



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: HU/01468/2018
HU/01475/2018

THE IMMIGRATION ACTS

**Heard at Field House, London
On Friday 3 December 2021**

**Decision & Reasons Promulgated
On Thursday 20 January 2022**

Before

**UPPER TRIBUNAL JUDGE SMITH
DEPUTY UPPER TRIBUNAL JUDGE JARVIS**

Between

**(1) AG
(2) RB
[ANONYMITY DIRECTION MADE]**

Appellants

-and-

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr M Biggs, Counsel instructed by Law Valley solicitors
For the Respondent: Mr S Whitwell, Senior Home Office Presenting Officer

Anonymity

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

An anonymity order was made by the First-tier Tribunal for reasons which are not entirely apparent. However, since the Appellants rely in their evidence on incidents which occurred in relation to the Appellants' families in Bangladesh and although the appeals do not include a protection claim, I am satisfied that it is appropriate to continue that order. Unless and until a Tribunal or court directs otherwise, the Appellants are granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their

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

BACKGROUND

1. By a decision promulgated on 23 September 2021, Upper Tribunal Judge Smith found there to be an error of law in the decision of First-tier Tribunal Judge D Brannan itself promulgated on 21 July 2020, dismissing the appeals. Judge Smith gave directions for the filing of further evidence and for a face to face hearing in order to re-make the decision. Judge Smith's error of law decision is appended hereto for ease of reference.
2. The Appellants appeal against the Respondent's decisions dated 13 December 2017 refusing their human rights claims. Those claims were made in the context of an application for leave to remain based on their private and family lives. The First Appellant also claimed to be entitled to succeed on the basis that he had lived lawfully in the UK for ten years and therefore satisfied the provisions of the Immigration Rules ("the Rules") in relation to long residence. That latter claim is no longer pursued as it is accepted on the basis of current case-law that he cannot meet the Rules in this regard. The focus of the claims now is the situation which the Appellants will face on return to Bangladesh. They are nationals of that country. However, as Hindus, they claim that they will face discrimination which amounts to a very significant obstacle to their integration in their home country.
3. We do not need to set the Appellants' immigration history out in any detail since that is referred to at [3] to [5] of the error of law decision. In addition to the claim that there are very significant obstacles to integration in Bangladesh, the Appellants rely on Article 8 ECHR outside the Rules. They have two children born in August 2017 and March 2021 who are now aged four years and under one year. Their best interests must also be considered when considering Article 8 ECHR outside the Rules.
4. The documents in this appeal are, as Mr Biggs accepted, in a state of disarray. There is no consolidated bundle. In order to make reference to the documentary evidence, we refer to the Appellants' bundles as follows:
 - The original bundle filed with the First-tier Tribunal. This is somewhat unhelpfully paginated within sections. It runs from A1-A7 to R1-R6. We therefore refer to it as [AB1/annex/page].
 - The additional bundle of evidence filed with the First-tier Tribunal. This is a continuation of AB1 and therefore begins at S1-S2, running to V1-V2. We refer to this as [AB2/annex/page]

- The bundle of evidence filed on 17 November 2021 in response to Judge Smith’s directions. Helpfully, this is simply paginated from [1] to [85]. We refer to this as [AB3/page]
5. In addition to the Appellants’ bundles, we have a core bundle of documents including the Respondent’s bundle. We were also referred to published background information being the Home Office’s Country Policy and Information Note entitled “Bangladesh: Religious minorities and atheists” dated October 2018 (“the CPIN”). Mr Biggs also submitted a skeleton argument.
 6. Mr Whitwell did not have all the Appellants’ bundles at the start of the hearing. We therefore arranged for him to be provided with copies of those he did not have and gave him time to consider the documents.
 7. We heard oral evidence from both Appellants. We do not set that out in full but refer only to that which is relevant to the issues we have to determine. Similarly, although we have read all documents submitted, we refer only to those documents which concern the relevant issues. As Mr Biggs has helpfully indicated by his skeleton argument, the issues can be taken separately. We therefore deal with each in turn.

PARAGRAPH 276ADE (1)(vi) OF THE RULES: VERY SIGNIFICANT OBSTACLES

The Legal Position

8. Paragraph 276ADE(1)(vi) allows an applicant who is unable to meet the length of residence requirements of the Rules to meet paragraph 276ADE (and therefore to succeed on private life grounds within the Rules) if he/she can demonstrate that there would be very significant obstacles to the applicant's integration into the country to which he/she would have to go if required to leave the UK.
9. In Secretary of State for the Home Department v Kamara [2016] EWCA Civ 813 (“Kamara”), the Court of Appeal had this to say about the test of “very significant obstacles”:

“14. In my view, the concept of a foreign criminal's ‘integration’ into the country to which it is 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.”

Kamara was concerned with a deportation case; hence the reference to paragraph 399A of the Rules. It is common ground that what is there said by the Court of Appeal applies equally to the removals context and therefore to Paragraph 276ADE(1)(vi).

10. Mr Biggs also makes reference to what is said by the Court of Appeal about the threshold in Parveen v Secretary of State for the Home Department [2018] EWCA Civ 932 as follows:

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

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

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

We have those observations and approach firmly in mind when considering the obstacles relied upon in these appeals.

11. Turning then to those obstacles, as we have already noted, those are the discriminatory treatment which it is said that the Appellants will face due to their Hindu religion. Ordinarily, such a claim would be raised by way of an asylum claim, depending of course on the level of discrimination faced. The claim would generally be explored by the Respondent at an interview with the asylum claimant who would have the opportunity to answer questions and in turn would be probed about the facts relied upon in the claim. That has not occurred in this case as the Appellants have not made any asylum claim.
12. It is common ground that the Appellants are entitled to rely on their claims about discriminatory treatment faced by Hindus in Bangladesh as part of a human rights claim and therefore in these appeals. Mr Whitwell however rightly drew our attention to the decision of this Tribunal (President and Vice-President) in JA (human rights claim: serious harm) Nigeria [2021] UKUT 0097 (IAC) (“JA”). We set out the reported guidance for ease of reference:

“(1) Where a human rights claim is made, in circumstances where the Secretary of State considers the nature of what is being alleged is such that the claim could

also constitute a protection claim, it is appropriate for her to draw this to the attention of the person concerned, pointing out they may wish to make a protection claim. Indeed, so much would appear to be required, in the light of the Secretary of State's international obligations regarding refugees and those in need of humanitarian protection.

(2) There is no obligation on such a person to make a protection claim. The person concerned may decide to raise an alleged risk of serious harm, potentially falling within Article 3 of the ECHR, solely for the purpose of making an application for leave to remain in the United Kingdom that is centred on the private life aspects of Article 8, whether by reference to paragraph 276ADE(1)(vi) or outside the immigration rules. If so, the 'serious harm' element of the claim falls to be considered in that context.

(3) This is not to say, however, that the failure of a person to make a protection claim, when the possibility of doing so is drawn to their attention by the Secretary of State, will never be relevant to the assessment by her and, on appeal, by the First-tier Tribunal of the 'serious harm' element of a purely human rights appeal. Depending on the circumstances, the assessment may well be informed by a person's refusal to subject themselves to the procedures that are inherent in the consideration of a claim to refugee or humanitarian protection status. Such a person may have to accept that the Secretary of State and the Tribunal are entitled to approach this element of the claim with some scepticism, particularly if it is advanced only late in the day. That is so, whether or not the element constitutes a 'new matter' for the purposes of section 85(5) of the Nationality, Immigration and Asylum Act 2002.

(4) On appeal against the refusal of a human rights claim, a person who has not made a protection claim will not be able to rely on the grounds set out in section 84(1) of the 2002 Act, but only on the ground specified in section 84(2)."

13. We observe that the Respondent did not expressly refer to the possibility of making an asylum claim in her decision under appeal. She rejected the claim that the Appellants would be discriminated against in Bangladesh in brief summary on the facts and background evidence. Nonetheless, we did not understand the Appellants to say in evidence that they were unaware of the possibility of making such a claim. They do not claim that Article 3 ECHR is engaged by the treatment they would face. Their claims are squarely based on Article 8 ECHR in the context of Paragraph 276ADE(1)(vi). Nor was this a "new matter" raised late in this appeal. We do however recognise that the Respondent has not had the opportunity to explore with the Appellants by an asylum interview the facts underlying their claim. That is particularly so in relation to a claim made now by the Second Appellant that her family has also been the target of violence in Bangladesh.

The Evidence, Assessment and Findings

14. The core of the Appellants' claim is that they would face violence, harassment and discrimination as a result of being Hindus on return to Bangladesh. As we have already observed, they have not made a protection claim and we do not therefore have the benefit of a refusal of a protection claim setting out the Respondent's case. We therefore have to consider the material concerning the situation for Hindus in Bangladesh for

ourselves in order to judge the Appellants' case. For that reason, we begin our consideration of the evidence with the Appellants' expert report and the October 2018 CPIN.

