IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-003819
First-tier Tribunal No: PA/01199/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 14 June 2023

Before

UPPER TRIBUNAL JUDGE KAMARA

Between

IS
(ANONYMITY ORDER MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:
For the Appellant: Mr S Hingora, counsel instructed by Law Valley Solicitors
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 or 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

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1. This is an appeal against the decision of First-tier Tribunal Judge I Burnett promulgated on 7 July 2022.

2. Permission to appeal was granted by First-tier Tribunal Judge Karbani on 9 August 2022.

Anonymity

3. An anonymity direction was made previously and is maintained because this appeal concerns a protection claim as well as mental health issues.

Background

4. The appellant is a national of Bangladesh. He first arrived in the United Kingdom on 24 February 2010, with leave to enter as a Tier 4 migrant. He made an in-time application for further leave to remain as a student, which was rejected on 12 October 2013. A further application was granted on 25 November 2013. The appellant's leave to remain was curtailed on 10 March 2015 with no right of appeal. On 27 October 2016, the appellant sought leave to remain outside of the Immigration Rules. That application was rejected on 23 November 2016. On 15 May 2017, the appellant was served with an enforcement notice as an overstayer. He made an asylum application on 16 May 2017 That claim was refused on 19 September 2017 and his appeal against that decision failed, with his appeal rights becoming exhausted on 14 December 2018. On 9 April 2020, the appellant made further submissions on protection and human rights grounds. Those further submissions were refused on 6 November 2020. It is this decision which is the subject of this appeal.

5. In refusing the appellant's protection submissions, the respondent placed weight on the findings of the First-tier Tribunal judge who heard the appellant's appeal in 2018, noting that the judge did not find the appellant's claim to be at risk in Bangladesh owing to his political opinion to be credible. As for the new information provided in the form of a First Information Report (FIR), the respondent considered that they were worthy of no significant weight. The psychological report provided by the appellant received criticism because there was no reference to the credibility findings before the previous judge. The respondent further noted that the appellant's evidence of sur place activities predated his appeal and there was no explanation as to why it was not available to the First-tier Tribunal. The appellant's private life Article 8 claim was refused on the basis that the requirements of the Rules were unmet and that there were no exceptional or compassionate circumstances. The appellant's mental health issues did not show a real risk of a breach of his Article 3 ECHR rights.

The decision of the First-tier Tribunal

6. At the hearing before the First-tier Tribunal, the focus of the appellant's case was on his protection claim as well as paragraph 276ADE (vi) of the Rules, in relation to the mental health aspect. The appellant was treated as a vulnerable witness. The appellant's claims that he was at risk of persecution, or a breach of his human rights were rejected.

The grounds of appeal

7. In the grounds of appeal, it was argued, firstly, that the judge had made four discrete errors in relation to the protection claim. Secondly, the judge's

assessment of the appellant's mental health was too brief in relation to the Article 3 claim. Thirdly and lastly, the judge made an error in relation to his consideration of whether there were very significant obstacles to the appellant's re-integration in Bangladesh.

8. Permission to appeal was granted on the basis sought, with the judge granting permission making the following remarks.

> It is an arguable error of law that the Judge has not considered the medical expert evidence and has arguably failed to provide adequate reasons for his findings on Article 3.

9. The respondent filed a Rule 24 response dated 12 September 2022. In it, the appeal was opposed. With respect to the second ground, the respondent made the following comment.

> It is perhaps unsurprising that the FTTJ's Art 3 summary was brief when it was clearly not relied upon with any great vigour by Counsel at the hearing [9/37]. The FTTJ's findings of fact on the protection claim (which the SSHD contends are sustainable and devoid of material error) demonstrate that any subjective fear of return is not objectively well founded. The FTTJ found that treatment was available and significantly the Appellant would have family support having rejected his account of a lack of family connections as part of the holistic credibility assessment. The SSHD contends in context the FTTJ's finding whilst brief was adequately reasoned.

The error of law hearing

10. When this matter came before me, I heard submissions from both representatives who relied upon their respective written arguments. Other than several comments which did not appear in the grounds of appeal, it is fair to say that the main thrust of Mr Hingora's submissions were on the judge's treatment of the Article 3 issue. At the end of the hearing, I reserved my decision.

Discussion

11. The first ground of appeal raises four areas of concern. Firstly, in ground 1A, the judge is criticised for describing the photographs of the appellant at meetings as 'staged' without providing reasons. In his submissions, Mr Hingora contended that the judge should have given more consideration to the photographs. This is not an entirely accurate summary of the judge's findings regarding the photographs which were at [56] of the decision and reasons.

> There are a number of pictures of the appellant involved in meetings. Those do not show the appellant taking a prominent role. He is one of many in the audience. It does not show he is an organiser or leader. Many appeared "staged". I give little weight to these photographs to support the appellant's claims that he will be at risk on return to Bangladesh.

12. The judge did not err in his consideration as to whether the photographs supported the appellant's claimed sur place activities in the United Kingdom. It is apparent from [56] that the judge accepted that the appellant was shown at meetings, however the judge was entitled to form the view that many of the photographs appeared to be staged. The reasons provided by the judge for giving little weight to the photographs were more than adequate. Mr Hingora argued

that there was a lack of holistic assessment of the evidence, however at [63] the judge confirms that he has considered all the evidence in the round before arriving at his conclusions. There is no substance to the criticism set out in the grounds.

