



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-003511
First-tier Tribunal No:
HU/56144/2021
IA/14883/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued
On the 09 March 2023

Before

UPPER TRIBUNAL JUDGE BLUNDELL
and
DEPUTY UPPER TRIBUNAL JUDGE COTTON

Between

MOULANA KAMAL UDDIN
(NO ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: In person
For the Respondent: Ms Isherwood, Senior Presenting Officer

Heard at Field House on 10 January 2023

DECISION AND REASONS

1. The appellant appeals, with permission granted by First-tier Tribunal Judge Hollings-Tennant, against the decision of First-tier Tribunal Judge Lucas (“the judge”), who dismissed his appeal against the respondent’s refusal of his human rights claim.

Background

2. The appellant is a national of Bangladesh who was born on 4 August 1965. He entered the United Kingdom as a visitor in February 2009 and overstayed upon the expiry of his leave to enter.
3. On 9 November 2020, the appellant made a human rights claim in which he submitted, in summary, that he had two daughters and grandchildren in the UK and that he would prefer to remain here, rather than returning to his wife and son in Bangladesh. There was some reference to his health and to his not having worked since he entered the UK. The appellant also stated that he would be at risk on return to Bangladesh for political reasons.
4. The respondent refused the application on 29 September 2021. She did not accept that there would be very significant obstacles to the appellant's re-integration to Bangladesh because he had lived there for the first 43 years of his life and had a wife and son there. It was not accepted that the appellant's separation from his family in the United Kingdom would be in breach of Article 8 ECHR or that his health conditions (diabetes and high blood pressure) were such as to render his removal contrary to Article 3 ECHR. The respondent discounted the appellant's assertion that he would be at risk on return to Bangladesh because he had confirmed that he did not wish to claim asylum.

The Appeal to the First-tier Tribunal

5. The appellant appealed to the FtT and his appeal came before the judge, sitting at Taylor House on 22 June 2022. The appellant was represented by Mr Gajjar of counsel, the respondent was represented by Mr Iqbal, also of counsel. The judge heard oral evidence from the appellant and his two daughters and submissions from the representatives before reserving his decision.
6. In his reserved decision, the judge rehearsed the evidence and the submissions before turning, in nineteen sentences, to explain the basis upon which he had decided that the appellant was unable to meet the Immigration Rules or to make out a case on Article 3 or 8 ECHR grounds.

The Appeal to the Upper Tribunal

7. The appellant sought and was granted permission to appeal on three grounds. By the first ground of appeal, it was submitted that the judge had given inadequate reasons for finding that there were no very significant obstacles to the appellant's re-integration to Bangladesh. By the second, it was submitted that the judge had reached an irrational conclusion in relation to the appellant's ties to his family in Bangladesh. By the third, it was submitted that the judge had failed to apply the law correctly in relation to paragraph 276ADE(1)(vi) of the Immigration Rules. Judge Hollings-Tennant considered each of these points to have arguable merit.
8. Shortly before the hearing, the appellant's solicitors indicated that they were not in funds and that the appellant would be attending in person. An interpreter was requested for the appellant.
9. At the outset of the hearing, we alerted Ms Isherwood to the fact that we had concerns about the judge's decision. With characteristic frankness, she accepted that the judge's decision was flawed for the reasons described in the grounds but

she submitted that no other decision could properly have been reached. There was, she submitted, simply no case under the Immigration Rules or the ECHR. The appellant was merely an overstayer who wished to remain with his daughters and who had availed himself of NHS services impermissibly. The appellant had accepted before the judge that, in relation to his claim of fear of attack because he is a supporter of an opposition party in Bangladesh, there were 'no cases against him' and that he was not 'a leader'. His wife and child were in Bangladesh, and it was not easy to see why his return might conceivably be in breach of the ECHR.

10. The appellant responded briefly through the Sylheti interpreter. He said that he was a member of a teacher's association in the UK and that he taught students on a voluntary basis. He had distributed leaflets for a Housing Association and had been given an award for this. He had nowhere to stay in Bangladesh as his house had been repossessed. His wife was living with her brother.
11. We reserved our decision at the end of the submissions.