Expert Report

15. The Appellants rely on a report dated 19 January 2020 from Mr Saqeb Mahbub at [AB1/M7-36]. The Respondent's position is that the Appellants' case turns on their credibility. Mr Whitwell submitted that the expert's report is predicated on the credibility or plausibility of the claims and therefore does not assist us.
16. Mr Mahbub is a barrister practising in Bangladesh. He says that he is "an independent expert on the Bangladeshi law and justice system". He sets out his credentials at [2] to [9] of his report. He has acted for clients in cases "of a political nature" and in judicial reviews challenging elements of the political system but we are less clear about his expertise when it comes to commenting on the general political and societal situation for minorities in Bangladesh. It appears that he may have some expertise from work done in 2014 to 2018 as a consultant to various research projects providing information about the legal and political context in Bangladesh. Nonetheless, that expertise is not shown to be wide-ranging. We give some weight to matters which appear to be within his stated expertise as follows.
17. We do not read the section of the report headed "CONTEXT" about the general situation in Bangladesh as being at odds generally with the background evidence to which we refer below. As that section shows, much of what is there said relies on other background evidence. As Mr Mahbub fairly notes, discrimination against and harassment of Hindus generally intensifies around the time of elections or where there are rumours put about by Islamists. Some of the examples given by Mr Mahbub about violence are historic. We refer below to the background evidence about past events as there recorded. As Mr Mahbub also notes, the pattern of discrimination is no different to that in many other countries.
18. We do not accept Mr Mahbub's evidence about discrimination in employment. He offers no source for what is said at [16] to [18] of the report. He provides three examples, one of a senior police officer and two concerning Judges. None of those applies to the Appellants' case. We also note that his comments are limited to public-sector jobs. We accept his observation that political representation of Hindus is low. That appears to be within his particular expertise. We do not accept however that there is evidence even in Mr Mahbub's report that this causes particular issues for Hindus.
19. We accept that Mr Mahbub's evidence that land grabbing of Hindu property (which is a factor in the Appellants' case) is not uncommon. Again, this is based on legal analysis and we accept falls within Mr Mahbub's area of competence. He mentions however legislation passed in Bangladesh in

2011 to restore property to those who lost it although he says that “implementation has so far been limited”.

20. Turning then to the section of the report dealing with the specifics of the Appellants’ case, Mr Mahbub says that the First Appellant’s claims of attacks on his parents are consistent with the background material. He points to Hindus being a minority (albeit we note a significant one being 10% of the population). Mr Mahbub also says that the claim that the First Appellant’s father’s land has been appropriated is consistent with the background evidence. He says that the claimed inaction by Government is consistent with his understanding of the context. He offers no source for that statement. The general section in that regard (as we understand it [51] to [53]) relies on background material from 2010. Mr Mahbub also refers to a reduction of 15% in the Hindu population between 1971 to 2016. He says that the “possibility of [the Appellants’] child suffering from hostility growing up cannot be ruled out”. The Appellants’ “fear of poor upbringing of his child” in the conditions for Hindus in Bangladesh is “plausible”. Even if we accept Mr Mahbub’s opinion that the Appellants’ claims are consistent with background evidence, it is for us to consider the credibility of the Appellants’ evidence.

Background Evidence

21. We turn then to the CPIN (dated October 2018). The salient passages drawn from the summary are as follows:

“2.4 Risk

a. State treatment

2.4.1 Bangladesh is a secular (i.e. where state and religious institutions are separate), pluralist parliamentary democracy. The constitution and other laws protect religious freedoms and ensure equal status and equal rights in the practice of the Hindu, Buddhist, Christian and other religions. These rights are generally respected by the government, although, at a local level, constitutional provisions, legal norms and political reform agendas lack consistent implementation. The main religious festivals of all religions are celebrated and recognised as public holidays.

...

2.4.5 Religious minorities, particularly Hindus, are disproportionately affected by historical and continuing land appropriation through the Vested Property Act. Despite laws allowing for the return of, or compensation for, seized property, a large percentage of claims remain unresolved or have been denied by government officials, and ‘land grabs’ are reported to continue due to lack of documentation proving ownership.

...

2.4.7 There are not legal or other restrictions preventing Buddhists, Christians or Hindus from freely practising their religion, accessing state schools, health or other government services....

...

2.4.9 In general, the level of state discrimination faced by religious minorities is low and is not sufficiently serious by its nature and repetition to amount to a real risk of persecution and/or serious harm.

...

b. Societal treatment and treatment by extremists

2.4.19 Hindus, their property and places of worship have faced targeted attacks, either committed or incited by Islamists, particularly during heightened political tensions, for example, during the 2014 elections. Instances of societal discrimination, harassment and occasional violence against Hindus occurs. Hindus are also disproportionately affected by land seizures, which have also been a factor in some attacks.

...

2.4.22 In general, the level of societal discrimination faced by religious minorities is low and does not amount to a real risk of persecution and/or serious harm. Although there have been outbreaks of communal violence and sporadic attacks by extremists, in general, these are not sufficiently serious by their nature and repetition as to amount to persecution or serious harm....

...

2.5 Protection

...

2.5.3 The Bangladeshi authorities conducted extensive counter-terrorism operations in response to the wave of militant attacks against religious minorities and made hundreds of arrests. State-security is provided at religious sites, festivals and events held by religious minorities, which are considered potential targets for violence.

2.5.4 In general, the state appears both willing and able to offer effective protection to religious minorities....”

22. We set out one part of [10] of the CPIN which deals directly with Hindus, their numbers and the situation for them generally. This fleshes out some of what is said in the summary:

“10. Hindus

10.1 Demography

10.1.1 The largest religious minority group was Hindus, estimated at between 9% and 10%. The DFAT report noted ‘Estimates of the numbers of Hindus in Bangladesh vary: while the 2011 census put their numbers at 12.5 million, some

current estimates place the Hindu population as high as 15.5 million. All sources agree that the Hindu community is Bangladesh's largest religious minority group.'

10.1.2 The DFAT report added 'Most Hindus are ethnically and linguistically Bengali, and are not physically distinguishable from the majority Muslim population. While Hindus live throughout Bangladesh, including in Dhaka, there are a small number of "Hindu belts" in the south, east, and north of the country where Hindus comprise up to 40 per cent of the local population. Some exclusively Hindu villages exist, although most villages are religiously mixed.' As reported by Global Human Rights Defence (GHRD), a Netherlands-based organisation which promotes and advocates human rights for minorities and marginalised groups in South Asia, in its 2014 annual report on Bangladesh, '[Hindus] are scattered throughout the different districts of Bangladesh, with high concentrations in the border regions of Dinajpur, Thakurgaon, Moulvibazar, Satkhira and Bagerhat.'

10.1.3 According to the Special Rapporteur, in the past four decades, the Hindu population of Bangladesh has decreased from an estimated 23% of the population in 1971 to approximately 9% in 2016, mainly due to contested property issues and harassment, and occasional physical attack. However, citing official statistics, the External Affairs Minister of India, Sushma Swaraj, speaking in the India's Upper House of Parliament in July 2018, said the Hindu population of Bangladesh had increased from 8.4% in 2011 to 10.7% in 2017.

10.2 State treatment

10.2.1 According to a 2016 report on religious minorities, MRGI noted: 'The oppression of Hindus in Bangladesh has been a constant feature in its history, both when it was still East Pakistan and since independence ...While justice for many of the victims remains elusive, attempts to prosecute alleged perpetrators have frequently ignited fresh rounds of violence in recent year... Activists have highlighted that this violence is not perpetrated exclusively by Jamaat-e-Islami members, with local leaders and politicians of different backgrounds exploiting communal tensions to consolidate their own position.'

10.2.2 The DFAT report noted: 'No legal or other restrictions prevent Hindus from freely practising their faith, or from participating in broader society. Hindus have made a significant contribution to Bangladeshi public life, including in politics, government, academia, business, and the arts. While they have traditionally supported the AL [Awami League] and other left-leaning parties such as the Communist Party, all major political parties have fielded Hindu candidates. While the current AL Cabinet has Hindu members, the overall level of Hindu political representation remains low and Hindu community groups have campaigned for reserved seats in parliament. Similar to other religious minorities, Hindus are not well represented in the security forces.'

10.2.3 In the aftermath of the violence that took place in the run-up to and following the 2014 elections, DFAT noted that '... the High Court ruled that law enforcement agencies had 'seriously failed' to protect members of vulnerable groups, including Hindus. The government responded by providing assistance to victims and helping communities restore religious and private property damaged in the violence.'"

23. In relation to attacks on Hindus and societal treatment more generally, we have read and have regard to the detail of those attacks at [10.3] of the CPIN. That confirms that there was a wave of attacks in the lead up to the 2014 elections and thereafter attacks triggered by the trial and execution of Islamist war criminals. Important for our purposes is reference to the death sentence passed on the leader of Jamaat-e-Islami (Jel), Delwar Hossain Sayeedi in 2013. The CPIN also sets out the numbers and extent of attacks in 2016, 2017 and 2018.
24. Mr Whitwell drew our attention to the table at [6.1.7] of the CPIN referring to the number of attacks against religious minorities. That shows a reduction of incidents after 2014. Mr Biggs said that this evidence should be viewed in the context of the whole of section [10] of the CPIN. We accept that there are some discrepancies between the details of the incidents and the table. Those discrepancies are greater in relation to vandalism rather than deaths. However, even taking the detail of the incidents rather than the table, that shows that in October 2016 there was a violent attack which left “dozens injured, and at least 15 Hindu temples and over 200 Hindu homes badly damaged and looted”. There were also smaller attacks in that year. In November 2017, there was a large-scale attack on a Hindu community, triggered it seems by an allegedly blasphemous Facebook post. Thirty houses were torched before the police dispersed the crowd. It is said that one person died and six were injured. It is not clear whether that was within the Muslim crowd at the hands of the police or Hindus who were attacked. There were 53 Muslims arrested. Another report in that year refers to attacks leading to one death and sixty-seven injuries in 2017 compared to seven deaths and sixty-seven injuries in 2016. There were also less attacks on property in 2017 than in 2016. The motivation for the attacks is said to have been unclear. In July 2018, there was a major attack on a Hindu community during their festival when six persons were assaulted, property was vandalised and some goods stolen. Two arrests were made. It is said that there was no reported motive for the attack. Overall the evidence show that attacks continue but have declined to some extent after 2014.
25. We turn then to the background evidence in the Appellant’s first bundle. That largely dates back to 2014 at the latest. We see no point in referring to the Home Office Country Information and Guidance dated March 2016 (at [AB1/H18-52]) since we have that dated 2018 before us (to which we refer above).
26. The articles which date from 2016 to 2018 at [AB1/H53-60] are of limited value. The first refers to a book published in 2016 by a University teacher giving a figure for the numbers of Hindus leaving Bangladesh up to 2013. We have more up-to-date information about that (see [10.1] of CPIN as set out above). The second is an article reporting “1,792 persecutions” on minorities in Bangladesh in the eleven months to December 2018. It reports a statement by the Hindu Alliance which may not be wholly objective. There is scant detail about the attacks. The third appears to have been taken from the Human Rights Watch report for 2017. We do not have the whole report.

