



**Upper Tribunal  
(Immigration and Asylum Chamber)      Appeal Number: PA/12929/2018**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On the 18 February 2022**

**Decision & Reasons Promulgated  
On the 31 March 2022**

**Before**

**UPPER TRIBUNAL JUDGE FRANCES  
DEPUTY UPPER TRIBUNAL JUDGE MALIK QC**

**Between**

**SMSK (BANGLADESH)  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**SECRETARY OF STATE  
FOR THE HOME DEPARTMENT**

Respondent

**Representation**

For the Appellant: In person

For the Respondent: Mr Toby Lindsay, Senior Home Office Presenting Officer

**DECISION AND REASONS**

*Introduction*

1. This is remaking of the decision in the Appellant's appeal against the Secretary of State's decision of 25 September 2018 to refuse his protection and human rights claims.

*Factual background*

2. The Appellant is a citizen of Bangladesh and was born on 10 June 1975. His wife and two children, who are also citizens of Bangladesh, were born on 1 January 1986, 15 March 2012 and 18 July 2016 respectively.
3. The Appellant arrived in the United Kingdom as a visitor, along with his wife and their first child, on 30 December 2014. They, however, did not leave and overstayed. The Appellant's second child was born in the United Kingdom.
4. The Appellant made a protection claim on 4 September 2017. He contended that he was a supporter of the Bangladesh National Party and had a dispute with a person in Bangladesh, who we shall refer as SC. He further contended that a case was filed against him by SC and he was thereafter assaulted. He claimed to be at risk of killing by SC or the ruling Awami League.
5. The Secretary of State refused the Appellant's protection claim, and the associated human rights claim, on 25 September 2018. The Secretary of State took the view that his account was not credible and that there was no reasonable likelihood of persecution or real risk of harm in Bangladesh. The Secretary of State held that he was not a refugee or entitled to humanitarian protection. The Secretary of State also held that his removal from the United Kingdom would not be incompatible with Articles 2, 3 or 8 of the European Convention on Human Rights.
6. First-tier Tribunal Judge Manyarara heard the Appellant's appeal from the Secretary of State's decision on 3 February 2020 and dismissed it on all grounds in a decision promulgated on 28 February 2020.
7. The Appellant's appeal from Judge Manyarara's decision, brought with permission of Upper Tribunal Judge Stephen Smith, came before Upper Tribunal Judge Frances on 3 December 2021. The Secretary of State conceded at that hearing that Judge Manyarara's decision was wrong in law. Accordingly, Judge Frances set aside that decision and retained the appeal for the purpose of re-making of the decision.

#### *Resumed hearing*

8. The Appellant appeared before us in person and the Secretary of State was represented by Mr Lindsay. The Appellant appeared to us to be a vulnerable adult on account of his mental health. Mr Lindsay agreed with our assessment. We accordingly treated the Appellant a vulnerable adult and conducted the hearing in accordance with the guidance given in *Joint Presidential Guidance Note No 2 of 2010: Child, vulnerable adult and sensitive appellant guidance*.
9. The Appellant adduced a written statement, an eTicket receipt, various documents concerning his health and the health of his wife, the birth certificate of their second child and two documents from the school. Mr Lindsay provided two policy documents entitled *Country Policy and*

*Information Note on Bangladesh: Background information, including internal relocation* (version 3.0, April 2020) (“CPIN 2020”) and *Family Policy Family Life (as partner or parent), private life and exceptional circumstances* (version 16.0, December 2021). We also had the Secretary of State’s bundle filed previously including the interview record and various documents provided by the Appellant in support of his claim.

10. The Appellant gave evidence by adopting his statement. Mr Lindsay cross-examined him with care and sensitivity. We then heard closing submissions from Mr Lindsay and the Appellant respectively. We reserved our decision at the conclusion of the hearing.

