



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2022-003982
First-tier Tribunal No: HU/05057/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 21 March 2023

Before

UPPER TRIBUNAL JUDGE KAMARA

Between

MMA
(ANONYMITY ORDER MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr G Dolan, counsel
For the Respondent: Ms S Cunha, Senior Home Office Presenting Officer

Heard at Field House on 23 January 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant and any member of his family, is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant or any member of his family. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

Introduction

1. This is an appeal against the decision of First-tier Tribunal Judge Blackwell promulgated on 30 March 2022.
2. Permission to appeal was granted by First-tier Tribunal Judge Beach on 5 September 2022.

Anonymity

3. No anonymity direction was made previously; however, I consider such a direction to be appropriate given that the appellant has been found to experience mental health issues.

Background

4. The appellant, who is a national of Bangladesh, first entered the United Kingdom on 16 June 2013, aged twelve, with entry clearance as a visitor. On 13 August 2013, the appellant made an asylum claim as his mother's dependant. That application was refused, and the appellant's appeals were exhausted as of 30 June 2015. Further submissions were lodged which were also refused by the respondent. The appeal against that decision was dismissed and appeal rights were exhausted on 4 June 2019. The appellant made a further protection claim on 12 June 2019 which the appellant subsequently withdrew on 23 April 2021. On 28 March 2020, the appellant applied for indefinite leave to remain in the United Kingdom on human rights grounds. It is the refusal of that application by way of a decision letter 21 September 2021 which is the subject of this appeal. In essence, the appellant's claim that there were very significant obstacles to his integration in Bangladesh was rejected and there were found to be no exceptional circumstances which would result in unjustifiably harsh consequences for the appellant. The appellant's mental health concerns were not considered to be sufficiently compassionate. The protection issues raised by the appellant were not considered in the decision letter as the respondent wrongly recorded that the appellant's protection claim remained outstanding.

The decision of the First-tier Tribunal

5. The appeal was considered on the papers on 20 March 2022 at the request of the appellant's representatives. The judge noted that a claim was made that the appellant was in danger in Bangladesh following the death of his father but declined to consider this as the judge believed it was a new matter which required the consent of the Secretary of State. The judge found that there were no very significant obstacles to the appellant's integration in Bangladesh and that his private life did not outweigh the strong public interest in immigration control.

The grounds of appeal

6. There are six grounds of appeal. Firstly, that the judge erred in failing to consider relevant matters. Secondly, that the judge failed to consider the expert evidence before him or to give reasons for rejecting it. Thirdly, the judge failed to properly consider the best interests of the children. Fourthly, there was a failure to consider medical evidence. Fifthly, a failure to consider whether the appellant could reintegrate in Bangladesh in a reasonable period. Lastly, the judge failed to consider the consequences of the appellant's removal to Bangladesh.
7. Permission to appeal was granted on the basis sought, with the judge granting permission making the following remarks.

The First-tier Tribunal Judge states at Paragraph 38 of the decision that he has not considered the appellant's concerns about returning to Bangladesh which arise from the death of his father because this is a new matter. The appellant had raised this as part of his human rights application and the respondent had stated in the reasons for refusal letter that she had not considered it because the appellant should make a protection claim. It is arguable that the appellant raising this issue within the human rights appeal was not a new matter and that the First-tier Tribunal Judge should have considered it. The appellant had submitted an independent Social Worker's report. Whilst the First-tier Tribunal Judge makes reference to the appellant's nieces in his findings, there is no reference to this report and no clear assessment of the best interests of the children. The appellant raises other grounds which have less force. However, I have not limited the grant of permission to appeal.

8. The respondent did not file a Rule 24 response.

The hearing

9. Ms Cunha confirmed that there was no Rule 24 response. She set out the Secretary of State's position at the outset. While it was accepted that there was no consideration of section 55 of the Borders, Citizenship and Immigration Act 2009, this error was not material as the children affected by the decision were not the appellant's own. As to the issue of whether the Secretary of State's consent was required for the judge to consider the protection issues, this was a moot point given that the respondent had been considering that claim until it was withdrawn. In any event, any error here was immaterial as there were inconsistencies between the versions of events the appellant had given, and the judge had looked at that claim within his Article 8 assessment.
10. For his part, Mr Dolan argued the following. The appellant's protection claim was not a new factual matter. The judge had been shown evidence that the protection claim was withdrawn and regardless of the strength of the underlying claim, it required consideration. The judge had not got to the heart of the protection case under the ambit of Article 8 and the wrong standard of proof and wrong legal tests had been applied to the appellant's evidence. He summarised the high points of the appellant's case as follows. The judge erred in finding that the protection issues amounted to a new matter, he erred in not considering it, there was a failure to explain why the judge rejected the evidence of the independent social worker as to the existence of a relevant family life between the appellant and his siblings, there was no holistic assessment of the various strands to the appellant's case and the judge misunderstood the evidence of the psychiatrist as to the impact on the appellant's mental state of removal to Bangladesh.
11. Ms Cunha accepted that the judge failed to look at the report of the independent social worker but submitted this was not material because the social worker made findings which were not open to them. The judge was further entitled to place little weight on the psychiatric report as the doctor's conclusions were internally inconsistent. The judge properly considered the judgment in *Kamara* [2016] EWCA Civ 813 and considering section 117B of the 2002 Act, the judge was entitled to find that the 'little weight' provision applied.