It is said that there were “sporadic attacks and threats against religious minorities” in 2018. It refers to the burning down of thirty properties in a majority Hindu village following an allegedly defamatory Facebook post concerning the prophet Muhammad. The final document is an extract from the report of the same organisation in the previous year. The reference to attacks in 2016 on religious minorities are grouped together with attacks on others such as foreigners, academics and gay rights activists. There is scant detail about the attacks. The reference to attacks on the Hindu community is reported as being from an “advocacy group” for several minorities. The evidence about the level and extent of attacks is vague.

27. Much reliance is placed by the Appellants in relation to the specifics of their claim on a report published in March 2014 by an organisation called Uttaran entitled “Gains of Few and Loss of the Nation” (at [AB1/E1-26] – “the Uttaran report”). That report attests inter alia to violence against Hindus in Bangladesh in 2013. As we understood it, the incident at [4.1] of the report is said to relate to the First Appellant’s father. There is a slightly different spelling of his name, but we do not place weight on that discrepancy. There is a letter said to have been written by the First Appellant’s father at [AB1/F6-7] which uses the same spelling. The incident is said to have happened “immediately after” an appeal verdict on war criminal which is said to have occurred on 26 November 2013. That is no doubt why the First Appellant was asked about timings in his oral evidence in chief and was cross-examined about them (as we will come to).
28. The Appellants now also claim that the Second Appellant’s family in Bangladesh have been the target of attacks in October 2021.
29. We accept that the attacks against Hindus reported in the CPIN as occurring up to 2018 have not ceased altogether. There are reports of mob attacks against Hindus by Islamic fundamentalists in October 2021 at [AB3/77-84]. The First Appellant’s statement also drew attention at [20] to YouTube and other online reporting of attacks in that month. Those attacks largely on Hindu temples were said to have taken place at the time of the Durga Puja celebrations and to have been sparked by what was seen by Muslims as a “besmirching” of the Quran. It is worthy of note however that the Bangladeshi authorities took a tough stance against the attacks and sent in paramilitary forces to deal with the attackers.
30. Overall, we accept that the background evidence does show that there are sporadic attacks against the Hindu population in Bangladesh. Those are generally at the times of high political or religious tensions or where the Muslim majority consider there has been a blasphemous attack on their own religion. That is consistent also with the Appellants’ expert’s report. That is not to excuse those attacks. Sadly, though, such tensions between religious groups occur in many countries in the world and are not confined to Bangladesh. The issue is whether the frequency with which those attacks or other discrimination occur gives rise to a general risk to all Hindus and whether action is taken against those who perpetrate such attacks. The evidence (particularly the most recent) is that the Bangladeshi ruling party

with which the Hindu community is largely aligned does take action against those who carry out the attacks.

31. We emphasise that we are not considering the Appellants' claims in the context of a risk of persecution since that is not their claim. Nor therefore are we concerned with whether there is a sufficiency of protection. However, both factors are relevant to whether the Appellants can show on balance that there are very significant obstacles to their integration in Bangladesh.
32. The background evidence does not show general discrimination against Hindus in Bangladesh in the field of employment, education, healthcare or other societal participation. They are able freely to practise their faith. Although the statistics are not entirely clear, the numbers of the Hindu population have not dwindled to the extent suggested by the First Appellant in some of his evidence and may actually be increasing.
33. Having set out the context of the general situation for Hindus in Bangladesh, we turn to the Appellants' evidence about their specific claims.

The First Appellant's evidence

34. The First Appellant has provided two witness statements dated 21 April 2020 and 14 November 2021 at [AB1/A1-10] and [AB3/1-14] respectively. His immigration history is not now disputed. In summary, he has been in the UK since September 2009, first as a student and then as a Tier 1 entrepreneur. He had leave to remain until October 2016 (see [4] of UTJ Smith's error of law decision).
35. In terms of the obstacles to integration, we begin with his evidence about the position of Hindus in Bangladesh. In his first statement at [27] and [30] the First Appellant describes an attack on his father and the burning of his family's home. That is said to have occurred on 13 December 2013. It is also said that the First Appellant's father's land was the subject of a land grab by a "local leader" (unnamed) supported by the Awami League. He says that as a result of those incidents, his parents had to leave Bangladesh and now live in India. The incidents are dealt with briefly also at [12] and [13] of the First Appellant's second statement.
36. Mr Biggs dealt in examination in chief with the incidents said to have occurred in Bangladesh. The First Appellant now says that there were three incidents in November 2013, December 2013 and February 2014. The First Appellant accepted that he had not mentioned there were three incidents in his statements. His statements deal with an attack on only one date. He said that maybe there had been a "misunderstanding". His oral evidence as we understood it was that the attack on his family's home was in November 2013. He said this related to the death sentence handed down to a leader of Jel. That is what triggered the attack. He said that his family home had

only been burnt down once. The photographs at [AB1/J10 and J12] were said to be photographs of his family home after the incident. There is no evidence what those photographs show nor when or by whom those were taken.

37. By contrast, the letter from the First Appellant's father at [AB1/F6-7] refers to the house being burned "3 times since 13th December 2013". That contradicts both the First Appellant's account (that this happened only once) and that the incident was according to the Uttaran report in November 2013 (see [27] above).
38. The First Appellant is not assisted by the First Information Report ("FIR") at [AB1/J1-5]. That is dated for some reason two years after the incident to which it is said to relate which is said to have occurred on 26 November 2013. That incident includes the attack said to have been on the First Appellant's father and the burning of his house. The attack itself is not mentioned at all in the letter from the First Appellant's father. We find that it would have been if it had occurred as claimed. The date of the burning of the house is inconsistent with the letter from the First Appellant's father.
39. We accept that other of the evidence in the bundle does support some sort of incident having occurred in the family village in December 2013 which would be consistent with the First Appellant's statements and his father's letter (see for example newspaper report at [AB1/K2-20]). That report is dated 14 December 2013 but appears to relate to incidents which occurred on the previous Thursday. That would have been 7 December 2013 and not 13 December 2013. That is also inconsistent with the FIR and the Uttaran report to which we have already referred, giving the date of the incident as 26 November 2013.
40. Although we accept that there are reports of attacks at around the time that the First Appellant and his father say that the family home was attacked, in December 2013, there are multiple contradictions between the various pieces of evidence. We are unable to place weight on the evidence for that reason.
41. The land grab is also mentioned again at [12] of the Appellant's second statement. This is also referred to in the First Appellant's father's letter. We can find no other evidence of this (for example any evidence showing that the First Appellant's father owned any land). As we understand it, the land said to have been grabbed is the house which was burned down but there is no evidence to show that he owned it. There is no mention of the land being appropriated by the local leader in the Uttaran report (although we accept it does refer to the house belonging to the First Appellant's father). The local leader is not named in the First Appellant's father's letter. There is no reference to the matter being reported to the authorities even though the Uttaran report says that the First Appellant's father's nephew is "a lawyer by profession". We note incidentally that the Uttaran report says that the attackers wanted to "slaughter [the First Appellant's] father and one of his grandsons" which might suggest that this does not relate to the First

Appellant's father since the Appellants' children were not born at that time and the First Appellant has no siblings. We do not place reliance on that point however since the discrepancy was not put to the First Appellant.

42. We are not satisfied that the land grab occurred. The letter from the First Appellant's father is vague about this incident. The attack in 2013 (if it occurred) was the subject of a report to the authorities which led to the FIR to which we have alluded previously. The First Appellant's father was (on the Appellants' case) prepared to report that attack to the authorities and there is no explanation why he did not do likewise in relation to the land grab.
43. The First Appellant also suggests that the Second Appellant was attacked at the time when the house was burned as she was living there at that time. We do not accept that assertion as credible. It is made for the first time in the First Appellant's second statement. The Second Appellant does not mention it in her statement, and she would have done if it were true.
44. Nor do we accept as credible the First Appellant's assertion at [12] of his second statement that he was the victim of an attack when he visited Bangladesh in 2013. He says that this was at the time when the Jel leader, Delwar Hussain Sayede was given the death penalty. According to a report at [AB1/E37-41] this occurred on 28 February 2013.
45. In spite of the First Appellant's evidence in chief that the three incidents which took place were in November 2013, December 2013 and February 2014, when cross-examined about the incidents, he changed his testimony and said that the incident when he was attacked was in February 2013 and not 2014. When the question was repeated to him about the date of the third incident, he said it was February 2014. He said that he could not remember the exact date, but he was in Bangladesh at the time.
46. We sought clarification from the First Appellant about the dates of this incident. Again, his evidence was inconsistent. It was pointed out to him, and he confirmed that he had said that he was not in Bangladesh in 2013 but was in 2014. He was asked again whether he had been in Bangladesh in 2013. He then said that he had been on 1 February 2013. However, he then said there was a misunderstanding. The third attack was February 2014. He was asked therefore whether his statement was wrong and should read 2014 which he confirmed twice thereafter was correct. He was not re-examined.
47. We can place no weight on the First Appellant's evidence about this incident. His evidence was confused at best and contradictory at worst. Furthermore, although we accept that the First Appellant does say in his first statement that he returned to Bangladesh in 2013 at the time when the Jel leader was sentenced to death which we accept was in February of that year and although he says that he had to leave his village and live elsewhere "to protect [his] life", he does not there mention any specific attack against him. None is mentioned by his father in his letter. There is no report to the

authorities of any such attack. We consider the First Appellant's evidence in this regard to be an embellishment.