#### *Grounds of appeal*

11. There are three grounds of appeal available to the Appellant. First, that his removal would breach the United Kingdom’s obligations under the Refugee Convention. Second, that his removal would breach the United Kingdom’s obligations in relation to persons eligible for a grant of humanitarian protection. Third, that his removal would be unlawful under section 6 of the Human Rights Act 1998 as it would be incompatible with his human rights. We proceed on the basis that the Appellant seeks to pursue all three grounds of appeal.

#### *Burden and standard of proof*

12. The burden of proof is on the Appellant, but the standard of proof is lower than the balance of probabilities. In order to qualify under the Refugee Convention, the Appellant is required to show a reasonable degree of likelihood that he would be persecuted in Bangladesh. In order to qualify for humanitarian protection, the Appellant is required to show that there are substantial grounds for believing that he would face a real risk of suffering serious harm. The same lower standard of proof applies in relation to human rights grounds under Articles 2 and 3. So far as Article 8 is concerned, if it is engaged, the Secretary of State bears the burden of showing that the interference with the protected right is proportionate.

#### *Findings*

##### *Protection claim*

13. Mr Lindsay accepted on the lower standard of proof that the Appellant had a dispute with SC in Bangladesh and that he was a supporter of the Bangladesh National Party. We accordingly make our assessment by accepting the Appellant’s underlying claim based on these two propositions.
14. The Appellant explained in the evidence that he was assaulted by SC and his men when he was in Sylhet. He, however, confirmed that he did not report the incident to the authorities. He stated that he was scared and that the authorities, being influenced by SC, would not assist him. In his asylum interview, he referred to an incident in Chittagong when he was

assaulted by SC and added that it had been reported to the police. The Appellant's account is inconsistent. In addition, these incidents, on the Appellant's own account, took place many years ago. We do not accept that SC still has an interest in the Appellant or is a person with the ability or resources to track him on return to Bangladesh. The Appellant has failed to adduce sufficient evidence to show SC is a person of political profile or influence in Bangladesh. There is no evidence before us as to SC's resources or abilities. The Appellant has provided no comprehensible reason in his evidence as to why SC would still have such an interest in him so that he might track and harm him on return.

15. In any event, if, on return to Bangladesh, SC is able to track the Appellant, he would be able to obtain protection from the local authorities. As Lord Hope noted in *Horvath v Secretary of State for the Home Department* [2000] UKHL 37 [2001] AC 489, the obligation to afford refugee status arises only if the person's own state is unable or unwilling to discharge its own duty to protect its own nationals. In order to satisfy the fear test in a non-state agent case, the applicant for refugee status must show that the persecution which he fears consists of acts of violence or ill treatment against which the state is unable or unwilling to provide protection. Lord Clyde added that an entitlement, for this purpose, to an absolutely guaranteed immunity is beyond any realistic practical expectation. Lord Clyde further noted that there must be in force in the country in question a criminal law which makes the violent attacks by the persecutors punishable by sentences commensurate with the gravity of the crimes, the victims as a class must not be exempt from the protection of the law and there must be a reasonable willingness by the law enforcement agencies, that is to say the police and courts, to detect, prosecute and punish offenders. There is insufficient evidence before us to show that such protection would not be available to the Appellant on return to Bangladesh. The CPIN 2020, at paragraph 6, by reference to paragraph 2.3 of the note on actors of protection, provides that Bangladesh has a functioning system of policing and criminal justice, although it is highly politicised and corruption is prevalent. The Appellant has provided no sensible reason in his evidence as to why he could not avail himself of the protection in Bangladesh.
16. The fact that the Appellant was a supporter of the Bangladesh National Party in Bangladesh does not mean he would either be targeted for that reason by the ruling Awami League or the authorities would be unwilling to provide protection. The Appellant does not claim to be an office holder of the Bangladesh National Party. In fact, in his asylum interview he confirmed that he had not even "officially joined" the Bangladesh National Party or held "any position" within it. In this context, we find that the Appellant's fear is not objectively well-founded. There is insufficient evidence to show that SC has any influence in the Awami League or is a person of particular profile. We find that the Appellant will not be at risk at the hands of the state authorities or the ruling Awami League.

