



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-000407

First-tier Tribunal No: PA/51215/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 24 August 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE SAFFER

Between

SHIPON MIAH
(No anonymity order made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Renee of Counsel

For the Respondent: Mr Diwnycz a Senior Home Office Presenting Officer

Heard at Manchester Civil Justice Centre on 9 August 2023

DECISION AND REASONS

1. Mr Miah was born on 1 January 2001. He is a citizen of Bangladesh. He appealed against the decision of the Secretary of State dated 12 March 2022, refusing his international protection and human rights claim. Mr Miah withdrew his international protection appeal at the hearing on 12 December 2022. The Secretary of State appeals against the decision of FtT Judge Chowdhury, promulgated on 24 January 2023, allowing the human rights appeal. For consistency with the proceedings before the First-tier Tribunal I will refer to Mr Miah as the Appellant and to the Secretary of State as the Respondent.

Permission to appeal

2. Permission was granted by FtT Judge Chohan on 20 February 2023 who stated:

“3. I have considered the judge’s decision as a whole and it is not the case that the judge has not given reasons. The difficulty is with paragraph 44 where, in

essence, the judge summarises the reason why the appeal should succeed. However, the judge states that there would be insurmountable obstacles, whereas the test is very significant obstacles. In any event, in my view, I do find that the judge has not given adequate reasons for finding that the appellant could not return to his home country.”

Grounds seeking permission to appeal

3. The grounds seeking permission to appeal stated:

“1. The FTTJ has allowed the appeal on Article 8 having found that the appellant came to the UK as a child and has no adult experience of living in Bangladesh. The FTTJ notes that the appellant speaks English, however this should be no more than a neutral factor.

Rhuppiah v Secretary of State for the Home Department [2016] EWCA Civ 803

24. The FTT rejected a submission on behalf of the appellant that section 117B(2) meant that her proficiency in English should be treated a matter which militated positively in her favour in the proportionality assessment. In the FTT's view, under that provision it was just a neutral factor: FTT paras. [54]-[55]. “[Section 117B(2)] does not provide that the public interest is served by permitting those who speak English to remain in the UK. It provides that it is in the public interest for those seeking to remain in the UK to be able to speak English. An inability to speak English is therefore a matter to be weighed against an individual, whereas an ability to do so seems to be a neutral factor ...” (FTT para. [55]).

25. At para. [56] the FTT also reached a similar conclusion in principle in relation to financial independence under section 117B(3): “It is in the public interest that those who seek to remain in the UK are financially independent, but it is not necessarily in the public interest that financially independent persons are permitted to remain in the UK.” In the event, however, as explained above, the FTT found that the appellant was not financially independent, so section 117B(3) meant this was a negative factor in her case.

2. It is further submitted that the FTTJ misdirects themselves in giving the appellant credit for withdrawing his asylum appeal on the day of the hearing [31] when it was made in 2017, thus resulting in a waste of public resource. It is submitted that the FTTJ has failed to have regard to the impact of the appellant’s behaviour on the public purse, this is contrary to s.117B of the Nationality, Immigration and Asylum Act 2002.

3. It is further submitted that the FTTJ errs in placing undue weight on the appellant’s employment which he has held for only 3 months. In any event the evidence of this employment was uploaded onto the Tribunal CCD platform after the hearing and therefore the SSHD has had no opportunity to cross-examine.

4. The appellant has family in Bangladesh who would be able to support the appellant while he readjusts to life in Bangladesh, there is therefore no risk that he would become destitute.

5. It is submitted that the FTTJ has erred in failing to give the appropriate weight to the appellant’s private life in the UK which has been acquired while he had no leave. There is no basis for finding that the appellant will face very significant obstacles or why there are exceptional circumstances that outweigh the public interest in his removal, given his poor immigration history.”

Rule 24 notice

4. There was no rule 24 notice.

Oral submissions

5. Mr Diwnycz conceded that if the Judge applied the “insurmountable obstacles” test, then the “very significant obstacles” test was also met as that was a lower threshold. He submitted however that the Judge glossed over the issues and the reasons for finding even that lower test were met were not adequate.
6. Mr Renee submitted that the findings are found in [26 to 46] with the reasons being contained in [33, 34, 35, 44, and 45]. The proportionality test has been considered. The decision is balanced as the Judge criticises the Appellant regarding his twin brother. The Judge notes that the Appellant speaks Bengali and spent time in Bangladesh [32], that his private life carries less weight [42], and that there are neutral factors of English language ability and not being a burden on the tax payer [45]. The grounds are just a disagreement with the decision. A generous conclusion does not amount to a material error of law.

The First-tier Tribunal decision

7. The Judge made the following findings:

“25. There appears to be, certainly on the part of the Appellant’s family, an aim to circumvent the immigration rules of this country. It is not disputed that the Appellant arrived in the UK when he was 14 years of age. There are college certificates dating from 2018 and Haringey Social Services were aware of him from 2018 (see PDF page 34).

