IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-004579

First-tier Tribunal No: HU/50686/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

14th December 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE SHEPHERD

Between

MR HUMAYUN KABIR CHOWDHURY
(NO ANONYMITY ORDER MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Razzaq-Siddiq, counsel
For the Respondents: Mr Terrell, Senior Home Office Presenting Officer

Heard at Field House on 28 November 2023

DECISION AND REASONS

Background

1. This matter concerns an appeal against the Respondent's decision letter of 8 January 2023, refusing the Appellant's application made on 16 February 2022.

2. The Appellant applied for leave to remain on the basis of his private life, relying mainly on the length of time he had been in the UK, amounting to over 16 years, and the ties developed during this time.

3. The Respondent refused the Appellant's claim by letter dated 8 January 2023 ("the Refusal Letter"). This set out the Appellant's immigration history and stated that the application had been considered with reference to Article 8 of the European Convention on Human Rights (ECHR) and under Paragraph 276ADE of the UK Immigration Rules. It did not accept that the Appellant would face significant obstacles to re-integrating into life in Bangladesh as he spoke Bengali, will have retained knowledge of the life, language and culture, and support from his family in the UK could continue on return.

4. The Appellant appealed the refusal decision.

5. His appeal was heard by First-tier Tribunal Judge Sullivan ("the Judge") at Hatton Cross on 18 September 2023. The Judge subsequently dismissed the appeal in her decision promulgated on 19 September 2023.

6. The Appellant applied for permission to appeal to this Tribunal on eight grounds, headed/described as follows:

> Ground 1: Failure to take into consideration all relevant factors and to give proper weight to those factors in coming to the conclusion that the Appellant would not face very significant obstacles to integration into Bangladesh.
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> Ground 2: Failure to take into consideration the Appellant's strong ties established in the UK.
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> Ground 3: Erred in suggesting that A has not satisfied section 117B (2).
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> Ground 4: Failure to provide sufficient reasons as to how the Appellant would be able to support himself upon return to Bangladesh.
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> Ground 5: Failure to provide sufficient reasons as to how the Appellant would be able to integrate upon return to Bangladesh.
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> Ground 6: Failure to give any weight to the Appellant's voluntary work.
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> Ground 7: Erred in rejecting counsel's 'near-miss' argument as not persuasive and considering it irrelevant to the balancing exercise required under Article 8.
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> Ground 8: Failure to sufficiently take into account the Appellant's health conditions and the subsequent consequences he would face upon return.

7. Permission to appeal was granted by First-tier Tribunal Judge Dainty on 17 October 2023, stating:

> "1. The application was made in time.
>
> 2.The grounds assert that the judge failed to take into consideration relevant factors and/or give proper weight as regards significant obstacles, failed to take into account strong ties in the UK erred in relation to s117B(2), failed to give sufficient reasons as to how he could support himself in and/or integrate in Bangladesh, failed to give weight to voluntary work, rejecting the bear miss argument and failing to take into account health conditions.

> 3.It is arguable that the judge gave insufficient reasons as to very significant obstacles. It is also arguable that there is an absence of "balancing" within the article 8 analysis. The question is not whether the near miss succeeds under the rules but what weight it is to begiven in the balance. It is not clear from the reasons given that the judge has actually balanced the private life and long residence in the UK against the admittedly quite powerful factor of the residence being precarious/unlawful. Even if the judge came down in favour of the latter a balancing exercise is to be carried out."

8. The Respondent did not file a response to the appeal.

The Hearing

9. The matter came before me for hearing on 23 November 2023 at Field House.

10. Mr Razzaq-Siddiq attended for the Appellant and Mr Terrell attended for the Respondent.

11. Mr Razzaq-Siddiq submitted that the Judge gave insufficient reasons for finding there were no significant obstacles to integration, and recited the obstacles that had been alleged. He also said there was a total absence of a balancing exercise for article 8.

12. I asked whether the latter point had been raised in the written grounds of appeal. He said no, it comes from paragraph 3 of the grant of permission. He referred to [22] of the decision and said the Judge was under a duty to weigh in the balance the Appellant's interest on one side and the public interest on the other; in this exercise, the Judge should have considered the Appellant's length of stay in UK, and support to his family members in the UK.