17. Even if we assume that the Appellant would be at risk from SC in his home area, he can internally relocate within Bangladesh to avoid him. We find that it would not be unduly harsh for the Appellant to internally relocate for the reasons given below.
18. In *Januzi v Secretary of State for the Home Department* [2006] UKHL 5 [2006] 2 AC 426, the House of Lords considered whether, in judging reasonableness of internal relocation, account should be taken of any disparity between the civil, political and socio-economic rights which an applicant would enjoy under the leading international human rights conventions and covenants and those which he would enjoy at the place of relocation. The clear conclusion of the House of Lords was that it should not (unless that in itself would lead to violation of fundamental rights). Lord Bingham, at [21], identified the task of first instance judges by observing that the decision-maker, taking account of all relevant circumstances pertaining to the claimant and his country of origin, must decide whether it is reasonable to expect the claimant to relocate or whether it would be unduly harsh to expect him to do so. Lord Hope, at [47], added that the question that the decision-maker should decide is whether it would be unduly harsh to expect an applicant who is being persecuted in one part of his country to move to a less hostile part before seeking refugee status abroad. He observed that the words unduly harsh set the standard that must be met for this to be regarded as unreasonable. If an applicant can live a relatively normal life there judged by the standards that prevail in his country of nationality generally, and if they can reach the less hostile part without undue hardship or undue difficulty, it will not be unreasonable to expect them to move there.
19. The CPIN 2020, at paragraph 2.3.1, provides that Bangladesh is a highly, and very densely, populated country and a person is legally (and practically) able to move freely around the country, except to Cox's Bazar and the Chittagong Hill Tracts (CHT) in the south because of the Rohingya migration crisis. Paragraph 2.3.2 adds that access to economic means, social support and education are all available and Bengali culture exists in all parts of Bangladesh, so internal relocation is not culturally or linguistically unreasonable. Even if one assumes that SC is a person of some influence, there is no evidential basis to conclude, even on the lower standard, that he has influence throughout Bangladesh.
20. We take into account the Appellant's mental and physical health issues. According to Dr Edward Garrett's letter of 27 January 2020, he was "suffering from depression" and had "suffered from suicidal ideation at times". His memory was said to be "poor" and he was "on the waiting list for cognitive behavioural therapy". He was also said to have "type two diabetes mellitus". In his written statement, the Appellant explained his medical issues and added that he has "a cough and chest infection", "breathing problems", "long Covid" and has an appointment with a psychiatrist. He further stated that his wife was also "clinically vulnerable", had a recent "major operation" and "gall stone" and was taking "antidepressants". The Appellant and his wife have both lived the majority

of their lives in Bangladesh and are familiar with the local way of life. They may not get the same standard of treatment and care in Bangladesh, but they will have access to local health and social care structures. There is insufficient evidence to show that adequate medical treatment will not be available or accessible by the Appellant and his wife in Bangladesh.

21. The Appellant's children will return to Bangladesh with their parents. The Appellant explained that they are in school and speak English. The first child has resided in the United Kingdom for over seven years and the second child has lived here since her birth in 2016. The children, with the help of their parents, will be able to adjust in Bangladesh if the family internally relocates to a different place. There will be some disruption but they will ultimately be able to continue their education in Bangladesh. The Appellant does not suggest he and his wife are not able to care for their children because of their health issues. The children currently reside with them and will continue to do so on return to Bangladesh.
22. We accordingly conclude that internal relocation within Bangladesh, if needed at all, will not be unduly harsh or unreasonable. The Appellant and his family will be able to live a relatively normal life judged by the standards that prevail in Bangladesh generally.
23. In the circumstances, we conclude that there is no reasonable degree of likelihood that the Appellant would be persecuted in Bangladesh. There are no substantial grounds for believing that he would face a real risk of suffering serious harm or treatment contrary to Articles 2 or 3. His removal from the United Kingdom would not be in breach the United Kingdom's obligations under the Refugee Convention or in relation to persons eligible for a grant of humanitarian protection. It would not be incompatible with Articles 2 or 3.

