



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2021-000107

First-tier Tribunal No: HU/03482/2020

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 20th of September 2024

Before

UPPER TRIBUNAL JUDGE LANDES

Between

MD NAWSHAD KAMAL
(NO ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Allison, Counsel instructed by Londonium Solicitors
For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

Heard at Field House on 12 September 2024

DECISION AND REASONS

1. The appellant has appealed, with permission granted by Upper Tribunal Judge McWilliam, against Judge Peer's decision promulgated on 7 June 2021 dismissing his appeal against the respondent's decision of 19 February 2020 to refuse his human rights' claim.
2. The appellant's solicitors settled the grounds. They are long and diffuse. They aver that the judge had made a flawed assessment of "very significant difficulties" (sic) and did not properly apply the unjustifiably harsh assessment.
3. Upper Tribunal Judge McWilliam granted permission concluding "*it is arguable that the judge did not make clear findings on the medical evidence which arguably supports that the appellant cannot go out alone.*"
4. Mr Allison in his opening submissions directed me to key parts of the grounds. He agreed that Upper Tribunal Judge McWilliam had accurately set out the central

issue. He said that the judge had failed to make a finding as to whether the appellant was able to go out unaccompanied. Alternatively, if she had not accepted this, she had not given adequate reasons for so doing. She had also given weight to immaterial matters. She had found at [63] *“that the appellant’s situation gives rise to social anxiety and fears of going out but these persist in the UK where the incident occurred”*. That fears and anxieties persisted in the UK were not, he submitted, relevant when assessing the appellant’s ability to integrate into Bangladesh. He referred me to CI (Nigeria) v Secretary of State for the Home Department [2019] EWCA Civ 2027 as authority for the proposition that someone may not be socially or culturally integrated anywhere in the world. If the appellant were not able to go out unaccompanied by someone known to him then there had to be a proper assessment of how in that case he would be able to reintegrate into Bangladesh.

5. Mr Walker agreed with Mr Allison that the quoted sentence at [63] was problematic. He said that although the judge had, at [54], found that the appellant had built relationships in the UK including with former strangers such as the sisters who had fundraised for him after the attack and he would be able to develop relationships with others in Bangladesh where he still had distant cousins, accessing some ties and building new ones, that begged the question of how precisely he would do that. There seemed to be an imbalance in how the judge reached her conclusions. He agreed there were material errors of law and the decisions should be set aside.
6. It is evident that Judge Peer thought carefully about the appellant’s case. Her decision is detailed and she was obviously aware of, and had sympathy for, the predicament the appellant found himself in as the innocent victim of a life-changing attack. It is important to read the decision as a whole and not to take paragraphs out of context.
7. Nevertheless, again returning to Upper Tribunal Judge McWilliam’s grant of permission, the assessment of the medical evidence was central. The judge accepted the report of Dr Hussain, a psychiatrist, as an expert report, and noted at [60] that report recorded the appellant’s account of severe anxiety and being unable to go out alone (paragraph 3.4 of the report *“since this incident, he has been unable to go out alone in the community and suffers from severe anxiety. He has been unable to return to normal functioning and a normal lifestyle as he lives with the constant fear from his past experience.”*) The appellant’s witness statement before the judge explained that his main problem was being afraid to go out alone as he feared that if no-one was with him the incident (which happened when he was on his own in broad daylight) could happen again and his trauma was triggered by seeing any boys or group of boys. No doubt this was why the judge accepted at [63] that the appellant did indeed have social anxiety and fears of going out and accepted (at [81]) *“challenges are presented by his return due to his mental health and lack of ready contacts or family ties in Bangladesh”*.
8. The logical question is if the appellant is afraid of going out, how will he manage returning to his home country where he only has distant relatives and as quoted above, a lack of ready contacts? The appellant’s evidence was that he had, in the UK, come to depend heavily on the relationships with his cousin (who gave evidence referring to weekly contact and support) and with his friends at least one of whom lived locally. The judge however found that *“the evidence available does not demonstrate any specific or particularly close relationships of*

geographical proximity, frequency of contact and dependency that provide integral support with daily life to enable the appellant to function” [67] and “there was no detailed evidence of any particular relationship of close proximity and reasonable dependency although the appellant says he is reliant on the relationships he has to function”[76]. I had wondered whether those findings meant that I could say that the judge was simply overall not satisfied bearing in mind the burden of proof that there were indeed very significant obstacles to the appellant’s integration into Bangladesh.

9. However, on reflection, Mr Walker was right to make the concession he did. There were indeed potential contradictions in the evidence. If the appellant were not able to go out on his own at all, would he not have needed close relationships in order to function? If the appellant were not able to go out on his own at all, how did he manage to put forward a job offer at Subway as one which would be open to him? Nevertheless, the judge did accept the appellant’s fears of going out. Such fear could range across a spectrum from never being able to go out unaccompanied, to being able to go out alone albeit preferring not to, to all points in between. The medical evidence of course would put the appellant at one end, the end of being unable to go out alone. Without making precise findings about the medical evidence and where on the continuum the appellant lay, one cannot say of what the judge was satisfied (or not) as far as the appellant’s ability to go out on his own was concerned beyond his having fears. Given the lack of ready contacts or close family ties to support the appellant on return, the judge needed to resolve the contradictions to determine whether the appellant would be able to manage day to day in society. That was the judge did not do. There were no clear and sufficient fully reasoned findings that would tell the appellant why the judge considered, despite his fears of going out on his own, that he would be able to integrate into society in Bangladesh.
10. I am sure the judge was not assisted in her task by the fact that at the date of the hearing, society was only just emerging from COVID, and many everyday chores, tasks and work were conducted remotely. As I have said, her decision was thoughtful and detailed, but I am satisfied that as the respondent agreed, she did err in the manner summarised by Mr Allison from the grounds and set out above. The errors were material as they went to the appellant’s ability to integrate into society.
11. The representatives agreed that because of the passage of time since the judge’s decision the only fair course was to remit the appeal to the First-Tier Tribunal given that the appellant’s circumstances are likely to be different as more than 3 years have passed. The appellant wished to rely on fresh medical evidence.
12. Mr Allison agreed that the judge’s findings that the appellant could not show 10 years’ continuous lawful residence should be preserved. That was not a finding that was challenged on appeal.

Notice of Decision

The judge’s decision contains errors of law and is set aside. The only findings preserved are that the appellant could not show 10 years’ continuous lawful residence.

The appeal is remitted to the First-Tier Tribunal for hearing before another judge.

A-R Landes

Judge of the Upper Tribunal
Immigration and Asylum Chamber

13 September 2024