48. Even if we had been prepared to find that the burning of the First Appellant's family home took place, whether in November or December 2013, we are not satisfied that any of these incidents were causative of the move by the First Appellant's parents to India. The letter from the First Appellant's father at [F6-7] is dated 3 August 2018. The First Appellant's parents had not moved to India at that time. That is nearly five years after these incidents are said to have occurred. Even if as is said the First Appellant's parents were living in the temple between 2013 and 2018, there is nothing in the letter to suggest that they had been threatened or attacked between those dates. The letter indicates only that the First Appellant's parents had decided to go to India, had documents to do so and therefore could not provide the Appellants with support and shelter after that date. We will come to the evidence about the Second Appellant's family circumstances below.
49. We have dealt above when looking at the background information with the general position for Hindus in Bangladesh. The First Appellant says that he has not returned to Bangladesh now since 2014. His parents no longer live there. His personal knowledge is therefore dated. The evidence in his statement about the general situation is, we assume, drawn from information in the public domain or his own expert's report and we prefer to consider that evidence for ourselves (as we have done).
50. The First Appellant says that he would be unable to work in Bangladesh. He points to the time he has spent outside Bangladesh. He says that there is a recruitment age deadline of 35 years for jobs in the public sector in Bangladesh. The article on which he relies ([AB1/N1-2]) is dated 2012 and in fact indicates only that the government was at that time considering raising the recruitment age from 30 years to 35 years. We are not clear whether that was done. Whether it was or was not increased, we do not accept that this recruitment age applies to any other sectors. The First Appellant in his oral evidence when asked about this said only that the private sector follows the rules of the public sector, but he has produced no evidence that this is so, and we are not prepared to accept his assertion absent such evidence. There is no mention of this aspect in the report of the Appellants' expert.
51. It is not apparent to us why the First Appellant should be restricted to jobs in the public sector. We were not shown any evidence to support the First Appellant's assertions that lack of ties would contribute to an inability to find work. He has been educated in the UK and has worked here. He has also worked for himself. He said that was a business selling mobile phone accessories. We would find it surprising if people in Bangladesh did not use mobile phones and we can see no reason why the First Appellant could not start up a similar business on return. When we asked him whether he could not run a similar business in Bangladesh he said that he had "no idea" if he would be able to.

52. The First Appellant was asked about his and his wife's educational qualifications. He said both he and the Second Appellant had degrees. He had come to the UK to do a Masters degree. The First Appellant said however that graduation was "the basic system" which he described as college or university. He said that he had finished his Masters and his wife had "finished her graduation" but he said that was "minimum level". We will come to the Second Appellant's qualifications when setting out her evidence. As the First Appellant accepted in his evidence, both he and his wife went to university. That does not suggest any discrimination against Hindus in the educational sector.
53. Discrimination in that system is relevant because the Appellants now have two children. [AG] was born in August 2017 and [AD] in March 2021. The eldest child is currently in reception and due to start primary school in September 2022. When asked whether the eldest child spoke Bengali, the First Appellant confirmed that he does. He said that [AG] cannot write Bengali but can speak it albeit not fluently. He understands it. Although we note the First Appellant's evidence that Bengali is [AG]'s second language since he is now at an English school, he is still in the early stages of his education. When we asked the Second Appellant about [AG]'s educational progress in English, she said that he could write English but only letters of the alphabet which we accept would be consistent with his young age (four years).
54. The First Appellant says in his statement that the Appellants would not be able to afford to send their children to English medium schools. We do not understand why they would need to do so. Whilst we appreciate that the eldest child has begun his education and speaks English and writes it to a limited extent, he is of an age where he could easily adapt to another language and to learn to read and write it even if he does not do so now. The youngest child is still a baby and is unlikely to be accustomed to either language.
55. The First Appellant also says that the situation in Bangladesh is not suitable for the wellbeing of a child, given the pollution, noise and lack of proper infrastructure. We cannot accept that the general climate and infrastructure is an obstacle for a family to return. There is no doubt that many people do bring up children in Bangladesh. There is no medical evidence to indicate that either child suffers any medical problems which would affect their individual position. Both children are very young and would adapt to differences in climate etc.

Second Appellant's Evidence

56. The Second Appellant has provided a statement dated 15 November 2021 ([AB3/15-17]). She refers in that statement to her own family having been the subject of violence in October 2021. She says that her family was renting one room in a house but that too has been vandalised by Islamic radicals in October 2021. She says that they are now living with friends. They are intending to move to India.

57. The documents produced by the Second Appellant in this regard were not accepted by the Respondent. Those documents are as follows:
- (a) A letter said to be from the Second Appellant's father dated 6 October 2021 ([AB3/20];
 - (b) A text message also said to be from the Second Appellant's father (undated) ([AB3/22]);
 - (c) A letter from the company for which the Second Appellant's father is said to have worked dated 22 September 2020 indicating that he was to be given early retirement on health grounds ([AB3/21]).
58. We deal first with the content of those documents. The letter from the Second Appellant's father begins by indicating that he is in ill-health and had to give up work. He has therefore left his job and would be given employee benefit for eighteen months (until March 2022). He says that he could scarcely support himself and his wife and would not be able to support the Appellants on return. The letter from the company largely confirms what the Second Appellant's father says save that it wishes him a "quick and healthy recovery" which Mr Whitwell said was inconsistent with the Second Appellant's father having to give up work permanently. The medical evidence at [AB3/19] suggests that the Second Appellant's father has been treated for cardiac and kidney problems and back pain for some time. The doctor advises that he is not fit for work but does not say whether that is temporary or permanent and suggests only that he "take rest". That might be more consistent with a temporary medical issue. The Second Appellant's father is now aged nearly 60 years which we accept would in any event be a quite usual retirement age in Bangladesh.
59. The letter from the Second Appellant's father goes on to talk about "bullying, harassment and discrimination" which the family has suffered as Hindus from "Islamic radicals and local political leaders". The Second Appellant's father says that he has "already taken decision to move ourselves to India permanently for safe and peaceful life". That suggests that he and his wife had already decided to move prior to any incidents. He speaks generally of the move of "close relatives" to India "due to face house burn, vandalize, harassment and discrimination". He makes no mention of any specific attacks on the family.
60. However, in the text message at [AB3/22], the Second Appellant's father appears to say that they were attacked and their house "vandalised and burned". We say appears advisedly because although the text message is headed "Papa" and is addressed to the Second Appellant referring to the sender as "your father", we have no other evidence that this is from the Second Appellant's father. There is no information to show from which phone number the text came.
61. Moreover, all the documents relied on including the letter and text said to be from the Second Appellant's father are written in English. Mr Whitwell

asked both Appellants about the aptitude of the Second Appellant's father in the English language.

62. The First Appellant initially said that his father-in-law spoke Bengali but went on to say that he used to work for an English firm in Bangladesh. When asked whether his father-in-law only spoke Bengali, he initially confirmed that was so. It was only when we sought to clarify that answer and asked whether his father-in-law spoke any other languages, that he volunteered the information that he also spoke English.

63. There was some dispute about the Second Appellant's answers to similar questions and we therefore record what we understood her testimony to be:

Q: If communicating with your father, what language do you use?

A: Bengali.

Q: Any other languages?

A: He can speak English a little but not sure. Bengali yes.

64. Mr Biggs suggested that this related only to the language used by the Second Appellant's father to speak to his daughter. We disagree. Even if that is how the Second Appellant understood the question, we do not understand what difference that would make. Her evidence is that her father speaks to her in Bengali. Why then would he write to her in English? In any event, her other evidence was that he can speak only a little English. It would therefore evidently be easier for him to correspond whether orally or in writing in Bengali. We can see no reason why he would send a text and a letter in English except with a view to seeking to bolster the Appellants' case. In fact, the letter is addressed to the Home Office which makes clear that its purpose was to assist the case.

65. We accept that does not necessarily mean that either the documents or their content are false. However, whether the documents are or are not sent by the Second Appellant's father (or perhaps prepared for him to send), we do not accept that the incident referred to in the text occurred. It is said that as a result of this incident the Second Appellant's parents had to go to live with a friend. However, neither of the Appellants knew who that was or where. If an attack had been made on her father, we find that the Second Appellant would be very concerned about his safety and would have wanted to know exactly where he and her mother were now staying so she could assure herself that they were alright. We do not accept the explanation she sought to give for that lack of knowledge. She said when asked to clarify that her father thinks she is already stressed and did not wish to add to her mental stress. However, we find that if the attack had happened as asserted the Second Appellant's father would be more likely not less to tell her where they were living and with whom so that she would not worry about them. We did not accept her explanation.

66. We accept that there is evidence that there were attacks on Hindus in October 2021 and therefore the attack asserted against the Second Appellant's family would be consistent with that evidence. However, for the reasons we have given we do not accept that the evidence is reliable. We consider this to be an embellishment, possibly designed to deal with the findings of First-tier Tribunal Judge Brannan that the Second Appellant's family could support the Appellants on return. Even if the text and letter from the Second Appellant's father were genuine (as to which we have serious doubts), we do not accept that they show that the Second Appellant's family was attacked as asserted.
67. Dealing then with the letter said to come from the company for which the Second Appellant's father worked, we accept Mr Whitwell's submission that it would be very odd for a company operating in Bangladesh to write an internal letter to one of its employees in English. The First Appellant said that the first official language in Bangladesh is English. We have no evidence that this is so, particularly for private companies. It is at odds with, for example, the FIRs which are not in English. The First Appellant said that his father-in-law was working for an English company in export and import, intending to suggest we assume that he naturally used English in the course of his employment. That is however contrary to the Second Appellant's evidence that her father spoke only little English. Further, when the Second Appellant was asked what language her father would use at work, she said Bengali because the company was in Bangladesh.
68. It may be that the letter is genuinely from the company which is said to have written it. However, we are not persuaded that the letter was genuinely written to the Second Appellant's father to confirm what is said in the letter. We consider it more likely that it was written for the purposes of these appeals to bolster a claim that the Second Appellant's family could not support the Appellants on return to Bangladesh. We accept Mr Whitwell's submission that it is far from clear that the medical evidence suggests that the Second Appellant's father is unable to work permanently in Bangladesh. The doctor refers to long-standing medical issues and that he is not fit for work "now". Rest is advocated. That does not suggest a need for medical retirement.
69. Even if the letter from the company is genuine as to its content, it shows only that the Second Appellant's father has retired. It is said that he and her mother intend to move to India. That may be so. On the face of it, he is at or nearing what appears to be the usual age for retirement in Bangladesh. As a Hindu, and as the First Appellant's parents, he may prefer to live in India in retirement. The Indian authorities appear to be willing to allow Hindus to move freely to that country and settle there.
70. That does not however mean that the Appellants could not return to Bangladesh. Both have qualifications. We have already referred to the First Appellant's evidence about educational qualifications. The Second Appellant says in her statement that she is a graduate in Environmental Science and Technology from a university in Bangladesh. That was an

English taught degree. We observed that her English when giving evidence was fluent. She therefore has qualifications in science and language abilities which would assist her to find work. We accept she has not worked in Bangladesh. She has worked in the UK when permitted to do so as a shop worker.

