



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-002828

First-tier Tribunal No: HU/00249/2023

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 14th of November 2023**

Before

UPPER TRIBUNAL JUDGE PICKUP

Between

**Bashir Ahmed
(NO ANONYMITY ORDER MADE)**

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr Murphy of Counsel, instructed by S&K Law Solicitors
For the Respondent: Mr M Parvar, Senior Home Office Presenting Officer

Heard remotely at Field House on 8 November 2023

DECISION AND REASONS

1. By the decision of the Upper Tribunal issued on 5.10.23, the appellant, a citizen of Bangladesh who came to the UK as a domestic worker in 2004 but unlawfully overstayed, has been granted permission to appeal to the Upper Tribunal against the decision of the First-tier Tribunal (Judge Farmer) promulgated 5.5.23 dismissing his appeal against the respondent's decision of 7.6.22 to refuse his application for Leave to Remain (LTR) pursuant to the 'very significant obstacles' route under paragraph 276ADE and in the alternative on private life grounds pursuant to article 8 ECHR.
2. The renewed grounds address at length the First-tier Tribunal refusal of permission, unnecessarily so, given that the Upper Tribunal makes an independent assessment of the merits of the grounds. In summary, the original grounds argued that the First-tier Tribunal's decision was procedurally unfair by having refused the application for an adjournment to adduce evidence that the appellant was suffering from depression. It was also argued that the First-tier Tribunal erred in stating that the appellant could 'explore' contact with his family

in Bangladesh, and that the article 8 proportionality balancing exercise was flawed in that the circumstances of the case demonstrated that removal of the appellant was disproportionate, reliance being placed on the appellant's long absence from Bangladesh.

3. In granting permission, Upper Tribunal Judge Owens considered it at least arguable that the refusal to adjourn to allow the appellant to adduce further evidence was procedurally unfair. No comment was made about the other grounds.
4. Following the helpful submissions of the two legal representatives, I reserved my decision to be provided in writing, which I now do.
5. I begin by observing that in granting permission on 9.10.23, the Upper Tribunal directed that "*Counsel for the appellant is to serve on the respondent and file at the Tribunal a copy of the notes of the hearing in relation to the application for the adjournment no later than 7 days prior to the hearing.*" Those directions have not been complied with and Mr Murphy did not seek to adduce any further evidence. It was particularly surprising that there was no Rule 15 (2A) application to adduce evidence relating to the appellant's mental health, particularly since the case should have been prepared on the basis that if an error of law was found the Upper Tribunal would proceed to remake the decision in the appeal on the evidence before it. Mr Murphy confirmed that there was no such expert or indeed any other evidence.
6. It seems that on the day of the appeal hearing before the First-tier Tribunal, Mr Murphy decided that expert medical evidence ought to be obtained to support the assertion in the appellant's witness statement that he was depressed. He, therefore, sought an adjournment, which was refused for the reasons set out in the decision.
7. I bear in mind when considering the grounds of appeal that when conducting a hearing any judge must abide by the overriding duty to deal with cases fairly and justly. Furthermore, after refusing an adjournment, a judge should keep the matter under review, in the event that the evidence adduced merited obtaining further evidence on an important issue.
8. However, the First-tier Tribunal appeal process is not a rolling opportunity for an appellant to perfect his case as and when thought necessary. In the interests of justice, cases must proceed on a relatively tight timetable. Pursuant to standard directions, the appellant was required to serve his evidence, the appellant's bundle, in advance of the First-tier Tribunal appeal hearing and did do so. Effectively, the appellant had had full opportunity to prepare his case and must be assumed to have made a considered decision as to what evidence to put before the First-tier Tribunal. I note that although he has had legal representation throughout, it was apparently never considered appropriate to seek any expert medical evidence, even though his witness statement dated 25.4.23 asserted, "*I have been continuously under depression ever since and I pass my days with extreme mental agony and pain. I sometimes see my future is bleak and uncertain, I have also stated about my mental state and depression in my application form.*" He went on to state that he had attached "*numerous medical documents to show the state and level of my depression which currently I am experiencing.*" However, none of the several pages of medical evidence makes any reference to the appellant suffering from depression. That medical evidence suggested that in 2017 he was diagnosed with tension-type headache and in 2020 with sleep apnoea. It does not appear that the appellant ever reported symptoms of depression to his doctors or consultants. Mr Murphy suggested that

the appellant was being treated with anti-depressant medication, but it is clear from the medical evidence that the medication in question was prescribed to address the diagnosis of tension headaches and for Mr Murphy to suggest that this was evidence supporting the claim of depression is to stretch the evidence beyond its limits.