*Private and family life claim*

24. The Appellant does not meet the requirements for leave to remain on the grounds of private life under Paragraph 276ADE(1) of the Immigration Rules or on the grounds of family life under Appendix FM to the Immigration Rules. He is over the age of 25 and has not lived continuously in the United Kingdom for at least 20 years. His dependent children had not lived continuously in the United Kingdom for at least seven years at the date of application. In light of our findings made above, there are no very significant obstacles to his integration into Bangladesh. In *Kamara v Secretary of State for the Home Department* [2016] EWCA Civ 813 [2016] 4 WLR 152, at [14], Sales LJ noted that 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. In *Parveen v Secretary of State for the Home*

*Department* [2018] EWCA Civ 932, at [9], Underhill LJ noted that the words “very significant” connote an elevated threshold and that the test will not be met by mere inconvenience or upheaval. The test contemplates something which would prevent or seriously inhibit a person from integrating into the country of return. There must be something more than “obstacles”. The words used set a high threshold which, on our findings, is not met.

25. This, however, is not determinative of the Appellant’s private and family life claim. We must determine whether the Secretary of State’s decision would be incompatible with Article 8 or result in unjustifiably harsh consequences for the Appellant, his wife or their children for the purpose of Paragraph GEN.3.2(2) of Appendix FM to the Immigration Rules.
26. We consider the Appellant’s claim by reference to five questions identified by Lord Bingham in *Razgar v Secretary of State for the Home Department* [2004] UKHL 27 [2004] 3 All ER 821, at [17]. First, will the proposed removal be an interference by a public authority with the exercise of the Appellant’s right to respect for his private or family life. Second, if so, will such interference have consequences of such gravity as potentially to engage the operation of Article 8. Third, “if so, is such interference in accordance with the law. Fourth, 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 freedom of others. Fifth, if so, is such interference proportionate to the legitimate public end sought to be achieved.
27. We answer the first four questions in the affirmative. The Appellant, his wife and their children have a private and family life in the United Kingdom. The Secretary of State’s decision amounts to an interference with that life and is of such gravity so to engage the operation of Article 8. We bear in mind, as emphasised in *AG (Eritrea) v Secretary of State for the Home Department* [2007] EWCA Civ 801 [2008] 2 All ER 28, at [28], and *VW (Uganda) v Secretary of State for the Home Department* [2009] EWCA Civ 5 [2009] Imm AR 436, at [22], that the threshold for engagement of Article 8 is low. It merely requires more than a technical or inconsequential interference with one of the protected rights. This threshold, in our judgment, is met in this case. The interference caused by the Secretary of State’s decision is in accordance with the law and is necessary in a democratic society in the interests of the economic well-being of the United Kingdom. The real issue in this appeal, as posed by the fifth question, is whether that interference is proportionate.
28. Section 117A(2)(a) of the Nationality, Immigration and Asylum Act 2002 (“the 2002 Act”) requires us to have regard to the considerations listed in section 117B in considering the public interest question. The public interest question is, in turn, defined in section 117A(3) of the 2002 Act as being the question of whether an interference with a person’s right to respect for private and family life is justified under Article 8(2). Section

117B(6) of the 2002 Act provides that 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. The Appellant is not liable to deportation. Mr Lindsay accepted that the Appellant's first child is a qualifying child, as defined in section 117D(1) of the 2002 Act, as she has lived in the United Kingdom for a continuous period of seven years or more. There is no dispute that the Appellant has a genuine and subsisting parental relationship with his children. The question for us, therefore, is whether it would be reasonable to expect the Appellant's first child to leave the United Kingdom.