71. Both Appellants gave evidence about their means of support in the UK. The First Appellant said that they receive £1200 per month from friends in the UK. The Second Appellant was asked whether that support could continue on return, she said she did not think so but that it depended on those providing that support and whether they wanted to. She said that “maybe they don’t want to”. We have no evidence that the friends who have been willing to provide financial support to the Appellants over a number of years would not be willing to continue that support if they were to return to Bangladesh.
72. Finally, the First Appellant was also asked about his parents’ means of support in India. He claimed not to know how they support themselves there. We are sceptical about that evidence. In any event, we have no evidence that they could not provide some support in the short term to assist the Appellants while they settle in Bangladesh.

Discussion and Conclusion

73. We turn then to draw together our conclusions concerning obstacles to the Appellants’ return to Bangladesh. In so doing, we have in mind the need to consider all evidence and factors holistically. The issue as explained in Kamara is whether the Appellants would understand enough about the way in which society works to be able to participate in that society and be accepted there so as to be able to conduct their everyday lives including to form relationships. The threshold is an elevated one. Mere obstacles will not suffice.
74. Although much of the evidence with which we have dealt is akin to that seen in protection claims, we are not here concerned with a protection claim as none has been made. We do not consider that JA has much relevance to this case. The Respondent did not invite the Appellants to make a protection claim. Even if we accept that they probably understood that they could do so, the First Appellant did offer some explanation why he had not done so, believing that he would be able to remain based on his work in the UK. However, since the Appellants have not made a protection claim, we are not therefore asking ourselves whether there is a real risk of persecution or ill-treatment against which the Appellants would not be protected on return. We are asking ourselves whether the situation they would face shows on balance that there are very significant obstacles to their integration. We accept nonetheless that if a real risk of ill-treatment is shown or that the evidence discloses discrimination which would impact on integration, that is relevant to our assessment.

75. On the evidence in this case, we do not accept that any such real risk has been shown. We have not accepted the Appellants' evidence about attacks on their own family. Nevertheless, the background evidence does show that there are sporadic attacks by Muslims on the Hindu minority most recently in October 2021. The material about those most recent attacks does however show that the authorities offer some protection against those incidents and/or intervene to take action against the perpetrators. The authorities have shown themselves willing to take action where that is necessary. The background evidence also shows that there are areas within Bangladesh which are predominantly Hindu. There is no reason why the Appellants could not move to one of those areas particularly since they claim that they no longer have or soon will not have any ties to any particular part of Bangladesh.
76. The evidence taken as a whole does not show that there is discrimination affecting education, employment, healthcare or any other aspect of societal participation. The Appellants are also able to practise their faith freely.
77. Moving on to their family circumstances, we accept that the First Appellant's parents have moved to India. We have not found them to have done so because of attacks on them even if such attacks did occur. We have no information about their means in India or that they would be unable to support the Appellants financially on return to Bangladesh. It is possible that the Second Appellant's parents also intend to move to India although they have not yet done so. We have not accepted on balance the evidence that the Second Appellant's father has been medically retired.
78. Even if it is the case that both sets of parents are living in India and/or are unable to support the Appellants, we have no evidence that those who are supporting the Appellants financially in the UK would not continue to do so if they returned to Bangladesh.
79. Even if the Appellants had no other means of support, the evidence does not show that the First Appellant could not work or set up his own business on return. We also have no evidence that the Second Appellant could not work. Both have qualifications which would stand them in good stead. There is no reliable evidence as is suggested in their statements that family or other ties are needed to get a job. There is no evidence that the First Appellant is now too old to join the job market, except perhaps in the public sector where he has never worked in Bangladesh or this country.
80. We do not at this stage deal with the best interests of the children. Those are relevant to the balancing assessment between interference with the Appellants' private lives and the public interest outside the Rules. They are not relevant at this stage. Nonetheless, the position of the children is clearly relevant to whether there would be very significant obstacles to the Appellants' integration in Bangladesh. It goes without saying that if there are sufficient obstacles to the children returning to Bangladesh, those obstacles would impact on the parents. That is so even though the children are not applicants and therefore not strictly within that definition in

Paragraph 276ADE(1)(vi). As an aside, and for that reason, also, we did not need to deal with Mr Biggs' submission in relation to whether there is interference with family life. The family will be removed as one unit. However, if the private life of one member of that family is disproportionately affected, that would amount to an interference with the private lives of the others.

81. As we have already observed, the children are very young and could adapt. We accept that life in Bangladesh may not be as comfortable as in the UK. We also accept that the children would not have access to the education system in the UK. The education system in Bangladesh may not be as good as that in the UK (although we have no evidence one way or another in that regard). That does not mean however that the education in Bangladesh whether for Hindus or otherwise is any obstacle to return. The evidence does not show that there is discrimination in education for Hindus. Both the Appellants received university education and have good qualifications. There is no reason why their children could not have access to the same sort of education. That is so whether they attend English medium schools or State education. There is no evidence that the children have any particular needs medical or otherwise which would be affected by the climate and services in Bangladesh.

82. Considering together all the factors on which reliance is placed by the Appellants and based on all the evidence and the findings we have made, we do not accept that there would be very significant obstacles to their integration in Bangladesh (or to their children's integration). We accept that it may take the Appellants a little time to adapt back to their home country and that they may find it difficult to do so. Nonetheless, both grew up and were educated in Bangladesh. Both speak Bengali. We have little evidence of any substantial integration in the UK. The letter at [AB2/S3] from the United Hindu Cultural Association London confirms that the First Appellant maintains his community ties with the Hindu community in London. They would be insiders with an understanding of how the community works in Bangladesh so that they could integrate with the Hindu community there and form relationships with others as they have in the UK within that community.

83. The Appellants do not meet Paragraph 276ADE(1)(vi) of the Rules.

ARTICLE 8 ECHR

84. We have already explained why we do not need to consider under this head Mr Biggs submission that removal would be an interference with the Appellants' family life. He relied in this regard on R (Agyarko and Ikuga) v Secretary of State for the Home Department [2017] UKSC 11. Those cases concerned family life between one partner who was a foreign national and one who was a British citizen and whether there would be "insurmountable obstacles" to family life continuing abroad. We do not consider those cases to have any relevance to these appeals. Whilst not accepting that we were right about that, Mr Biggs accepted that he did not need to rely upon his

submission in that regard since we accepted that the position of the children and whether there were very significant obstacles to their integration in Bangladesh was a matter which we could consider within Paragraph 276ADE(1)(vi) as we have now done.

85. There is no dispute between the parties that the task for us is to balance the interference with the Appellants' private lives (and those of their children) against the public interest in their removal. The Appellants bear the burden of establishing the nature and extent of their private lives. It is then for the Respondent to show that the interference is justified, lawful and proportionate.
86. In conducting that balancing exercise, we are bound to have regard to Section 117B Nationality, Immigration and Asylum Act 2002 ("Section 117B"). We also have to consider the best interests of the minor children as a primary consideration. That does not mean however that it is the paramount consideration in the balancing assessment.
87. We do not need to set out much of the evidence since it is largely dealt with when looking at the obstacles to integration in Bangladesh. The only matters relevant under this head which are not there considered are the nature and extent of the Appellants' integration in the UK and the best interests of the children.
88. Dealing with the latter issue first (since it is a primary consideration), we have very limited evidence about the children. That is unsurprising given their ages. The only specific evidence is at [AB3/23-25] which is the admission pack for the eldest child's reception at school and a summary showing that his attendance rate in the first month was 83.78%. There is no evidence that either child has any medical or other special needs. There is no independent social worker's report regarding the children. The First Appellant says that the eldest child is enrolled with a "We Make Footballer Club" but there is no other evidence about what that entails. Whilst the child may have made some friends in the UK, at his young age, those are unlikely to be very developed friendships. There is in any event no detailed evidence about such friendships. The eldest child is young enough to form new friendships on return to Bangladesh. The youngest child is too young to have formed any friendships as yet.
89. At their tender age, it is in the best interests of children that they remain with their parents. The issue is whether their best interests require that to be in the UK or in their home country. In these appeals, we have little evidence that the children's best interests require them to be in the UK. The eldest has only just started education and we have found that he would readily adapt to another country given that he has only recently started to learn to read and write in English. The other child is too young to communicate in either language. Bengali is spoken in the home. We have not accepted that the children will face discrimination in education. Both their parents were educated to degree level. We do not consider therefore that there is evidence to show that their best interests are to remain in the

UK. Even if we accepted that it was in their best interests to remain in the UK, that would only be marginally so on these facts. The stronger interest is for them to remain with their parents wherever their parents are living.

