



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-006640

First-Tier Tribunal No: HU/50075/2020
IA/00404/2020

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 29th April 2024

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

Maherun Nessa

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Gill KC, instructed by Barclay Solicitors
For the Respondent: Mr N Wain, Senior Home Office Presenting Officer

Heard at Field House on 18 April 2024

DECISION AND REASONS

1. This is the re-making of the decision in the appellant's appeal, following the setting aside of the decision of First-tier Tribunal Judge Peer which had allowed the appellant's appeal on human rights grounds.

2. The appellant entered the UK on 19 December 2015 with entry clearance as a visitor valid until 23 April 2016. On 17 March 2016 she applied for leave to remain on the basis of her private life. Her application was refused and certified as clearly unfounded on 29 August 2017 but further to a grant of permission to apply for judicial review the respondent reconsidered the application and refused it again, on 28 September 2017, with a right of appeal. The appellant's appeal was heard in the First-tier Tribunal by Judge Lenier on 6 July 2018 and was dismissed in a decision

promulgated on 12 October 2018. Permission to appeal to the Upper Tribunal was refused and the appellant became appeal rights exhausted on 11 February 2019.

3. On 21 February 2019 the appellant made further human rights submissions which the respondent refused under paragraph 353 of the immigration rules on the basis that it did not amount to a fresh claim. Following a grant of permission to apply for judicial review the respondent made a new decision on 1 July 2020 treating the submissions as a fresh human rights claim, but refusing the claim with a right of appeal. The appellant appealed against the decision and it is that decision, promulgated on 21 March 2022, which is the subject of these proceedings.

4. The background to the appellant's applications is as follows. The appellant was married to her husband Mehraj Uddin in Bangladesh and had four children with him (two sons and two daughters), Hanif (DoB 10 June 1974), Karun (DoB 11 November 1975), Nurun (DoB 22 December 1979) and Sajib (DoB 18 January 1981). She visited the UK with her husband on 15 May 2011. He died in the UK on 2 July 2011 and she returned to Bangladesh with his coffin. The appellant visited the UK again several times: from 26 July 2013 to 2 December 2013, from 1 June 2014 to 26 October 2014, from 1 March 2015 to 9 August 2015 and then from 19 December 2015. During her penultimate visit, her daughter Nurun's husband died, on 23 June 2015.

The Appeal before First-tier Tribunal Judge Lenier (6 July 2018)

5. The evidence before Judge Lenier was that three of the appellant's children were living in Bangladesh and one, her daughter Nurun Islam, was living in the UK. It was said that one of her sons in Bangladesh had mistreated her, another was addicted to drugs and her daughter had responsibilities to take care of her own family, so that the appellant was unable to remain in Bangladesh and wanted to stay in the UK with her daughter and her sister and nephew. She was living with her sister, Ayesha Ahmed. The appellant had some health issues and had been treated in Bangladesh and in the UK. The evidence was that it was on this last visit that the appellant had disclosed to her family what was happening to her in Bangladesh and that her UK family decided to try to keep her here. It was said that her UK family members had always supported her financially. Although she was not ill, she needed care and there were no facilities in Bangladesh to enable her to live alone and receive care. Her son in Bangladesh, Hanif, had abused her emotionally and expected her to undertake his domestic chores, and he would take away money that was sent to her. She could no longer live with him and neither could she live with her other son Sajib as he was a drug addict. She could not live with her daughter as she had her own family and it was not culturally acceptable for her to live with her daughter in such circumstances. The best care home in Bangladesh was in Dhaka, but that was 200 miles away from where she lived in Sylhet.

6. The appellant's nephew Mohammed Ahmed gave evidence before Judge Lenier. He said that the family had never wanted or expected the appellant to remain in the UK and she herself had not wanted to stay here permanently, but she would not be able to live in Bangladesh and she could not cope alone in private accommodation and she would not receive the same care and attention in a care home as she would with her family in the UK. Mr Ahmed's evidence was that he felt a duty to take care of the appellant in the UK. The appellant's daughter, Nurun Islam, also gave evidence before the judge and explained that she was a widow and lived with her three sons who were British citizens. She explained the appellant's circumstances in Bangladesh and why it would be difficult for her to return there. She explained that she was very close to her mother and that her mother had formed a close bond with her children. The evidence

was that the appellant's sister's son, Tanvir, was autistic and had severe learning difficulties and that he had developed an emotional attachment to the appellant and was greatly affected when she was not around. The appellant's health was deteriorating and she suffered from stress, anxiety and sleepless nights and she was worried about returning to Bangladesh.

