



**Upper Tribunal**

**(Immigration and Asylum Chamber)**

Appeal Number: PA/09645/2019 (P)

**THE IMMIGRATION ACTS**

**Decided Under Rule 34  
On Monday 18 May 2020**

**Determination Promulgated  
On Thursday 21 May 2020**

**Before**

**UPPER TRIBUNAL JUDGE SMITH**

**Between**

**M M**

**[Anonymity direction made]**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Anonymity**

*Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008*

An anonymity order was made by the First-tier Tribunal. As this is an appeal on protection grounds, it is appropriate to continue that order. 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 her family. This direction applies, amongst others, to both parties. Failure to comply with this direction could lead to contempt of court proceedings.

**DECISION AND REASONS**

**PROCEDURAL BACKGROUND**

1. The Appellant appeals against the decision of the First-tier Tribunal Judge B Lloyd promulgated on 21 January 2020 (“the Decision”). By the

Decision, the Judge dismissed the Appellant's appeal against the Respondent's decision dated 18 September 2019 refusing his protection and human rights claims.

2. The Appellant is a national of Bangladesh. The core of his protection claim is that his uncle murdered his parents in 1992 when the Appellant was still a child. It is said that his uncle then tried to poison him in order to secure his seizure of the Appellant's parents' assets. As a result of these events, the Appellant says that he moved to Dhaka where he worked for two to three years but that his uncle thereafter traced him to that area. He says that he then moved to Oman in 1996 where he suffered yet further ill-treatment at the hands of an employer.
3. The Appellant came to the UK as a domestic worker with his sponsor in 2007. His last entry in that capacity was in 2014. Although, when he claimed asylum in 2016, the Appellant said that he was a victim of modern slavery, his claim was not accepted. The Appellant also claims to have been the victim of an attack by local criminals whilst in the UK (in January 2018).
4. The Appellant is said to suffer from mental health difficulties. He claims that he tried to take his own life in 2019. Medical evidence dating from December 2018 is contained in the Appellant's bundle ([AB/11-31]).
5. There was a dispute as to the Appellant's age (material to the events which the Appellant says occurred in Bangladesh). The Judge resolved that issue in the Appellant's favour but that was the only point on which the Judge found the Appellant credible. Otherwise, he disbelieved the Appellant's account. In any event, he also found that the Appellant would not face a risk on return owing to the historic nature of the events on which the Appellant relied and that there was a sufficiency of protection. For those reasons, the Judge dismissed the Appellant's protection appeal.
6. The Judge also dismissed the Appellant's human rights appeal (founded on Article 8 ECHR) both within the Immigration Rules (relying on paragraph 276ADE(1)(vi)) and outside the Rules.
7. The Appellant appeals the Decision on two grounds. By his first ground, the Appellant contends that the Judge has failed to make findings on material issues. It is said that, having accepted the Appellant's date of birth, the Judge failed to consider how that impacted on the chronology of the Appellant's claim, particularly in relation to his Article 8 claim and the obstacles he might face on return. The second ground asserts that the Judge failed to consider the medical evidence which was relevant in particular to the events which the Appellant claimed befell him in Bangladesh.
8. Permission to appeal was granted by First-tier Tribunal Judge EM Simpson on 24 February 2020 for the following reasons so far as relevant:
  - "... 2. Permission to appeal is granted because in the appellant's asylum and human rights appeal the Decision arguably disclosed:

- (i) In one brief closing paragraph (47), a failure to provide an adequacy of reasoning and fact-finding, with reference to paragraph 276ADE(1)(vi) of the Immigration Rules and Art 8 of the ECHR, private life, in respect of the evidence before them, including medical evidence and *inter alia* a Rule 35 report, and arising from the chronology of life events provided by the appellant, the judge having found in the appellant's favour his claimed date of birth and furthermore having accepted that he had 'been away from his home country (Bangladesh) for a long time...' (42,1,10,12,16-19, 25,26);
- (ii) All grounds arguable..."

9. By a Note and Directions sent on 7 April 2020, the Vice President of the Tribunal, having reviewed the file, reached the provisional view that it would be appropriate to determine without a hearing (pursuant to Rule 34 of the Tribunal Procedure (Upper Tribunal) Rules 2008 - "the Procedure Rules") the following questions:
- (a) whether the making of the First-tier Tribunal's decision involved the making of an error of law and, if so
  - (b) whether that decision should be set aside.

Directions were given for the parties to make submissions in writing on the appropriateness of that course and further submissions in relation to the error of law. The reasons for the Note and Directions was the "present need to take precautions against the spread of Covid-19, and the overriding objective expressed in the Procedure Rules".

