- 76.** It is not suggested that NB came to the United Kingdom as other than a genuine visitor. It is not disputed that NB suffered medical problems in Bangladesh including a stroke in 2018. I find that notwithstanding her mental health issues, NB received appropriate medical treatment to meet her needs including prescription of necessary medication in Bangladesh.
- 77.** I find it has not been established, taking into account NB's presentation at the date of this appeal hearing, that there are insufficient resources within Bangladesh that this family could access,

both economically and practically, to meet NB's needs if required. It has not been made out that the family in Bangladesh are unwilling to assist in meeting such needs, for which they may not have the necessary understanding or training or will withhold their consent for NB to live in a residential setting if required.

- 78.** It is not suggested that this application has been made as a deliberate attempt to circumvent the Immigration Rules per se. I accept that the family in the UK just want to do their best for NB and to try and improve the quality of life for her over and above that that they perceive she experienced previously.
- 79.** Whilst NB may be showing signs of an improvement in light the assistance of medical professionals and family in the UK, it has not been shown that the withdrawal of the same will result in consequences that will make the respondents position disproportionate.
- 80.** As NB has access to suitable medical and support facilities to meet her needs, as it has not been shown that in light of the same NB is able to meet the adult dependent relative rules at this stage, and in light of the fact it has not been made out that if returned to Bangladesh NB will be destitute, denied appropriate treatment as required, or can satisfy the AM (Zimbabwe) test, I consider the application at this stage premature, and find that any interference with the family and private life that has been developed in the United Kingdom has been shown by the Secretary of State to be proportionate.
- 81.** If NB returns to Bangladesh and once there it transpires that the requirements of the Adult Dependent Relative rule can be satisfied, by the provision of sufficient evidence to satisfy an Entry Clearance Officer, it is always open to NB and the family to make a fresh application. They will have to appreciate, however, that sufficient credible evidence will have to be made available as the desire of the family, however genuine, that NB should be able to live in the UK is not on its own sufficient.
- 82.** It is not made out on the evidence that NB will not be able to fly from the UK to Bangladesh. It is not made out that if the airline at the time of booking is notified of NB's condition and request the level of assistance that may best suit her needs, by example escort service through the airport, such could not be provided. NB flew to the United Kingdom with her conditions that were diagnosed at that time and it was not made out that if she needed to be accompanied to the point of return to her family in Bangladesh, that it would be disproportionate to expect a member of the UK based family to undertake the journey with her. There is insufficient credible evidence NB's son in Bangladesh would not permit her to return and live in her family home whilst other arrangements were made.
- 83.** On the basis of the evidence, and a property undertaken balancing exercise, I have no option other than to dismiss the appeal. The Secretary of State has established that any interference is proportionate.

Decision

84. I dismiss the appeal.

Anonymity.

85. The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....
Upper Tribunal Judge Hanson

Dated 21 February 2022