7. Judge Lenier accepted the evidence about the appellant's son Sajib having a history of drug addiction and not being able to help the appellant. She accepted that there had been a level of emotional abuse from her son Hanif, that the family was concerned about the way she was being treated by him and she accepted that it was undesirable for her to live with him. She accepted that the appellant was unused to living independently. The judge found, however, that the appellant had many extended and immediate family members who could offer her support in Bangladesh and the UK apart from her two sons and that it would not be impossible for relatives to hire a suitable companion or nurse if required. The judge considered that the appellant's care needs were not extensive and noted that she provided emotional support for family members herself. She considered that the appellant's family in the UK could offer financial incentives to encourage family members in Bangladesh to care for her, that live-in care could be arranged or that a care home was also an option, and she did not accept the claim that Hanif would take the appellant's money wherever she was living. The judge was satisfied that there were no very significant obstacles to the appellant's integration in Bangladesh and that the requirements of paragraph 276ADE of the immigration rules were not met.

8. With regard to Article 8 outside the immigration rules, the judge accepted that family life was engaged. However, she did not accept the submission that, other than the requirement for entry clearance, the appellant met the requirements of the rules as an adult dependent relative, as she was not satisfied that the appellant required long-term personal care or that there was sufficient evidence to establish that the appellant could not obtain the required level of care in Bangladesh. The judge considered that the appellant's status was precarious when she arrived in the UK as a visitor with no expectation of being allowed to remain and she found there to be no clear change in circumstances which had led to her application for leave to remain, although she found the explanation about matters with Hanif worsening and the family becoming more concerned to be plausible. She noted that the appellant's immigration history showed general compliance and that she had made her application for leave whilst she was in the UK lawfully, and she accepted that there was no deliberate attempt to circumvent the immigration rules through entry as a visitor. The judge noted that the appellant was paying for her health care privately and was not relying upon the NHS, but she noted that her medical needs were likely to increase and that there remained a risk of future expense to the tax payer. The judge was not satisfied that the appellant's circumstances in Bangladesh or the UK were compelling for Article 8 purposes. She considered that the appellant's attachment with her nephew Tanvir was a strong factor but noted that he had other alternative and more longstanding sources of support. Overall the judge was not satisfied that the appellant's removal would result in such unjustifiably harsh consequences that it would be disproportionate and she dismissed the appeal.

Fresh Claim

9. In her fresh claim submissions made to the respondent in February/ March 2019, the appellant produced further evidence, namely letters of support from family and friends including the Honourable Baroness Uddin, and medical evidence. It was stated that she was still living with her sister and was still being supported financially by her

nephew Mohammed Ahmed. Reliance was placed upon new evidence which showed that hiring a carer or putting the appellant into a care home in Bangladesh was not an option, as there were no care homes in Sylhet where the appellant was from and that it was harsh and unjust to expect her to reside in a care home in Dhana which was hundreds of kilometres away from her place of birth and where the spoken dialect was different. It was submitted that there were inadequate medical and social services available for the elderly in Bangladesh and that the appellant would be vulnerable to mistreatment. It was submitted further that the appellant's mental health had deteriorated because of her immigration problems and that there were very significant obstacles to her integration in Bangladesh. It was submitted that the appellant's grandchildren would be affected by her removal and that it would be disproportionate to remove her from the UK.

10. In the decision refusing the appellant's fresh claim, the respondent considered that there were no very significant obstacles to her integration in Bangladesh and that the appellant's family and friends could continue to support her in Bangladesh. The respondent noted the lack of evidence to show that the appellant's mental health had deteriorated since her appeal was determined in October 2018 and that she could access healthcare in Bangladesh. The respondent considered evidence from Eastway Care Ltd about the appellant's nephew Tanir and considered that he would have support from other sources if the appellant was not in the UK. The respondent did not consider there to be any exceptional circumstances that would warrant a grant of leave outside the immigration rules.

The Appeal before First-tier Tribunal Judge Peer (4 March 2022).

11. The respondent was not represented at the hearing before Judge Peer. The judge had before her further supporting evidence from the appellant including an expert report of health and social care support in Bangladesh, further medical evidence and a further document from East London NHS Trust in relation to the care needs of the appellant's nephew Tanvir, as well as further country evidence about care available in Bangladesh and about the situation for women in Bangladesh. The appellant and her nephew relied upon their witness statements before the judge and the appellant's legal representative, Mr West, made submissions.

12. Taking the decision of Judge Lenier as her starting point and the findings previously made, Judge Peer found that, whilst there were wider family members and the appellant's daughter on whom she can draw for emotional support, the realistic prospect for the appellant on return to Bangladesh was that she would be living independently, which she was not used to, and would therefore be in a situation of some difficulty facing real hurdles to the operation of her day to day life on return to Bangladesh.