90. Turning then to the Appellants' integration in the UK, it is said in Mr Biggs' skeleton argument that "it is apparent that both appellants have strong connections in the UK". He points in that regard to the First Appellant's charity work and support of his community. Whilst not wishing to denigrate the work the First Appellant has done, we have already pointed to the letter from the Temple which shows the work which he has done for the Hindu community in the UK. There is no reason why he could not provide equivalent service to his community in Bangladesh. The only other evidence is that he was a volunteer for the Labour Party in the 2017 general election. There is no evidence that he has participated in that regard since.
91. Both Appellants have worked in the UK. The First Appellant has also studied here. Evidence about their work and education here however is notable by its absence (beyond the evidence to which we have already referred and a certificate for the First Appellant's degree). The Second Appellant says that she has "a substantial number of friends in the UK" but none have provided supporting statements or even letters. There are one or two letters of support for the First Appellant scattered within the bundles. We have had regard to those at [AB1/F2-5] dated from 2017 from two friends originally from Bangladesh but settled in the UK and one who had known the First Appellant for two years which is in the form of a character reference. There are three further letters also from 2017 at [AB1/L1-3] which attest to his links to what appears to be the Hindu community and one or two other friendships. The letters are short and offer little detail about the Appellants' integration.
92. We accept that, over the time that, in particular the First Appellant and to a lesser extent the Second Appellant have spent in the UK, they will have integrated to some extent. We also accept that the First Appellant has studied here and that he and his wife have both worked here (although not recently since they last had leave in October 2016). It is though for the Appellants to provide evidence about their integration. On the evidence we have, we are unable to find that they have strong private lives in the UK.
93. In relation to the public interest, we have already found that the Appellants cannot meet the Rules. Paragraph 276ADE(1)(vi) is not met. There are no other provisions of the Rules which apply. Neither child has been here for seven years.
94. The maintenance of effective immigration control is in the public interest. Mr Biggs suggested that the weight to be given to this should be tempered because the out of time application which led to the decisions under appeal was made within the grace period (in other words the period of overstaying which is disregarded within the Rules). We disagree. As is evident from the chronology set out at [4] and [5] of UTJ Smith's error of law decision, the application made within the grace period was one for leave as a Tier 1

entrepreneur. However, the Appellants did not pursue that application, instead varying it to one based on human rights only some five months later. That suggests that the Tier 1 application was made as a holding position and that in reality the only basis on which the Appellants could claim to remain was based on their human rights. The argument that the public interest should be reduced for that reason is circular. If the Appellants' claim is insufficient to meet the Rules based on their Article 8 rights (as we have found), there is no reason to reduce the weight of the public interest in consequence when balancing the interference against the public interest outside the Rules.

95. The failure to meet the Rules is therefore relevant to the public interest imperative in the removal of the Appellants.
96. Looking at the other factors in Section 117B, we accept that both Appellants speak English to a greater or lesser extent. We also accept that they are financially independent albeit they rely on others for support. They are not reliant on the State which is the relevance of the public interest. However, both of those factors are neutral in the context of our assessment.
97. Section 117B(4) provides that little weight should be given to a private life formed whilst an individual is here unlawfully. Little weight is also to be given to a private life formed whilst a person is here on a precarious basis (Section 117B(5)). Both apply here. Little weight does not mean no weight. However, the weight to be given depends on the evidence about that private life. We have already referred to the paucity of evidence about the Appellants' private lives. We can give little weight to those private lives.
98. Balancing the degree of interference with the Appellants' private lives and taking into account also the interference with the private lives of the children including the best interests of those children which we have taken as a primary consideration, against the public interest in their removal which is strong because of their failure to meet the Rules, we have no hesitation in dismissing these appeals. Removal of the Appellants would not lead to a breach of section 6 Human Rights Act 1998. There is no disproportionate interference with their Article 8 rights.

DECISION

The Appellants' appeals are dismissed. The removal of the Appellants in consequence of the Respondent's decisions refusing their human rights claims does not breach section 6 Human Rights Act 1998. There is no disproportionate interference with the Appellants' Article 8 rights.

Signed: L K Smith

Dated: 10 January 2022

Upper Tribunal Judge Smith

APPENDIX: ERROR OF LAW DECISION



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: HU/01468/2018 (V)
HU/01475/2018 (V)

THE IMMIGRATION ACTS

**Heard at Field House via Microsoft
Teams
On Tuesday 14 September 2021**

Decision & Reasons Promulgated

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Before

UPPER TRIBUNAL JUDGE SMITH

Between

(1) AG

(2) RB

[ANONYMITY DIRECTION MADE]

Appellants

-and-

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr M Biggs, Counsel instructed by Law Valley solicitors
For the Respondent: Mr C Avery, Senior Home Office Presenting Officer

Anonymity

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

An anonymity order was made by the First-tier Tribunal for reasons which are not entirely apparent. However, since the Appellants rely in their evidence on an incident which occurred in relation to the First Appellant's family in Bangladesh and although the appeals do not include a protection claim, I am

satisfied that it is appropriate to continue that order. Unless and until a Tribunal or court directs otherwise, the Appellants are granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their 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

BACKGROUND

1. The Appellants appeal against the decision of First-tier Tribunal Judge D Brannan promulgated on 21 July 2020 (“the Decision”). By the Decision, the Judge dismissed the Appellants’ appeals against the Respondent’s decisions dated 13 December 2017 refusing their human rights claims. Those claims were made in the context of an application for leave to remain based on their private and family lives. The First Appellant also claimed to be entitled to succeed on the basis that he had lived lawfully in the UK for ten years and therefore satisfied the provisions of the Immigration Rules (“the Rules”) in relation to long residence.
2. The Appellants are nationals of Bangladesh. As I will come to, the Appellants no longer rely on their claim to long residence. They accept that in the light of the Court of Appeal’s judgment in *Hoque and others v Secretary of State for the Home Department* [2020] EWCA Civ 1357 (“*Hoque*”) (which is no longer subject to any applications for permission to appeal), they are unable to establish that claim. Nonetheless, since the remaining claim and grounds rely on what they say is a disproportionate interference with their private and family lives, it is appropriate to set out their immigration history.
3. The First Appellant came to the UK in September 2009 with entry clearance as a student valid to 30 April 2013. His leave was extended on further application as a Tier 1 post-study worker from August 2012 to 29 August 2014. That leave was further extended as a Tier 2 seasonal worker from 20 November 2014 to 21 January 2018. However, on 12 January 2015, the First Appellant’s leave was curtailed to 2 April 2015. The Second Appellant entered the UK on 11 February 2015 as the First Appellant’s dependent. The Appellants appealed the curtailment decision. Their appeals were dismissed on 13 November 2015 and their appeal rights were exhausted on 3 October 2016.
4. The First Appellant with the Second Appellant as his dependent made an application for further leave as a Tier 1 entrepreneur on 14 October 2016. That was within fourteen days from when the Appellants’ lawful leave came to an end but, following *Hoque* and since, as I will come to, further leave has never been granted, in accordance with the judgment in *Hoque*, they have not had lawful status since 3 October 2016.

5. The Tier 1 application was varied to an application for leave outside the Rules on 29 November 2016 and to an application on human rights grounds on 25 April 2017. The Appellants say that the application was varied again on 15 September 2017 following the birth of the Appellants' child but never addressed. Nothing however turns on that since the Respondent has consented to the position in relation to the Appellants' child being considered within these appeals. The Respondent was also directed by the First-tier Tribunal in the course of these appeals to review her decision in light of the September 2017 and she maintained her decision on 1 May 2019.
6. The issues which arose for determination (leaving aside the long residence issue) were whether the Appellants could succeed within the Rules or outside them. Within the Rules, the only applicable paragraph is 276ADE(1) (vi) ("Paragraph 276ADE"). To satisfy that paragraph, the Appellants would have to show that there are very significant obstacles to their integration in Bangladesh. Outside the Rules, the only applicable article of the ECHR is Article 8.
7. In deciding the appeals, Judge Brannan concluded that the Appellants could not make out their case that they were entitled to remain under the Rules based on the First Appellant's long residence ([32] of the Decision). He also rejected the Appellants' case that there are very significant obstacles to their integration in Bangladesh under Paragraph 276ADE ([59] of the Decision). He went on to consider the claims outside the Rules but, following a 'balance sheet' assessment, he concluded that the decisions refusing leave were not a disproportionate interference with the Appellants' private and family lives ([92] of the Decision).

THE GROUNDS OF CHALLENGE

8. The Appellants appeal the Decision on three grounds. The first was that the Judge had erred in concluding that the Appellants failed to establish their case on long residence. The Judge had relied on an earlier Court of Appeal case which it was said was now accepted by the Respondent to be wrong at least in part. That ground was based on the Respondent's submissions to the Court of Appeal in Hoque. At the time when the grounds were drafted, the judgment in Hoque was awaited. As Mr Biggs has fairly conceded, now that the judgment has been handed down and since permission to appeal that judgment has been refused, the Appellants can no longer succeed on this ground and he did not pursue it.
9. The second ground is concerned with the Judge's assessment under Paragraph 276ADE. The ground as pleaded is that the Judge had failed to consider the First Appellant's inability to find work, the discrimination against the family based on their religion (as Hindus) and the discrimination which the child would face and the impact of that on his interests and well-being. As I will come to, although Mr Biggs sought to expand the grounds by way of amendment the focus of the pleaded case has, as Mr Avery accepted in his submissions, always been the discrimination said to be faced by

Hindus in Bangladesh and the best interests of the child (now children as the Appellants have a further child).

10. The third ground challenges the Judge's assessment of the claims outside the Rules. I can ignore the part of this ground which relies on the reduction in the public interest arising from the First Appellant's long residence. The remainder challenges the Judge's approach of allocating points to various aspects of the Appellants' private and family lives and what are said to be contradictions between the points allocated to various aspects or a lack of rationality. Again, the focus is the position of the child and the discrimination the Appellants are said to face based on their religion.