26. It is his uncle’s account (see PDF page 55) that the Appellant was deposited on his doorstep after his mother contacted him to tell him she was sending the Appellant to him.

27. The Respondent states that the Appellant’s fingerprints were matched with a Visa Application form (VAF) dated in November 2013, made in the name of MD Ripon Miah. Mr Renee submits that there is no expert evidence on this. He is correct. However the coincidences do not end here. The sponsor’s UK name and address used for the Visa Application Form in November 2013 is the same as that of the Appellant’s uncle.

28. In addition, the home address provided in the VAF in Bangladesh, i.e. in Goala Bazar, in Sylhet Bangladesh is the same as that provided by the Appellant.

29. This Appellant provided his father’s name as “Newar Miah” and this Ripon Miah (apparently managing to also enter the UK to claim asylum) also provided his father’s name as “Neor Miah”. I consider these to be merely differences in transliteration of the same name. Moreover the address given in Ripon’s asylum claim for where his father lives is the same as that given as the Appellant as his residential address in the UK.

30. The Appellant, I find on the balance of probabilities, with the guidance (or direction) of either his uncle and/or others provided a fictitious asylum claim in 2017. The Appellant would have been around 16 years old at that time. He is listed with a claimed twin brother “MD Ripon Miah” with the same date of birth, by what appears to be his current legal representatives, in a letter dated 16 June 2017 (see PDF page 168 of stitched bundle). I find it is more than probable than not that the Appellant has the benefit of a brother, father and uncle in the UK at least. There is no letter of complaint provided to me about the solicitor getting the facts wrong or “mixed up” with Ripon Miah’s details. There is no witness statement from the solicitor to explain the circumstances.

31. Now the Appellant has retracted his claim for asylum, which is to his credit. He has moved away to Preston, from London, to pursue his own career path.

32. Mr Renee on behalf of the Appellant submitted that he relies only on Article 8 of the ECHR. He has been resident in the UK since 2015, i.e. for some seven years, since he was 14 years old. The Appellant speaks Bengali and spent all of his formative years in Bangladesh. However, I also note that the Appellant has no adult experience of living in Bangladesh.

33. Supreme Court jurisprudence in **Zoumbas [2013] UKSC 74** and **KO (Nigeria) [2018] UKSC 53**, expressed the general principles relating to children's "best interests" warranted that account needs to be taken in applying Article 8 include the principle that "a child must not be blamed for matters for which he or she is not responsible, such as the conduct of a parent".

34. A corollary of this principle is that it would be wrong in applying Article 8 to treat the public interest in this Appellant's removal as increased or the weight to be given to his private life as reduced by reason of the actions of his family for which he was not in any way responsible.

35. The Appellant has been working as a "complex carer" and in addition to his oral evidence has provided an employer's letter corroborating the same. He has provided a number of certificates indicating the work he has undertaken. I also accept that home care workers are on the shortage application list. I find that the Appellant has necessarily built up some form of private life. I also find that the Appellant has at least family life with his uncle here.

36. Relevant social ties obviously include relationships with friends and relatives, as well as ties formed through employment. A person's social identity is not defined solely by such particular relationships but is constituted at a deep level by familiarity with and participation in the shared customs, traditions, practices, beliefs, values, linguistic idioms and other local knowledge which situate a person in a society or social group and generate a sense of belonging.

37. I go on to consider the traditional five stage test set out in the judgement of Lord Bingham in **R (Razgar) v SSHD [2004] UKHL 27**. I have no evidence as to the nature of any Article 8 claim to private life other than that I have detailed above.

38. So far as question (3) and (4) are concerned if they are to be answered in the affirmative, the question to be considered would therefore be whether the decision to refuse the Appellant leave is disproportionate in all the circumstances, keeping in mind the House of Lords guidance in Huang.

39. I consider the proper focus in relation to the **Razgar** question (5); is the proportionality assessment. I find on balance that these matters weigh in favour of the decision being a disproportionate one.

40. The importance of upbringing and education in the formation of a person's social identity is well recognised, and its importance in the context of cases involving the Article 8 rights of persons facing expulsion has been recognised by the European Court. Thus, in the **Üner** case at paragraph 58, the court considered it "self-evident" that, in assessing the strength of a foreign national's ties with the "host" country in which they are living, regard is to be had to "the special situation of aliens who have spent most, if not all, of their childhood in the host country, were brought up there and received their education there."

41. The European Court returned to this theme in **Maslov**, stating (at paragraph 73) that:

"... when assessing the length of the applicant's stay in the country from which he or she is to be expelled and the solidity of the social, cultural and family ties with the host country, it evidently makes a difference whether the person concerned had already come to the country during his or her childhood or youth, or was even born there, or whether he or she only came as an adult."