13. Judge Peer considered the additional evidence, from which she concluded that the appellant had certain mental health issues, albeit that there was no detailed evidence as to their severity, and that she was relatively elderly and had some physical ailments, and that she had emotional support from her sister and niece but did not require particular care with everyday tasks. Rather, she was herself a source of emotional and practical support for her sister and in particular her nephew. The judge considered that it was not clear what particular care needs the appellant would have if she returned to Bangladesh, but if residential care was necessary at any point, she had family including her UK based family who could make the necessary arrangements to facilitate that for her. The judge did not find that the evidence before her showed that there were no suitable care options for her in Bangladesh should she

need residential care and no possibility of finding any home help and support with day to day living if that was what she needed. The judge found that such care would be affordable. The judge concluded that, whilst the appellant would face difficulties navigating circumstances on return to Bangladesh due to her age, illiteracy, and mental health issues, those were no different to those faced by others with increasing health and social care needs in Bangladesh. The judge was not persuaded that there was no family support the appellant could draw on if she returned to Bangladesh and considered that her family in the United Kingdom could support her settling back into life in Bangladesh. She was not persuaded that the appellant faced very significant obstacles to reintegration into Bangladesh.

14. Turning to Article 8 outside the immigration rules, the judge found that the appellant had established a substantial private life in the United Kingdom and that there would be an interference in that private life of sufficient gravity as to engage Article 8(1) if she had to leave the UK. She had regard to the public interest factors in section 117B of the Nationality, Immigration and Asylum Act 2002, noting with regard to section 117B(2) that the appellant was illiterate and had no ability in the English language; with regard to section 117B(3) that the appellant was financially supported by her family but was not otherwise financially independent herself; and with regard to section 117B(5) that she had been in the UK unlawfully or with precarious status and therefore little weight could be given to her private life. The judge relied on the appellant's strong and extensive family ties in the UK which contrasted to the limited family support in Bangladesh, the fact that she played an essential role in the household in relation to her nephew and the fact that she faced the prospect of removal to Bangladesh to live in isolated circumstances away from her family.

15. At [65] of her decision the judge said the following:

"The only factor that weighs against the appellant is her lack of English language as whilst not of independent financial means her nephew is to provide for her and is well able to do so. This is not a case where the appellant has a poor immigration history although she has clearly overstayed her leave. There is no basis on which the appellant can be considered as not of good character; there is no criminality. I have carefully considered the features of the appellant's particular private life as presented to me and I am also mindful of the strong public interest in effective immigration control in the economic interests of the United Kingdom. I find that in all the circumstances I am somewhat constrained with regard to the weight that can be placed on the appellant's side of the scales although I do give weight to the quality and depth of the private life as developed and established in the UK particularly as between the appellant, her elderly sister and nephew. I also consider and find that in all the circumstances of this case the public interest is tempered somewhat by the fact that the respondent has taken no steps to enforce immigration control in respect of the appellant. Accordingly, the circumstances are finely balanced."

16. The judge concluded that the interference with the appellant's rights as protected by Article 8 was neither justified, necessary nor proportionate and she allowed the appeal, in a decision promulgated on 21 March 2022.

17. The respondent sought permission to appeal to the Upper Tribunal on the grounds that the First-tier Tribunal had erred by treating the appellant's lack of English as a neutral factor and by attaching significant weight to the appellant's private life and that there had been a failure to attach the correct weight to the public interest and to give appropriate weight to the appellant's poor immigration history.

18. Permission was granted to the respondent. The appellant produced a rule 24 response challenging the grant of permission.

Upper Tribunal

19. The matter then came before Deputy Upper Tribunal Judge (DUTJ) Bowler on 24 November 2024, to determine the error of law issue.

20. In a decision promulgated on 14 December 2023, DUTJ Bowler set aside Judge Peer's decision, as follows:

"Ground (a)

10. Although the Judge referred to the lack of English as being neutral the Judge then very clearly said that it weighed against her in carrying out the proportionality exercise. I am satisfied that this ground is not made out.

Ground (b) and (c)

11. Overall, the Decision is detailed and clearly written with some considerable care. However, despite that care the Respondent has correctly identified apparent errors in the proportionality balancing exercise set out in paragraph 65 of the Decision which I now address.

12. The Judge says that the Appellant does not have a poor immigration history. The Judge immediately refers to lack of criminality or character issues and therefore appears to be viewing a poor immigration history through those prisms. The Judge makes no reference to the poor history of the Appellant in remaining in the UK and failing to have due regard to the previous decision of the FtT based on almost exactly the same evidence. There is no indication that this is taken into account in any way. The Respondent's lack of action after the FtT decision does not convert a poor history in that sense into a good one. While the Judge should take into account all relevant circumstances, which could include the lack of criminality and good character, the statement that the Appellant does not have a poor immigration history is incorrect.