13. Complaint is made in 1B of the grounds that the judge in noting the appellant's failure to adduce the FIRs at his previous appeal during 2018, failed to consider the explanation that the appellant was not aware of the existence of the FIRs until January 2020. This ground is misconceived as the judge made no criticism of the appellant for failing to adduce the FIRs earlier. The judge's comments regarding a failure to adduce material at the previous appeal concerned one of the news articles [53], which caused the judge to note there was no good reason why it was not produced earlier.

14. Mr Hingora changed the focus of the argument on ground 1B to assert that there was no assessment of the substance of the articles in the round. There is no merit to that argument given the plethora of sustainable reasons provided at 53-55 by the judge as well as the judge's self-direction at [52] and [63] that he had considered all the evidence in the round. The judge was entitled to note that the articles post-dated the FIRs and as such could not have plausibly influenced the Bangladeshi authorities to file false charges for politically motivated reasons.

15. In ground 1C it is contended that the judge failed to consider the impact of the appellant being perceived to be a leader. The support for that contention came from the online news articles, both of which described the appellant as being 'the communist party leader.' The appellant has never claimed to be a leader. The grounds criticise the judge for not considering the 'impact' on the appellant if he is perceived to be a PCBC leader, albeit there is no discussion, let alone evidence, of whether these articles might come to the attention of the Bangladeshi authorities and no reference to any background country evidence which sets out what this claimed impact might be. Mr Hingora did not expand on the grounds.

16. It is hard to see what the complaint in ground 1 D is. It is simply said that the judge failed to properly consider the fact that the articles pre-dated the appeal hearing. Mr Hingora rightly had nothing to add here.

17. I find that none of the complaints made in ground one are made out and they amount to little more than poorly argued disagreements with the findings of the First-tier Tribunal.

18. I now consider the second ground, in which it was argued that the judge's findings were too summary in relation to the Article 3 claim and that there had been a failure to consider the medical and country evidence. The judge's reasons for dismissing the Article 3 claim were indeed brief, in that he simply stated that there was 'insufficient evidence' to establish such a claim. The judge was entitled to reach this view based on the case advanced before him.

19. In his submissions, Mr Hingora described the appellant's Article 3 case as being the centrepiece of the appeal. This is a far from accurate description. The First-tier Tribunal judge was assisted by submissions from experienced counsel, Mr Michael Biggs. At the outset, Mr Biggs informed the judge that reliance was placed on paragraph 276ADE in terms of the mental health aspect [9]. Otherwise, the judge was invited to 'look at article 3.' When it came to submissions, the judge records at [37], that in respect of mental health, counsel for the appellant

focused on paragraph 276ADE. There is no indication that any submissions were made in respect of Article 3.

20. Mr Hingora prayed in aid the skeleton argument he drafted for the First-tier Tribunal, stating that Article 3 was "fully" argued therein. It is apparent from an examination of that skeleton argument under the heading 'Issues in this appeal,' that there was no reference to Article 3. The four issues set out at paragraph 8 of the skeleton were that firstly, whether there was a well-founded fear of persecution; secondly, whether a claim for Humanitarian Protection was established; thirdly, whether there were very significant obstacles to integration and lastly, whether removal would disproportionately breach the appellant's rights under Article 8. Mr Hingora was correct in saying that there was a reference to Article 3 in the skeleton argument, however this began at paragraph 19 as part of some somewhat dubious arguments under the Refugee Convention, it being argued that the appellant is a member of a particular social group owing to his mental health problems. In addition, there is a lone, poorly argued, paragraph which does little more than assert that the evidence shows that the appellant would face an infringement of his Article 3 rights. The judge was entitled to rely on the oral submissions of experienced counsel and cannot be criticised for failing to consider arguments which were never put.

21. Contrary to what was said in the grounds, the judge considered and accepted the content of the medical and country evidence before him, including at [44], [48][60] and [62].

22. In the alternative, if the judge was wrong not to explore the Article 3 claim further, it was not a material error given that at no stage has anything other than a cursory argument been put that the appellant's removal would result in him being exposed to a serious, rapid and irreversible decline in his health resulting in intense suffering or a serious reduction in life expectancy. Indeed, no such submission was made by Mr Hingora before me.

23. The third ground contains a single area of criticism relating to the judge's determination of Article 8 in that it is briefly stated that the judge erred in relation to assessing 'insurmountable obstacles' as there was no consideration of the evidence relating to the availability of employment. Mr Hingora did not expand on this ground and there is no indication from the skeleton argument or the decision and reasons that the judge was referred to any evidence in this regard.

24. There are no material errors of law in the decision of the First-tier Tribunal, and it is upheld in its entirety.

<u>Decision</u>

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

The decision of the First-tier Tribunal is upheld.

T Kamara

Case No: UI-2022-003819
First-tier Tribunal No: PA/01199/2021

Judge of the Upper Tribunal
Immigration and Asylum Chamber

24 January 2023

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent.

2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically).**

3. Where the person making the application is in detention under the Immigration Acts**, the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.

4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically).**

5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.

6. The date when the decision is "sent' is that appearing on the covering letter or covering email.