13. I sought clarification as to the evidence going to each of the grounds, in answer to which Mr Razzaq-Siddiq confirmed as follows:

(a) Ground 1 – the evidence of assistance and support including emotional support to the Appellant's brothers' and sisters' children was contained in the witness statements, as was the evidence that Bangladeshi society has changed (he confirmed there is no other specific evidence of this point).

(b) Ground 3 - there was no specific evidence that the Appellant speaks English but he has been here over 18 years, has worked in the catering industry and only used an interpreter on advice. He confirmed this factor could only have been neutral but said in [23] the Judge took this point against the Appellant.

(c) Ground 4 - he agreed that the Appellant's ability to support himself only went to the s.117B factors such that it was neutral.

(d) Ground 5 - the evidence that the Appellant would struggle to find employment was only in the witness statements; there was no country evidence.

(e) Ground 6 – the evidence of voluntary work was in the Appellant's first witness statement as well as letters from the council and caseworker (pages 15 and 16 Appellant's FT bundle and para 9 skeleton argument).

(f) Ground 7, I asked how a 'near miss' argument sat with the failure to meet the rules being a weighty factor, and also how it was a near miss argument in any case, given the majority of time spent in the UK had been without leave and the rules required continuous lawful residence. Mr Razzaq-Siddiq said that the 20 requirement is in the rules, and the fact that the Appellant has spent 90% of 20 years in the UK was a factor to be considered under article 8; the Judge considered the length of time when assessing the rules [26] but not in a balancing exercise.

(g) Ground 8 – there was no evidence concerning medical care (and the price of this) in Bangladesh outside the witness statements; article 3 was not argued, only article 8.

14. Mr Terrell said his overarching submission was that the grounds attempt to reargue the case in a materially different way to that argued before the Judge; really they amount to mere disagreement and disclose no error. He said the Judge made clear at [12] that she had taken into account all the evidence, and it is well established that it is unnecessary for a Judge to rehearse every single point forward provided they focus on the main issues and resolve the key conflicts. He submitted the Judge had reached perfectly sustainable conclusions based on the evidence; she looks at what the obstacles are and finds there are none.

15. Mr Terrell proceeded to address all of the grounds individually, reiterating his main submissions and relevant case authorities in relation to each ground as appropriate. He added that simply because comment is made in the grant of permission about the lack of a balancing exercise does not give the Aappellant the right to argue it when it was not raised in the grounds. In any event, the Judge clearly does balance the Appellant's rights against the public interest.

16. Mr Razzaq-Siddiq briefly replied to say that even if reasons were given by the Judge, they were insufficient, and she did not take into account the Appellant's voluntary work at all.

17. At the end of the hearing, I reserved my decision.

Discussion and Findings

18. I remind myself of the important guidance handed down by the Court of Appeal that an appellate court must not interfere in a decision of a judge below without good reason. The power of the Upper Tribunal to set aside a decision of the First-tier Tribunal and to proceed to remake the decision only arises in law if it is found that the tribunal below has made a genuine error of law that is material to the decision under challenge.

19. I deal first with the issue of whether the Judge carried out a balancing exercise for the purposes of article 8. I cannot see that the written grounds of appeal before me raise this argument. It was not said that the point is "Robinson obvious" and I cannot see that it could have been in any case. It therefore should have been made explicit in the grounds of appeal if the Appellant wished to argue it. Failing to do so is a breach of the Tribunal's requirements as per comment in the recent case of TC (PS compliance - "issues-based" reasoning) Zimbabwe [2023] UKUT 00164 (IAC),(which the Judge herself cited at [10] of her decision) and Lata (FtT: principal controversial issues) [2023] UKUT 00163 (IAC).

20. No explanation was given as to why this point had not been raised by the Appellant in the grounds and overall, I am not persuaded that he should be allowed to raise it simply because it is mentioned in the grant of permission.