11. As I will come to, permission to appeal was eventually granted to challenge the Decision by this Tribunal following a "Cart" challenge. The grounds have changed over time. Permission to appeal was initially refused by Upper Tribunal Judge Martin as a First-tier Tribunal Judge on 10 August 2020 in the following terms so far as still relevant:

"4. The grounds also suggest the judge erred in finding no very significant obstacles to the family integrating in Bangladesh due to their Hindu faith. The judge gave reasons for so finding, including that the family could live near/with the second Appellant's family who were in Bangladesh in a different area from where the first appellant's own family had suffered many years ago.

5. I can discern no arguable error of law in the Judge's approach or reasoning."

12. Upper Tribunal Judge Lane also refused permission to appeal in the following terms:

"1. In so far as the appellant relies upon the grounds of appeal which were considered by Upper Tribunal Judge Martin (sitting as a First-tier Tribunal judge) I adopt the reasons given by that judge for refusing permission.

2. As the judge notes, the Court of Appeal authority of *Masum* [2019] EWCA Civ 1070 addressed the same version of HC 395 (as amended) as that applying in the instant appeal; not surprisingly, the judge declined to distinguish that authority. The judge's decision at [31] not to adjourn is not arguably wrong in law; deciding the appeal on the basis of the law pertaining as at the date of the hearing led to no arguable unfairness. Finally, the judge's conclusion that there exist no very significant obstacles to the family reintegrating in Bangladesh was unarguably available to him on the facts as he found them."

13. It is the decision of Upper Tribunal Judge Lane which was the subject of the "Cart" challenge. Permission to apply for judicial review of that decision was granted by Mr Justice Goose on 24 March 2021 with no reasons given. Given the focus of the permission refusal of Upper Tribunal Judge Lane based on the first of the grounds set out above, it is unsurprising that, when the Vice President granted permission following remittal of the appeal to this Tribunal he observed that "[a]lthough no reasons are given in the grant of permission by Goose J, it is clear from the papers that he was persuaded by the arguments based on the then recent decision by the Court of Appeal in Hoque". As it is, nothing turns on these observations because, as I accept,

the guidance of this Tribunal in EH (PTA: limited grounds; Cart JR) Bangladesh [2021] UKUT 0117 (IAC) is that even if permission is said to be granted on limited grounds only, that limitation is of no real effect and all grounds can be pursued. The decision of the Vice President granting permission in this case on 1 July 2021 is not in any event expressed to be a limited one.

14. For those reasons, the Appellants are able to pursue all three grounds. I have already noted Mr Biggs' concession that the first ground could not succeed and the Appellants' abandonment of that ground. The appeal is therefore to be determined on the second and third grounds only. However, immediately prior to the hearing before me, Mr Biggs submitted a skeleton argument and "Proposed Amended Grounds of Appeal". He asked me to allow the amendment. I indicated that I would hear from him on all matters before making any decision. As it is, I have formed the view that it is unnecessary for me to address the proposed amendments for the following reasons.
15. First, the proposed amendment in relation to the second ground adds very little if anything to the pleaded case. Reliance is placed on the case of Secretary of State for the Home Department v Kamara [2016] EWCA Civ 813 ("Kamara") in the ground as pleaded and it is asserted that the Judge failed to follow that guidance. The proposed amendment adds nothing. It is implicit in the challenge as pleaded that the Judge failed to consider certain matters and that the Appellants are asserting that there is inadequate reasoning.
16. Second, in relation to the third ground, the pleaded challenge is as to the allocation of points in relation to various aspects. The express challenge to methodology is implicit in that challenge.
17. Third, the only remaining matter relates to the Appellants' family life and an asserted failure to give that family life weight. There was much discussion in the course of the hearing before me whether there is in fact any interference where a family is to be removed as a unit. I struggle to understand how the test in Agyarko and Ikuga v Secretary of State for the Home Department [2017] UKSC 11 ("Agyarko") can be said to apply here. Agyarko is concerned with the situation where one party to the family is entitled to remain in the UK and cannot be removed. It is about the interference with the family life based on whether the partner entitled to remain can reasonably be expected to leave. That is not this case. Ultimately, however, and since I find in conclusion below that the Judge has made an error of law and I have therefore set aside the Decision, I have decided that it is unnecessary to say any more about this issue. The Appellants can argue this issue if they wish to do so at a resumed hearing and can there explain how it has any bearing on this case.

THE HEARING

18. The matter came 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 appeals to the First-tier Tribunal to do so. The hearing was conducted via Microsoft Teams. There were no technical issues affecting the conduct of the proceedings. I had before me a core bundle of documents relating to the appeal including the Respondent's bundle, the Appellant's bundle as before the First-tier Tribunal and a supplementary bundle which was before the First-tier Tribunal. Due to the nature of the challenge and the errors which I have accepted were made by the Judge, I have not found it necessary to refer to those documents expressly but I have read them and take them into account in what follows.

DISCUSSION AND CONCLUSIONS

Second Ground: "Very Significant Obstacles"

19. Although there is substantial overlap between the Appellants' challenge on the second and third grounds, it remains sensible to take these in order as the Judge's reasoning under the Rules informs his assessment outside the Rules.
20. There were a number of matters relied upon by the Appellants as forming very significant obstacles to integration. Those are set out at [35] of the Decision. Central to those was the assertion that as Hindus, they would face discrimination and in addition their son would not be able to access education and healthcare because of their religion. They also said that the First Appellant was past the age when he could enter a profession in Bangladesh and that they have "no property, savings or capital to start a life in Bangladesh".
21. The main complaint made in the grounds is that the Judge failed to consider the obstacles holistically in accordance with what is said in Kamara. The argument put forward orally by Mr Biggs is that the Judge failed properly to deal with the arguments about discrimination and failed to consider the child's best interests.
22. The Judge accepted that the First Appellant's parents had moved to India ([37] of the Decision). He accepted that something had happened to their property in Bangladesh but did not accept that there was a causal link between that and their move to India due to inconsistencies in the evidence ([51] of the Decision). He also found that there had been some action by the authorities in Bangladesh in relation to the events said to have befallen the First Appellant's parents. The findings in this regard were open to the Judge for the reasons he gave at [37] to [50] of the Decision.
23. Similarly, the Judge was entitled to find that the position in relation to resources on return was not a very significant obstacle to integration in Bangladesh for the reasons given at [51] to [54] of the Decision. In short

summary, although the First Appellant's family are no longer in Bangladesh, the Second Appellant's family still live there. She is also young enough to embark on a career. She studied in Bangladesh. It is also not clear to me what is said to be the First Appellant's career in the UK given he is described in his child's birth certificate as a chef. It is not clear to me whether the claimed age barrier to recruitment into a profession is in relation to any job or just particular professions and what profession is said to be denied to the First Appellant for that reason.

24. The errors made by the Judge however arise in relation to the position of the child and the claimed discrimination. The Judge considers those at [55] to [58] of the Decision as follows:

"Schooling and Medical Care for the Son

55. The Second Appellant along with her family could support the Appellants if they returned to Bangladesh. As a result, even if there is a cost involved, education and medical care can be provided for the Appellants' son. There is no claim that he has any medical conditions or educational needs which cannot be provided for in Bangladesh.

Discrimination Against Hindus

56. There is overwhelming evidence in the Appellants' bundle that Hindus in Bangladesh suffer discrimination and occasional acts of violence, particularly at times of political tension. However, the Second Appellant's family continue to live in Bangladesh and could support the Appellants and their son. Additionally, while the First Appellant's family may have been victimised in their home town, there is no evidence that the Second Appellant has been victimised at all or that the First Appellant would suffer in Dhaka or the First Appellant's home town.

57. Paragraph 276ADE looks at very significant obstacles to integration in Bangladesh which means any part of the country. I am not considering internal relocation as a separate issue as I would if this were an asylum claim. I therefore find that discrimination against Hindus is not a very significant obstacle to integration in Bangladesh.

58. I do bear in mind that the discrimination will have a bearing on the child, whose best interests I have as a primary concern. I consider that further below when balancing the proportionality of the refusal of leave."

25. I can ignore Mr Biggs' submission regarding [57] of the Decision as it is based on a misunderstanding of that paragraph. He suggested that the Judge was there saying that there was no part of Bangladesh where the Appellant could integrate successfully due to his religion. That is the converse of what the Judge is saying. The Judge obviously did not have to consider whether the First Appellant could move to a different part of Bangladesh from his home area in the context of whether it would be unduly harsh for him to do so in the same way as that is considered in an asylum claim. The issue though is whether the Appellants could integrate in Bangladesh when considered as a whole. If, therefore, there were a part of Bangladesh where they could live and integrate, they could not meet

Paragraph 276ADE. It is evident from the final sentence of [57] read also with [56] of the Decision that the Judge found that the Appellants could move back to the area where the Second Appellant's family live and would be able to integrate there.

26. I accept however that there are other errors in the Judge's assessment. First and foremost, in relation to the Appellants' child, the case in relation to his access to healthcare and education is inextricably linked to the case that he would be discriminated against in that regard due to his religion. Although the Judge says at [58] that discrimination would "have a bearing on the child", he does not consider that in the context of the obstacles which the child would face in health and education (if that is what the evidence shows).
27. That leads to a wider problem which is, as Mr Biggs submitted, that the Judge has compartmentalised the obstacles which are asserted to exist and has failed to consider the case holistically in line with the test in Kamara.
28. Finally, I also accept Mr Biggs' submission that the Judge has erred at [58] of the Decision where he postpones to the later assessment of proportionality a consideration of the child's best interests. Whilst my preliminary view is that the proportionality assessment is the appropriate place for those best interests to be considered, if the Judge was going to defer the effect of discrimination in relation to the child's best interests, he did need to do that when he came to consider best interests. As I will come to, that he failed to do. In any event, as I have already said, if discrimination was relevant to the treatment which the child would face on return, that was part of the assessment of very significant obstacles.
29. I make one further observation under this heading regarding whether the position of the child and his private life formed part of the consideration whether there were very significant obstacles to integration. I have referred above to Mr Biggs' insistence on the relevance of the Appellants' family life. It seemed to me that this was because he considered that the private life of the child could not be considered under Paragraph 276ADE and he therefore sought to incorporate the impact on the child as an "insurmountable obstacle" to family life being continued in Bangladesh. Mr Avery appeared to agree that the child's private life could not be considered under Paragraph 276ADE because he was not an applicant in the application which led to the decision under appeal. Whether that is or is not correct is not something I need to decide at this stage but I would observe that in any event the impact on the child is something which clearly needs to be considered within the proportionality assessment and it cannot be considered in an assessment of family life within the Rules as paragraph EX.1 of Appendix FM to the Rules clearly does not apply.
30. In conclusion under this ground, I am satisfied that there are errors of law in the Decision when assessing whether there are very significant obstacles to the Appellants' integration in Bangladesh. One of those errors in relation

to the best interests of the child has an impact also on the third ground to which I now turn.