10. On 21 April 2020, the Appellant filed written submissions. The Appellant repeated in summary form the grounds to which I refer above. In relation to whether the error of law issue could be determined without an oral hearing, the Appellant submitted that one should be convened if the Tribunal was not persuaded to set aside the Decision because the "appeal raises concern about whether the Applicant [sic] has had a fair hearing with anxious scrutiny applied to the consideration of his evidence." It was said that "an oral hearing is required so that trust in the judicial process can be maintained, and the Applicant can be assured that the relevant standard of scrutiny has been applied."
11. On 27 April 2020, the Respondent filed written submissions. The Respondent accepted that "there is material merit in the criticisms in respect of the findings on the Article 8 appeal". The Respondent submitted however that the Appellant had not challenged the dismissal of the appeal on protection grounds "presumably because the alternative findings in respect of sufficiency of protection and risk on return are unimpeachable". As the Respondent understood the second ground, she accepted that the medical evidence was relevant to the assessment of Article 8. Whilst, in the Respondent's view, the Article 8 case was a weak one, she accepted that the Decision should be set aside. She contended

however that the Decision could be re-made in this Tribunal as the re-making related only to the Article 8 case.

12. By a reply dated 4 May 2020, the Appellant welcomed the Respondent's concession but disagreed with the Respondent as to next steps. In particular, she submitted that the failures to consider relevant evidence were relevant also to the protection claim and that, accordingly, the Decision should be set aside as a whole, and the appeal remitted as it amounted to a complete re-hearing.
13. The matter comes before me to determine whether the Decision contains an error of law and, if I so conclude, to either re-make the decision or remit the appeal to the First-tier Tribunal to do so.

### **DISCUSSION AND CONCLUSIONS**

14. I accept that the Respondent's concession is appropriately made on both of the Appellant's grounds. The disagreement between the parties is as to the extent of the challenge to the Decision, the errors identified and the next steps.
15. In relation to ground one, the Judge's findings are confined to [47] of the Decision which reads as follows:

"In relation to Appendix FM and Article 8 ECHR, I conclude that I have no sufficient evidence before me in respect of the Appellant's family or private life that would permit me to conclude that he engages any of the provisions of Appendix FM or that there are exceptional circumstances which would facilitate his engagement of Article 8, so that his removal from the UK to Bangladesh would be disproportionate. For those reasons therefore I do not allow his appeal in the context of Article 8 as well as under Appendix FM."
16. I am unimpressed by the first ground insofar as it claims that the statements of the Appellant's witnesses were relevant to the extent of the Appellant's private life in the UK. They are largely silent on that point. They do not demonstrate the nature and strength of any private life ties. However, the Judge failed to consider the position for the Appellant returning to Bangladesh after he claimed to have left that country whilst still a child. As the grounds point out, the Judge having accepted that the Appellant is the age he says he is, should have taken into account his age when he left Bangladesh and that he had therefore spent the whole of his adult life outside that country. That was relevant to an assessment under paragraph 276ADE(1)(vi) of the Rules whether there are very significant obstacles to integration in Bangladesh, an assessment which was not carried out at all by the Judge.
17. The second ground is perhaps more nuanced than is appreciated by the Respondent in her submissions. As I understand that ground it is that the Judge failed to make findings in relation to the medical evidence and to take that into account when assessing whether the Appellant's protection claim was credible. As the Appellant points out, the medical evidence indicates that the Appellant is suffering from post-traumatic stress disorder. Some although not all of that evidence cites the cause as the

previous traumatic events which the Appellant recounts. I note, of course, that not all of those experiences occurred in or have any link to the position on return to Bangladesh. It is also the case that an expert can only opine on the plausibility or consistency of the link between particular traumatic events and the symptoms presented.

18. I also accept the Respondent's point that, whether or not the events occurred as the Appellant says, the protection claim could not succeed if there is a sufficiency of protection in Bangladesh. The Judge made a finding that there is a sufficiency of protection in Bangladesh ([37] of the Decision) which is not challenged in the grounds of appeal. However, that finding is unreasoned and unsupported by reference to background material.
19. The Judge has referred to the medical evidence in particular at [19] of the Decision. However, what is said in that evidence is not then taken into account when considering the credibility of the Appellant's account. For that reason, I am persuaded that this error impacts on the credibility findings in relation to the protection claim. For that reason, I do not consider it appropriate to preserve the Judge's findings in that regard. The protection claim will need to be reconsidered taking into account all relevant evidence.
20. It follows from the foregoing that I am satisfied that the Decision should be set aside as a whole. Given the lack of any findings in relation to obstacles on return to Bangladesh (and so far as evidenced the Article 8 claim relating to private life in the UK) and the failure to consider material evidence when determining the protection claim, the appeal will need to be re-heard on all issues.

## **CONCLUSION**

21. For those reasons, I am satisfied that the grounds disclose an error of law as set out above. I therefore set aside the Decision.

## **NEXT STEPS**

22. My decision has identified an error which impacts on the previous Judge's credibility findings as well as an error in failing to determine another material issue. Accordingly, it will be necessary for another Judge to make credibility findings which will be initial ones. In fairness to the Appellant, therefore, I consider it appropriate to remit the appeal to the First-tier Tribunal for re-determination.

## **DECISION**

**I am satisfied that the Decision involves the making of a material error on a point of law. The Decision of First-tier Tribunal Judge B Lloyd promulgated on 21 January 2020 is set aside. The appeal is**

**remitted to the First-tier Tribunal for re-hearing before a Judge other than Judge B Lloyd.**

Signed L K Smith  
Upper Tribunal Judge Smith

Dated: 18 May 2020