21. It is clear to me in any case that the Judge did conduct a proportionality balancing exercise. She refers to the need for this in [11b)]. Although she does not expressly mention the five stage test in of R (Razgar) v SSHD [2004] UKHL 27, she clearly applies the first steps of the test in [21] and [22] before addressing overall proportionality and the factors that she needed to consider under s.117B of the Nationality Immigration and Asylum Act 2002. These are that it is in the public interest that: the Appellant speaks English (the Judge finds he cannot [23]); the Appellant is financially independent (the Judge finds he is at [24]); and that little weight should be given to private life established when a person is in the UK unlawfully, or has precarious status (the Judge does so at [25]). Whilst considering these factors, the Judge explicitly refers to the Appellant having worked in the UK and being supported by his siblings [24] and his length of residence [25]. In [26], she states:

> "Applying Agyarko, I must consider the Appellant's individual circumstances (which I have done) and consider whether the impact of the Refusal is in all the circumstances "unjustifiably harsh"."

22. She therefore explicitly confirms that she has considered the Appellant's individual circumstances, and her consideration of these is clearly seen in [16]-[21] of her decision such that I consider there is no need for her to repeat her earlier findings again. Having done so, the Judge concludes at 26 that:

> "I find that the consequences of the Refusal are not unjustifiably harsh and that the Refusal is not disproportionate."

23. I therefore consider that the Judge did undertake the requisite balancing exercise adequately. Even if I am wrong about this, I cannot see that her conclusion in dismissing the appeal could have been any different in any case. The Judge clearly finds at [19] that the Appellant does not satisfy the relevant immigration rules. At [20]-[21] she finds that although the Appellant has an established private life which will be interfered with by his removal, he does not have family life worthy of protection under article 8 and he could maintain any relationships he has with family in the UK by contact and visits from Bangladesh. It is therefore very difficult to see how the Judge could have reached any conclusion other than to find refusal was proportionate. With the weighty factor of a failure to meet the rules against him, the Appellant faced an uphill battle in tipping the scales back in his favour (see Agyarko, cited below)

24. This is relevant to the other points argued in the written grounds of appeal, which I now turn to. In answer to my questions at the hearing, Mr Razzaq-Siddiq confirmed the Appellant's evidence was largely contained in the witness statements and there was no further, or objective, evidence in relation to: Bangladeshi society having changed; employment opportunities in Bangladesh; support provided to his family in the UK; ability to speak English; and the availability, accessibility and cost of medical care in Bangladesh. There was therefore a lack of supporting evidence in relation to these factors.

25. As regards the Appellant's voluntary work, I was directed to the Appellant's witness statement and pages 15 and 16 of the Appellant's bundle. The grounds say this was not taken into account in terms of article 8. There is no mention of it

being raised before the Judge in respect to obstacles to integration under the immigration rules so it appears only to have gone to article 8. The Judge at [12] sets out the evidence before her, which clearly included the Appellant's bundles and additional witness statement. While she does not mention the voluntary work explicitly, it is trite that a Judge need not mention each and every single piece of evidence before them. As above, she clearly states at [26] that she has taken into account the Appellant's individual circumstances. I therefore do not consider there was a failure to take into account the evidence of voluntary work.

26. In addition, Mr Terrell cited the applicable case of Thakrar (Cart JR; Art 8: value to community) [2018] UKUT 00336 (IAC), the headnotes of which confirm that (my emphasis in bold):

> "(2) Before concluding that submissions regarding the positive contribution made by an individual fall to be taken into account, for the purposes of Article 8(2) of the ECHR, as diminishing the importance to be given to immigration controls, **a judge must be satisfied that the contribution is very significant**. In practice, this is likely to arise only where the matter is one over which there can be no real disagreement. One touchstone for determining this is to ask whether the removal of the person concerned would lead to an irreplaceable loss to the community of the United Kingdom or to a significant element of it.
>
> (3) The fact that a person makes a substantial contribution to the United Kingdom economy cannot, without more, constitute a factor that diminishes the importance to be given to immigration controls, when determining the Article 8 position of that person or a member of his or her family."

27. Even have the Judge failed to take into account the Appellant's voluntary work so as to comprise an error, I do not consider any such error is material. This is because I cannot see how the evidence adduced was sufficient to show that the Appellant's contribution was very significant, and even if it was, Thakrar confirms that this in itself is insufficient to diminish the importance to be given to immigration control. It could not therefore have been a determinative factor.