9. Unarguably, on the facts set out above, the judge was entitled to note that the claim of depression was not supported by any of the existing medical evidence. The judge did not err by suggesting that the appellant could give evidence about the alleged depression and that he had a witness who could also speak as to his mental health. This was addressed at [17] of the decision, with the judge observing that appellant's evidence was vague and the only support from the witness was to the effect that sometimes the appellant was distracted. When asked about his mood and how it affected him, the appellant response was found to be vague, as stated at [17] of the decision. The grounds make no challenge to the accuracy of that finding. Furthermore, there was no suggestion of any suicidal intention, or ideation, or any risk of suicide.
10. I am satisfied that on these facts the judge was not in error to refuse the requested adjournment, either when made at the outset of the hearing or following the evidence. In reality, there was little evidential support for the assertion that the appellant was suffering from depression, symptoms that were neither reported nor observed when his sleep apnoea and headaches were under medical investigation. Effectively, his claim was found to be unreliable. Unarguably, the judge was entitled to reach the conclusion on these circumstances that it was not in the public interest to further delay matters by an adjournment for expert evidence.
11. In any event, even if independent evidence had been available, and I note that even now it is still not available, to the effect that the appellant was/is suffering from depression, the grounds fail to demonstrate that this would or could have made any material difference to the outcome of the appeal. Even if the appellant was suffering from symptoms of depression, I am satisfied that the depression in the terms he claimed in his witness statement could not be sufficient, either on its own or together with appellant's other circumstances, to amount to very significant obstacles to integration. To suggest otherwise is fanciful.
12. Furthermore, it is significant that the evidence before the Tribunal did not demonstrate that treatment for depression would be unavailable to the appellant on return to Bangladesh. As Mr Parvar pointed out, even if he did suffer from depression there was nothing to suggest that the appellant was suffering from such a very serious medical condition untreatable in Bangladesh that would be sufficient to amount to very significant obstacles to integration, or to meet the high article 3 threshold. Neither, in my view, would the fact of suffering depression, taken with the other factors in the appellant favour, have been sufficient to outweigh the public interest in the article 8 proportionality balancing exercise.
13. In all the circumstances of this particular case, I am satisfied there was no sufficient reason before the First-tier Tribunal to justify an adjournment for appears to have been an entirely speculative foray for expert evidence as to depression. Even now there is no reliable evidence that the appellant is suffering from depression, let alone to a degree that would or could make any difference to the assessments required by the First-tier Tribunal in relation to either very significant obstacles or the article 8 proportionality balancing exercise. It follows that even if there was an error in refusing the adjournment, it has not been

demonstrated to be material to the outcome of the appeal. I am satisfied that by any standard, the appellant did have a fair hearing.

14. There is absolutely no merit in any of the other grounds. Complaint is made as to the judge suggesting at [13] of the decision that the appellant could “explore” the connections to Bangladesh of his family in the UK. The judge was undoubtedly entitled to point out that the appellant was unable to say what the reaction of his family in Bangladesh would be on his return; he had not been in touch and not tried to get in touch with them. The judge also observed that there was no reason why his family in the UK could not continue to support him on return to Bangladesh. It would be rather difficult in such circumstances to demonstrate very significant obstacles to integration, the burden of which was on the appellant. I am not satisfied that any error of law is disclosed or that it is even arguably material.
15. The third ground complains that the judge failed to take into account the appellant’s long absence from Bangladesh and his ‘near miss’ length of residence in the UK, being some 18 years but not the 20 required. Whilst SS (Congo) [2015] EWCA Civ 387 was relied on by Mr Murphy to the effect that it cannot be said that a case involving a ‘near miss’ is wholly irrelevant to the article 8 balancing exercise, it is clear that the Court of Appeal was referring to a ‘near miss’ being a potential tipping factor in that balance in a strong claim of compelling circumstances so as to justify granting leave outside of the Rules. That is patently not the facts of the present case. In reality, this was not a strong or even a borderline case in terms of the proportionality balancing exercise. In any event, it is clear from the decision that the judge was cognisant of the long absence from Bangladesh, referenced at [12] and [18] of the decision, and I am satisfied that this was taken into account in the balancing exercise. The ground discloses no error of law.
16. Given that he was that he was relying only on private life under article 8, there was little if any prospect of success at appeal on any of the grounds. The judge was obliged by s117A to accord little weight to the private life developed in the UK whilst the appellant’s immigration status was not only precarious but unlawful. He should have returned to Bangladesh long ago and had no entitlement to remain.
17. In all the circumstances, the grounds fail to disclose any material error of law in the making of the decision of the First-tier Tribunal.

Notice of Decision

The appellant’s appeal to the Upper Tribunal is dismissed.

The decision of the First-tier Tribunal stands with the appeal dismissed.

I make no order for costs.

DMW Pickup

DMW Pickup

Judge of the Upper Tribunal
Immigration and Asylum Chamber

8 November 2023