Analysis

12. It is clear – and it was quite rightly accepted by Ms Isherwood – that the judge's decision is vitiated by legal error. The respondent's refusal letter, the appellant's skeleton argument and the respondent's review all made reference to paragraph 276ADE(1)(vi) of the Immigration Rules. It was clearly submitted to the judge, therefore, that the issue which arose under the Immigration Rules was whether the appellant would face very significant obstacles to his integration into the country to which he would have to go if required to leave the UK. As is well known, guidance on the threshold presented by the test of 'very significant obstacles' was given in Parveen v SSHD [2018] EWCA Civ 932 and guidance on the concept of integration was given in SSHD v Kamara [2016] EWCA Civ 813; [2016] 4 WLR 152.
13. There is no reference to paragraph 276ADE(1)(vi) in the judge's decision. There is reference to the test of 'very significant obstacles' in the opening paragraphs of the decision but there is no reference to that test within the judge's analysis. There is no reference to Kamara or Parveen or to any other authority in which this provision of the Rules was construed.
14. It is obviously not necessary for a judge to cite authority or to rehearse the legislative provisions under consideration. What matters is whether the judge has demonstrably applied the correct approach and it should be assumed that a judge in a specialist jurisdiction such as this understands the law unless the contrary is shown. With respect to the judge, we cannot make that assumption in this case.
15. The nineteen sentences of analysis which appear in [30]-[40] of this decision appear to conflate the analysis under the Immigration Rules and that which should have taken place outside the Rules under Article 8 ECHR. Structurally, it is appropriate for a judge to begin with consideration of the Rules because a favourable conclusion in that regard is dispositive of the appeal and a negative conclusion in that regard is the starting point from which consideration of Article 8 ECHR can take place: TZ (Pakistan) v SSHD [2018] EWCA Civ 1109; [2018] Imm AR 1301 refers. At the start of the judge's analysis, however, we see reference to the appellant's ties to the UK and to the fact that he accrued those ties when 'he

had no basis to be here'. That is an aspect of the Article 8 ECHR analysis and has no part to play in the analysis under the Immigration Rules.

16. Insofar as the judge did turn his mind to the Immigration Rules, his analysis is almost entirely devoid of reasons. He said that the appellant's assertion that he had no contact with his wife was 'clearly contrived' but that was to state a conclusion, not to provide reasons for that conclusion. He undertook no reasoned consideration of the appellant's suggestion that his life would be in danger in Bangladesh, other than to say that these assertions were very generalised and that he had made no claim for asylum. It is not clear whether these matters were factored into his analysis under the Immigration Rules (such as it was) or whether it was considered to be an ECHR consideration.
17. The judge was entitled, in our view, to conclude that there was no Article 3 ECHR medical claim. It is surprising that that submission was ever made, given the nature of the appellant's conditions and the treatment he can obtain in Bangladesh. But the analysis of Article 8 ECHR is confused and unstructured. There is no need in every case to follow the staged analysis recommended by Lord Bingham in R (Razgar) v SSHD [2004] 2 AC 368. Nor is it a requirement that judges adopt a 'balance sheet' analysis of proportionality, despite the repeated judicial endorsement, at all appellate levels, of that approach. But the judge's decision does not make clear whether he accepted that the appellant has a family life with his daughters, particularly the daughter with whom he was living on the south coast. It does not make clear whether and on what basis Article 8 was found to be engaged. It is by no means clear to us what factors were said to militate for and against the appellant in the assessment of proportionality. And there is no reference whatsoever to the statutory public interest factors Part 5A of the Nationality, Immigration and Asylum Act 2002. With the exception of the inevitable conclusion in relation to Article 3 ECHR, therefore, the decision is deficient in every respect.
18. That brings us to the basis upon which Ms Isherwood sought to maintain the dismissal of the appeal. She did not submit, nor could she have submitted, that the decision of the FtT was free of legal error. Instead, she submitted that the only proper outcome was the dismissal of the appeal, given the paucity of evidence before the judge that there was any semblance of a case inside or outside the Immigration Rules. We had anticipated that submission but we think it right to observe that it was attractively made by Ms Isherwood.
19. Having reflected carefully on that submission, however, we are unable to accept it. This was undoubtedly a weak case and it may ultimately be dismissed but we do not think that outcome is inevitable, and that is undoubtedly the test we must apply: IA (Somalia) v SSHD [2007] EWCA Civ 323, at [15]. We recall in this connection the words of Megarry J at p402 of John v Rees [1970] Ch 345, about the danger inherent in viewing a case as open and shut. It is conceivable, to our mind, that the appellant might be able to establish that he has a family life with his daughter(s). It is conceivable that he might persuade a judge that he is unable to return to his home area as a result of his political or religious beliefs. It is conceivable that he might be able to show that he has lost some of his ties to Bangladesh in the 14 years since he came to this country. We are very far from suggesting that the appellant has a good case in any of these respects but we are unable to say with any certainty that his case under the Rules and the ECHR is wholly unable, on any proper view, to succeed. The human rights claim was not certified as clearly unfounded under section 94 of the Nationality,

Immigration and Asylum Act 2002 and we consider that decision was correct. There is here the semblance of a human rights case and we do not accept Ms Isherwood's able submission to the contrary.

20. We have therefore come to the conclusion that the First-tier Tribunal failed to engage with this appeal in any meaningful way and that the proper course is to set aside that decision in full and remit the appeal to be heard afresh by a judge other than Judge Lucas. In reaching that conclusion, we have taken account of paragraph 7.2 of the Practice Statement and of the recent decision of the Court of Appeal in AEB v SSHD [2022] EWCA Civ 1512.

Notice of Decision

The decision of the FtT contained errors of law which were material to the outcome of the appeal. That decision is accordingly set aside in full. The appeal is remitted to the FtT for consideration afresh by a judge other than Judge Lucas.

M.J.Blundell

Judge of the Upper Tribunal
Immigration and Asylum Chamber

25 January 2023