42. I am aware, and have given weight to, the fact the Appellant had built his private life during a period when he was here unlawfully and therefore the weight I give to his private life is lessened. I have also considered that the Appellant came at 14 years old and therefore the majority of his childhood was in Bangladesh and have balanced this with the fact the Appellant has been here for seven years.

43. I also had regard to the following passage from the judgment of Sales LJ (with whom Moore-Bick LJ agreed) in **Kamara v Secretary of State for the Home Department [2016] EWCA Civ 813; [2016] 4 WLR 152**, at paragraph 14:

"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."

44. I have had particular regard to the fact that this Appellant has not had any adult experience of living in Bangladesh. I find he is currently employed in a recognised shortage occupation. Given his work and education in this country I find on any view this Appellant is an 'insider' in the UK, as his life here is the only life he knows. He is integrated into this country such that his removal to a country where he has had no adult experience would present insurmountable obstacles for him.

45. Having also fully considered statutory matters under Section 117B of the Immigration Act 2014 I consider all matters highlighted with reference to the rules in addition to the impact of the Respondent's decision to refuse leave to the Appellant. I have placed great weight on the importance of maintaining immigration control. It is clear the Appellant's family have attempted to circumvent it however the Appellant arrived as a minor. The Appellant is a fluent English speaker and has also undertaken a number of English language courses. He is working, moreover, in a shortage occupation, and financially self sufficient. He is not a burden on the tax payer. These are neutral factors. I find the Respondent's decision is disproportionate, given the evidence and circumstances."

Discussion

8. There are numerous authorities that confirm that;

- (1) the weight of competing evidence is pre-eminently a matter for the trial Judge as is the credibility of oral testimony (see for example **Perry v Rayleys Solicitors [2019] UKSC5**),
- (2) judicial restraint should be exercised when the reasons that a Tribunal gives for its decision are being examined (see for example **R (Jones) v First-tier Tribunal and Criminal Injuries Compensation Authority [2013] UKSC 19**),
- (3) the Upper Tribunal was only entitled to interfere with findings in fact made by the First-tier Tribunal if those findings were infected by some error of law (see for example **YZ v Secretary of State for the Home Department [2017] CSIH 41**), and
- (4) the mere fact that one Tribunal reaches what may seem to be an unusually generous view of the facts of a particular case does not mean that it has made an error of law (see for example **Mukarkar v Secretary of State for the Home Department [2006] EWCA Civ 1045**).

9. Regarding [1] of the Grounds, there is no merit in this as the Judge identified the Appellant's ability to speak English and current financial independence as neutral factors in [45] of the decision.

10. Regarding [2] of the Grounds, the Judge did materially err in crediting the Appellant with withdrawing his asylum appeal on the day of the

hearing as the assessment of that issue by the Respondent was a burden on the public purse and is a factor which weighs against the Appellant pursuant to s117B of the Nationality, Immigration and Asylum Act 2002.

11. Regarding [3] of the Grounds, there has been no challenge to the assertion by the Respondent that “the evidence of this employment was uploaded onto the Tribunal CCD platform after the hearing and therefore the SSHD had had no opportunity to cross-examine.” Bearing in mind the finding at [44] that “he is currently employed in a recognised occupation shortage” it was unfair for the Judge to take that as a positive factor on the Appellant’s private life appeal (which itself has limited weight) without giving the Respondent the opportunity to examine that evidence and make submissions on what would appear at the time to be very recent employment. That amounts to a material error of law.
12. Regarding [4] of the Grounds, there has been no challenge to the assertion by the Respondent that the “appellant has family in Bangladesh who would be able to support the appellant while he readjusts to life in Bangladesh, there is therefore no risk that he would become destitute”. That is plainly a factor which impacts on the question of his ability to integrate in Bangladesh and of whether there were very significant obstacles in him doing so. That amounts to a material error of law.
13. Regarding [5] of the Grounds, the weight to be attached to the private life acquired while here is a matter for the Judge and of itself would not amount to a material error of law.
14. However for the reasons given above in [10 to 12], the Judge has materially erred as the reasons did not address the question the Judge was required to address. It is not just a matter of weight, or of taking a generous view of the evidence, but in this case the Judge did not address key elements of the appeal and has not given adequate reasons for the findings made.

Notice of Decision

15. The Judge made a material error of law. I set aside that decision.
16. Mr Renee submitted that if I found that there was a material error of law, I should emit the matter to the First-tier Tribunal. Mr Diwnycz said it was a matter for me.
17. Having considered **Begum (Remaking or remittal) Bangladesh [2023] UKUT 00046 (IAC)**, I agree with Mr Renee and am satisfied for the above reasons that there has not been a fair hearing, and it is not just limited evidence that would need to be given but a complete rehearing. Accordingly I remit the appeal back to the First-tier Tribunal for a de novo hearing not before Judge Chowdhury.

Laurence Saffer

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

9 August 2023