12. In reply, Mr Dolan disputed Ms Cunha's analysis of the appellant's evidence and emphasised that the real argument was concerning the existence of family life where there was no little weight provision under section 117B.
13. At the end of the hearing, I announced that I was satisfied that the decision of the First-tier Tribunal contained material errors of law and set it aside in its entirety. Both representatives agreed that it was appropriate for the matter to be remitted to the First-tier Tribunal.
14. Mr Dolan took instructions from the appellant and advised me that the appellant resides in London and wishes to give evidence at the rehearing of his appeal. I agreed that this matter should therefore be listed for an oral hearing at Taylor House, given the proximity of the appellant's address to that hearing centre.

Decision on error of law

15. I will firstly address whether the judge erred in finding that the appellant's references to a fear of return to Bangladesh amounted to a new matter. In Mahmud (S. 85 NIAA 2002 - 'new matters') [2017] UKUT 488 (IAC), at headnote 3, the following was said:

In practice, a new matter is a factual matrix which has not previously been considered by the Secretary of State in the context of the decision in section 82(1) or a statement made by the appellant under section 120. This requires the matter to be factually distinct from that previously raised by an appellant, as opposed to further or better evidence of an existing matter. The assessment will always be fact sensitive

16. The appellant raised his fears of persecution in Bangladesh as part of his previous protection claim, which was withdrawn. Furthermore, the respondent was aware of the appellant's continued reliance on the underlying account which stems from the killing of the appellant's father and uncle, as it is alluded to in the refusal of his human rights claim. The respondent erred in stating in the decision letter that the protection issues would be considered separately because by this stage the appellant had withdrawn his protection claim. The judge was aware of that withdrawal. The content of the appellant's claim was known to the Secretary of State both as part of his withdrawn protection claim as well as his outstanding human rights claim. Therefore, it could not be said that the claim advanced in the appellant's very detailed witness statement was 'factually distinct' from what he had raised previously. It follows, that the judge materially erred at [38] in concluding that the appellant's fears in relation to returning to Bangladesh were a new matter and further erred in declining to consider it. This failure also infects the judge's assessment of whether there were very significant obstacles to the appellant's integration in Bangladesh.
17. In addition to the foregoing, the judge materially erred in simply adopting the view of the Secretary of State as to the existence of a family life between the appellant and his adult siblings without referring to the opinion of an independent social worker on the topic. At [48], the judge dismissed the appeal primarily because he was required to give little weight to the appellant's private life. The error in failing to consider the social work evidence is material given that the appellant has been living in the United Kingdom since the age of twelve and by all accounts remains dependent upon his family. Furthermore, had the judge considered the opinion as to the existence of family life expressed in the social

worker's report, this factor could well have led to a different outcome to the judge's proportionality assessment.

18. The errors identified above suffice to render the decision of the First-tier Tribunal unsafe and the decision is set aside in its entirety.
19. In deciding whether to retain the matter for remaking in the Upper Tribunal, I was mindful of statement 7 of the Senior President's Practice Statements of 25 September 2012. The appellant indicated, via Mr Dolan, that he wished to give evidence at the rehearing of his appeal. Taking into consideration the nature and extent of the findings to be made as well as that the appellant has yet to have an adequate consideration of his human rights appeal at the First-tier Tribunal, I reached the conclusion that it would be unfair to deprive him of such consideration.

Decision

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

The decision of the First-tier Tribunal is set aside.

The appeal is remitted, de novo, to the First-tier Tribunal to be reheard at Taylor House, at an oral hearing, by any judge except First-tier Tribunal Judge Blackwell

T Kamara

Judge of the Upper Tribunal
Immigration and Asylum Chamber

24 January 2023