29. We commence our assessment by considering the best interests of the Appellant's children. We do so in accordance with the principles set out by Lord Hodge in *Zoumbas v Secretary of State for the Home Department* [2013] UKSC 74 [2013] 1 WLR 369, at [10]. We treat the best interests of the Appellant's children as a primary consideration. Although it can be outweighed by the cumulative effect of other considerations, we proceed on the basis that no other consideration can be treated as inherently more significant. As Lord Carnwath noted by reference to earlier case-law in *KO (Nigeria) v Secretary of State for the Home Department* [2018] UKSC 53 [2019] 1 All ER 675, at [19], the assessment of the best interests of the children must be made on the basis that the facts are as they are in the real world and if neither parent has the right to remain, then that is the background against which the assessment is conducted. This approach, or the fact that the Appellant's first child has resided in the United Kingdom for over seven years, as recently emphasised in *NA (Bangladesh) v Secretary of State for the Home Department* [2021] EWCA Civ 953, at [29]-[30], does not create a presumption in favour of, or against, the grant of leave to remain. It, however, represents a common-sense starting-point.
30. In this case, the Appellant and his wife have no right to remain in the United Kingdom. It is in the best interest of their children to remain with them. The parents are currently providing care to the children and will continue to do so in Bangladesh. There is no suggestion that their health issues inhibit their ability to care for the children. The children are presently in school and are making good progress. We accept that they are settled and speak only English. However, with the support of their parents, they will adjust to life in Bangladesh and will continue their education. The standard of schooling may well be quite different. The fact that they only speak English may result in some difficulty for them in their first few months in Bangladesh. Ultimately, and without any serious or enduring difficulty, they will settle in their new home.
31. In the circumstances, taking everything in the round, we find that it is reasonable to expect the Appellant's children to leave the United Kingdom.



32. We also take account of other considerations in section 117B of the 2002 Act. As sub-section (1) provides, the maintenance of effective immigration control is in the public interest. The Appellant is able to speak English for the purpose of sub-section (2). For the purpose of sub-section (3), as construed in *Rhuppiah v Secretary of State for the Home Department* [2018] UKSC 58 [2019] 1 All ER 1007, at [55], there is no evidence of financial dependence upon the state. These, however, are not matters which can positively weigh in favour of the Appellant in our assessment. We note that sub-sections (4) and (5) provide that little weight should be given to a private life that is established by a person when that person is in the United Kingdom unlawfully or at a time when that person's immigration status is precarious. As held in *Rhuppiah*, at [44], "everyone who, not being a UK citizen, is present in the UK and who has leave to reside here other than to do so indefinitely has a precarious immigration status for the purposes of section 117B(5)". The residence of the Appellant, and his family members, have always been unlawful or precarious.
33. The Appellant, as we find above, does not qualify under the Immigration Rules. In *Hesham Ali v Secretary of State for the Home Department* [2016] UKSC 60 [2017] 3 All ER 20, at [53], Lord Reed emphasised that the failure to meet the requirements in the Immigration Rules is a relevant and important consideration in an Article 8 assessment because the Immigration Rules reflect the assessment of the general public interest made by the responsible minister and endorsed by Parliament. In making our assessment, we attach particular weight to this important consideration.
34. Taking into account all these considerations, in the light of our findings of fact, the interference caused by the Secretary of State's decision as to the Appellant's private and family life is justified and proportionate. The Secretary of State's decision is not incompatible with Article 8 or result in unjustifiably harsh consequences for the Appellant, his wife or their children.

### *Conclusion*

35. For all these reasons, we remake the decision in the Appellant's appeal by dismissing it on all grounds.

### *Notice of decision*

36. The Appellant's appeal is dismissed on all grounds.

### *Anonymity order*

37. An anonymity order under Rule 14(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008 has already been made in this appeal. Having regard to *Presidential Guidance Note No 2 of 2022, Anonymity Orders and Hearing in Private*, and the Overriding Objective, we maintain that order.

Accordingly, unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies, amongst others, to both sides. Failure to comply with this direction could lead to contempt of court proceedings.

Zane Malik QC

**Signed  
2022**

**30 March**

**Deputy Judge of Upper Tribunal  
(Immigration and Asylum Chamber)**

**TO THE RESPONDENT**  
**FEE AWARD**

As we have dismissed the appeal, we make no fee award.

Zane Malik QC

**Signed  
2022**

**30 March**

**Deputy Judge of Upper Tribunal  
(Immigration and Asylum Chamber)**

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**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.