28. Paragraph 9 of the skeleton argument states (with my emphasis in bold):

> "The question therefore shifts to whether the Appellant's removal is proportionate in Article 8(2) terms. The Appellant has provided evidence of having undertaken voluntary work [AB/15-16]. It is contended that the weight to be given to the public interest in immigration control is diminished in the Appellant's case because of the factors showing that his presence in the UK is of positive benefit to the UK community: Lama (video recorded evidence -weight - Art 8 ECHR: Nepal) [2017] UKUT 16 (IAC); UE (Nigeria) [2010] EWCA Civ 975in which Keene LJ stated: (§18-19)
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> > 'For example, if the immigrant has a history of fathering illegitimate children in this country who then become a burden on the public purse, that would seem to me to be a consideration relevant to the need for effective immigration control. It is something which enhances the importance of immigration control being effectively exercised in that individual case. But by the same token a public interest in the retention in this country of **someone who is of considerable value to the community** can properly be seen as relevant to the exercise of immigration control. It goes to the weight to be attached to that side of the scales in the proportionality exercise. The weight to be attached to the public interest in removal of the person in question is not some fixed immutable amount. It may vary from case to case, **and where someone is of great value to the community in this country**, there exists a factor which reduces the importance of maintaining firm immigration

> control in his individual case. The weight to be given to that aim is correspondingly less."

29. Despite citing this case, which again confirms any contribution must be considerable, no explanation is provided as to how the Appellant is of considerable or great value to the community. The authors of the two letters provided did not attend the hearing before the Judge and the contents of the letters do not shed much light on the Appellant's actual role in community activities or his importance. Therefore, even if the Judge had taken into account the evidence of voluntary work, I do not consider she would have reached a different conclusion to the one she did.

30. Otherwise, I find the grounds overall to be in the nature of mere disagreement, seeking to persuade this Tribunal to reattribute weight to the different strands of evidence. It is well-established that:

(a) the assessment of weight is generally for the First-tier Tribunal: AE (Iraq) v Secretary of State for the Home Department [2021] EWCA Civ 948, [2021] Imm. A.R. 1499, at [44]; and

(b) appellate courts should not rush to find such misdirection simply because they might have reached a different conclusion on the facts or expressed themselves differently: AH (Sudan) v Secretary of State for the Home Department [2007] UKHL 49; [2008] 1 A.C. 678, at [30].

31. Taking each ground in turn for the sake of completeness:

32. Ground one: the Judge clearly did take into account the Appellant's relationship with his family in the UK, mentioning this as background at [10b] [12] [14] and discussing the evidence at [16] [17] [21] [24] and [25]. It was specifically recorded at [10c] that the Appellant did not rely on family life, but private life only. Mr Razzaq-Siddiq confirmed that the only evidence of the relationships involved was contained in the witness statements. Those statements contain little detail as to the Appellant's exact involvement and time spent with his family members, making general assertions such as the Appellant is 'close to' or has 'good relationships' with various family members. The submission that "he provides a great deal of assistance and support including emotional support to his brothers' and sisters' children" is not borne out by the evidence that was provided to the Judge; I cannot see any indication in the decision of this assertion being better explained or evidenced. Therefore, without the Appellant relying on his family life, and considering the nature of the evidence provided, it is difficult to see how the Judge would have attributed much weight, or more weight than she did, to this aspect of the Appellant's claim. No error is disclosed.

33. The same can be said of the allegations of there being a total lack of support in Bangladesh, and Bangladeshi society having changed in the Appellant's absence. At [10a] the Judge records that "The only very significant obstacle to the Appellant's reintegration in Bangladesh is the length of his absence from that country and the consequent difficulties he would experience on return". It was confirmed that there was no objective evidence of these things. The Judge clearly addresses the position on return in [16] -[19] of the decision. The findings are well reasoned and were open to her. No error is disclosed.

34. Ground two: I consider this to be an argument about the weight attributed to the Appellant's relationships and ties in the UK which, as per the cases cited

above, was a matter for the Judge. As I have already found, the Judge adequately takes these factors into account in the absence of reliance on family life and given the nature of the evidence provided. Further, it was not for the Judge to describe what contact was possible on return, rather the burden was on the Appellant to make out any breach of his private life was disproportionate, with contact being one factor to be considered.