Third Ground - Proportionality Assessment

31. I begin with the Judge's approach to the proportionality assessment. Having referred to the need for a 'balance sheet' assessment (which is the correct approach), he went on to say the following:

"62. In order to do this transparently and explain the relative weight of each factor, I give points out of 10 for each. I then give a reasoned conclusion as to whether the 'pros' have outweighed the 'cons' such that the refusal decision is disproportionate. If it is, the appeal succeeds. If it is not, then I must dismiss the appeal."

32. Whilst I accept Mr Avery's submission that the case-law in relation to proportionality and the 'balance sheet' assessment does not prescribe any particular form which this should take, the Judge's approach in this case is somewhat unorthodox and perhaps overly literal. This is not an arithmetical points scoring exercise. It is an evaluative assessment. More importantly, as Mr Avery conceded, the use of points to denote the weight given to each aspect of the claim opens up to challenge the apportionment of weight. Finally, it also runs the risk of again compartmentalising the different factors rather than forming an overall evaluation of interference with the Appellants' private and family lives as balanced against the weight of the public interest. Whilst in and of itself, the approach might not amount to a legal error, therefore, for reasons which follow, that approach has led the Judge into errors which are made out.

33. I begin with the error which I identified in relation to the child's best interests under the second ground. As I have already said, the appropriate stage to consider the child's best interests is within the overall balancing exercise. The Judge did not err in considering those interests at that point. His assessment in this regard is set out at [82] of the Decision as follows:

"Similarly, schooling and medical care are not guaranteed by article 8. I have already found that with the support of the Second Appellant's family or from the First and/or Second Appellant's work they could procure schooling and healthcare. I do not have the benefit of an assessment of what support the Second Appellant's family would actually offer. However I still must also bear in mind the best interests of the child as a primary consideration. In the UK the child has the benefit of good free healthcare and education. In Bangladesh that will not necessarily be the case. I accept that in Bangladesh if it is free it will not necessarily be good and if it is good it will not necessarily be free. The child will therefore be better off with his parents in the UK. But that must be considered in the overall balance of the public interest in immigration control and therefore this factor must be given weight with the overall balance. The child has no special health or educational needs. The child is also only two and a half years old and is therefore not yet in formal education. He will also not have difficulty adapting to life in Bangladesh. To this I give only limited weight, numerically two points."

34. I am unimpressed with Mr Biggs' submission that because the Judge found that the child would be better off in the UK that was dispositive of the balance in the Appellants' favour nor even that this factor had to be given heavy weight. To suggest that is so is to elevate the best interests from a primary to a paramount factor which is not the test. Leaving aside whether an allocation of points to this aspect is an appropriate way of dealing with the issue, the reasoning of the Judge read alone is not open to criticism. He finds that the child may well receive better education in the UK but also that he is not used to education or indeed life in the UK given his age and will be better off with his parents wherever they are. That is consistent with case law.
35. The difficulty however arises when one looks back to the Judge's reference at [58] of the Decision (cited at [24] above) in relation to the need to consider the impact of discrimination when assessing the position of the child. At [58] of the Decision, the Judge accepts that "discrimination will have a bearing on the child" but then says at [82] of the Decision that the child will "not have any difficulty adapting to life in Bangladesh". That is an inconsistency. Moreover, at [85] of the Decision, the Judge gives "three points in favour of the Appellants" in relation to "the potential experience of discrimination of the child". That too is inconsistent with the finding at [82] of the Decision and also reflects a failure by the Judge to consider discrimination as part of the best interests of the child if that is indeed relevant to his future position.
36. Mr Biggs also criticised the way in which the Judge dealt with the discrimination issue. That is set out at [83] to [85] of the Decision as follows:

"83. The final ground is the general discrimination against Hindus in Bangladesh. In Strbac Lord Justice Laws went on to consider whether article 8 when combined with prohibition on discrimination in article 14 could give a right and said at paragraph 50:

While in principle such a claim may, depending on the facts, be available, care has to be taken to avoid applications of Article 14 which effectively imply a free-standing right to be protected against discrimination. For that reason the effects upon the substantive right – here arising under Article 8 – said to be perpetrated by the discrimination have to be examined at least as closely as the discrimination itself. In S & K the IAT specifically considered the Article 8 right in the context of the discrimination complained of in Croatia. I have already cited the passage, but repeat it for convenience:

'40...Even though there is discrimination coupled with the difficulties particularly of housing, employment and convalidation to which we have referred, we are satisfied that the threshold of Article 3, in particular of degrading treatment, has not been crossed. Equally, although we recognise that the Article 8 threshold is lower, we are not persuaded that it has been crossed. But even if it has, we are satisfied that removal is justified by a proper control of immigration.'

84. In the present case, I accept that the widespread discrimination against Hindus in Bangladesh is a factor leading to a material difference in the quality of private life compared to that which Hindus could enjoy in the UK. However as found above, I do not find that the First Appellant's parents left Bangladesh because of this, and I find that the Second Appellant's family are able to continue to live in Bangladesh, as did the Second Appellant until 2015, without difficulties.

85. The First Appellant's family's experience of an attack on his family home in 2013 renders his private life most vulnerable because of discrimination. I give this moderate weight, in numeric terms five points in his favour. For the Second Appellant I give slightly less weight because she has personally never experienced problems (and may never do so). For her I give three points in her favour. I also give the potential experience of discrimination of the child the same weight: three points in favour of the Appellants."

37. I have already dealt with the inconsistent findings or failure to consider discrimination in relation to the best interests of the child. Mr Biggs criticised the awarding of five and three points respectively to the Appellants in this regard whilst allocating five points against the Second Appellant due to her inability to speak English. That discloses the difficulties caused by the Judge's approach. The two factors are unconnected. One is relevant to the level of the Second Appellant's integration in the UK (and therefore weighs in favour of the public interest) and the other to the potential obstacles to integration in Bangladesh (which weighs in favour of interference).
38. The Judge could, quite properly, give equal weight to those factors depending on what impact discrimination would have on the Appellants' private lives in Bangladesh. It is in that respect that the error arises. The error may not assist the Appellants. However, it is not clear to me why the First Appellant's private life would be more significantly impacted simply because his parents were directly affected by discrimination in 2013 nor why there would be less interference with the Second Appellant's private life simply because she has never experienced any discrimination. That may be relevant to the evidence about the general discrimination which now exists but the question for the Judge is what would be the interference with the Appellants' private lives following removal based on how they would be treated in Bangladesh and the impact that would have now. One searches in vain for an analysis of that sort either within this section of the Decision or within the Paragraph 276ADE evaluation. As Mr Biggs pointed out, there is a fairly large body of evidence in relation to the allegation of discrimination and although much of that needs to be updated (given the age of these appeals), the Judge did need to set out what he found to be the discrimination which the Appellants would face and therefore what weight should be given to the interference with their private lives.
39. For the foregoing reasons, I accept that the Appellants' grounds are made out on the second and third grounds (although not necessarily entirely for the reasons put forward). I therefore set aside the Decision. I see no reason to preserve any of the findings made. Although there is no criticism made of the Judge's finding about the attack on the First Appellant's parent's house

in 2013, that is part of the Appellants' discrimination case which needs to be considered as a whole based on the up-to-date position. I note in that regard, for example, that there are Home Office Country Information documents which post-date those in the appeal bundles which may well be relevant to the case.

40. The appeals are limited to a human rights claim on Article 8 grounds. The main focus is on the discrimination which the Appellants say they would face on return and the position of the Appellants' offspring. They now have a further child. As Mr Avery accepted, that does not change the complexion of the case and is not a new matter (unless there are any particular concerns relating to that child as to which there is no evidence). The issues which require to be determined are relatively narrow. For those reasons, I see no reason to remit these appeals for re-determination. They have been ongoing for some considerable time and it is therefore appropriate that they be disposed of as soon as possible.
41. Given what I say above about the dated nature of some of the evidence, particularly as regards discrimination against Hindus in Bangladesh and the position of the Appellants' children, I have given a direction below to allow for further evidence to be produced by either party. Mr Biggs also asked that there be an oral resumed hearing. I agree that this would be appropriate. It is not clear to me whether the Appellants have the facilities to give evidence remotely and, in any event, the Second Appellant's spoken English may require that she give evidence via an interpreter. For that reason, I have directed that there be a face-to-face hearing. It is open to the parties to apply for a remote hearing if they would prefer that course. They would need to provide reasons for such an application.

DECISION

The Decision of First-tier Tribunal Judge Brannan promulgated on 21 July 2020 involves the making of an error on a point of law. I therefore set that decision aside. I make the following directions for a resumed hearing in this Tribunal:

- 1. Within 28 days from the date when this decision is sent, the parties may file and serve on the other parties any further evidence on which they wish to rely at the hearing.**
- 2. The resumed hearing is to be listed as a face-to-face hearing on the first available date after eight weeks from the date when this decision is sent. If the Appellants require an interpreter in order to give evidence, they must notify the Tribunal within fourteen days from the date when this decision is sent. Time estimate for the hearing is half day.**

Signed: L K Smith

Upper Tribunal Judge Smith

Dated: 23 September 2021