35. Ground three: as above, the Judge clearly takes into account the s.117B factors which included at [23] the Appellant's ability to speak English. It was confirmed at the hearing before me that there was no evidence of such an ability beyond the Appellant's assertion that he could speak adequate English having been in the UK for so long. The Judge was therefore correct to record that "He has not provided documentary evidence of any English language qualification" and having noted he gave evidence via an interpreter, she was entitled to find he does not have the requisite language skills. Even if she had found that he did have such skills, this would only have been a neutral factor in the balance in any event such that the overall conclusion would not have been different. No error is disclosed.

36. Ground four: despite her concern that the Appellant was not candid about his earnings, the Judge nevertheless finds that at [24] that the Appellant is supported and has not accessed public funds such that this is a neutral factor. As it is indeed a neutral factor, the Judge could not have made anything more of this point such that this ground is without foundation. No error is disclosed.

37. Ground 5: it was not for the Judge to provide reasons as to how the Appellant would be able to integrate, but for the Appellant to prove that he would face very significant obstacles to doing so. The Judge made sound reasoned findings in [16] – [19] that he would not. The matters raised in the grounds of appeal are an attempt to seek a fresh determination of the evidence. No error is disclosed.

38. Ground 6: I have already addressed this in my findings above, no error is disclosed.

39. Ground 7: the question for the Judge was whether the Appellant met the requirements of the immigration rules and if he did not, whether he was able to make out a case under article 8 outside the rules. It was not in dispute that the Appellant has not been continually resident in the UK (whether lawfully or not) for 20 years or more. The only rule under discussion was that requiring significant obstacles to integration, as recorded in [10] of the decision. Mr Razzaq-Siddiq appears to accept before me that any "near miss" argument could not get him anywhere as regards the rules but submitted that the length of residence should have been given weight as regards article 8.

40. The Supreme Court held in Patel v The Secretary of State for the Home Department [2013] UKSC 72 (20 November 2013) [2014] A.C. 651 that although the balance drawn by and the context of the Rules might be relevant to the consideration of the proportionality of the interference with article 8 rights involved in removal, there was no principle that the closer a person had come to complying with the Rules the less proportionate such interference would be, and a 'near miss' under the Rules could not provide substance to a Convention rights case which otherwise lacked merit. Article 8 is not a general dispensing power. It is to be distinguished from the Secretary of State's discretion to allow leave to remain outside the Rules, which might be unrelated to any protected human right.

41. I find the Judge clearly considers the Appellant's length of residence throughout the decision. It is recorded in [10] as being a main tenet of his case. In [20] the Judge finds that the Appellant has established private life on the basis of his time spent in the UK, so weight is clearly attributed to it. She refers to it again in her concluding paragraph [26] concerning the claim made under article 8. As per Patel, the Appellant getting closer to having 20 years' residence does not provide substance to his article 8 claim if it otherwise lacked merit, and the Judge found it did lack merit. Without more, length of residence is not in itself sufficient reason to outweigh the public interest in the balancing exercise when the requirements of the immigration rules are not met. As per R (on the application of Agyarko) v Secretary of State for the Home Department [2017] UKSC 11, if an applicant fails to meet the requirements of the Rules it should only be in genuinely exceptional circumstances that refusing them leave and removing them from the UK would breach article 8. The Judge expressly applies Agyarko in [26] and finds that, despite the Appellant's length of residence, removal is proportionate. No error is disclosed.

42. Ground 8: Mr Razzaq-Siddiq confirmed that there was no objective evidence as to the availability, accessibility and cost of medical care in Bangladesh and the only evidence that the Appellant would face any obstacles because of this was his own witness evidence. The matters raised in the grounds of appeal are a further attempt to seek a fresh determination of that evidence, and even appear to present submissions as evidence. The Judge records at 18 that:

> "The Appellant suffers from diabetes. It is not suggested that this condition cannot be treated in Bangladesh. I am not satisfied that the Appellant would be unable to access healthcare there or that this condition materially affects his employability."

43. Against a background of no objective evidence as to treatment in Bangladesh, this finding was open to the Judge and no error is disclosed.

44. To conclude, I find the decision is not infected by any material errors of law. The decision therefore stands.

Notice of Decision

45. The appeal to the Upper Tribunal is dismissed. The decision of First-tier Tribunal Judge Sullivan of 19 September 2023 is maintained.

46. No anonymity order is made.

L.Shepherd
Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber
8 December 2023