13. The Respondent also submits that there are errors in the weight given to various factors in the proportionality exercise. It is generally a matter for a judge to determine the weight to be given to the factors which inform the balance sheet for that exercise. In the case of *Kaur v Secretary of State* [2023] EWCA Civ 1353 Lord Justice Stuart-Smith referred to that margin of appreciation in determining the weight to the factors considered, but confirmed the margin is not unlimited. In particular, the court must attribute significant weight to the Secretary of State's policy at a general level which includes the policy weightings set out at s117B NIAA 2002 {see paragraph 21}. The court must say what weight is attached to other factors.

14. The Judge says at the start of paragraph 65 of the Decision that the only factor weighing against the Appellant is her lack of English. That is wrong. Although the Judge says that there was a strong public interest in effective immigration controls, that statement is set by the Judge in the context of also saying the public interest was "tempered" by the lack of action by the Respondent following a previous unsuccessful application and appeal. The overall conclusion as to the resulting weight after the "tempering" referred to by the Judge is unclear. Taken together with the first sentence of the paragraph it appears to be implied that the Judge concludes that the "tempered" interest in effective immigration controls did not weigh against the Appellant. Yet s117B NIAA 2002 requires significant weight to be given to the public interest in effective immigration controls; and as explained above the Appellant has a poor immigration history which has not been addressed.

15. Turning to the approach to the weight given to the Appellant's private life in the UK, the Judge initially says that little weight can be given to that, including family ties in the UK (at paragraph 61); and when the paragraph 65 balancing is set out the Judge says that they are "constrained" as to the weight to be given to the Appellant's private life. However, the Judge then proceeds to give weight to elements of that private life - namely the relationship with the Appellant's sister and nephew. While Rupiah makes clear that the little weight requirement of Section 117B NIAA does not mean no weight, reading the exercise carried out in paragraph 65 as whole shows that the Judge is giving the Appellant's private life more weight (even if only marginally more) than the combined weight given to her lack of English and effective immigration controls. That would indicate a significant weight being given to her private life, beyond the margin envisaged in Rupiah and in contravention of 117B NIAA 2002.

16. Accordingly, I consider that the proportionality exercise carried out contained material errors of law. This therefore means that the Decision must be set aside.

17. Given the nature of the errors of law a rehearing is required. I have applied the guidance in Begum (Remaking or remittal) Bangladesh [2023] UKUT 00046 (IAC) and have had regard to the extent of fact finding which will be required as well as the extent of loss of the two-tier decision making process if the decision is retained. I have decided in the circumstances of his appeal that the appeal should be reheard in this Upper Tribunal.

18. Neither party challenged the findings of fact otherwise made by the Judge and therefore the findings made in paragraphs 30-47, 49-50, 56-57, 59 in so far as it is found that the Appellant is illiterate and has no ability in the English language, and 60-64 of the Decision are therefore retained."

Resumed Hearing

21. The appeal came before me on 18 April 2024 for a resumed hearing. Both parties had produced skeleton arguments and the appellant provided a rule 15(2A) application to admit new evidence together with an additional bundle of evidence. That bundle contained a medical report by Dr Karim, a private GP, in relation to the appellant's health, a letter from the appellant's GP in Bangladesh, a prescription from Bangladesh, a medical examination report from Sylhet Women's Medical College Hospital and registration papers for Spire Healthcare in the UK.

22. Mr Gill produced and relied upon a supplementary note, in which he made the submission that DUTJ Bowler was wrong to have found a material error of law in Judge Peer's decision and that it was intended to challenge her decision in the Court of Appeal at a later stage. Mr Gill asked that the matter be remitted to the First-tier Tribunal rather than retained in the Upper Tribunal so that the appellant may update the evidence in relation to her deteriorating physical and mental health, or if retained in the Upper Tribunal that an adjournment be granted for that purpose. Mr Wain objected to such a course and I declined both requests.

23. This was not a case where a remittal to the First-tier Tribunal was appropriate as DUTJ Bowler had preserved various findings of Judge Peer and the re-making was limited to Article 8 outside the immigration rules. Neither was it appropriate for DUTJ Bowler's decision to be challenged before me and I would not entertain any submissions to the effect that she had erred in law. There had been no prior request for an adjournment to adduce further evidence and there was no clarity as to what that evidence would be, other a vague reference to further medical evidence. Mr Gill advised me that his instructing solicitor had had a family bereavement and so had not had time to obtain further evidence, but there had already been a rule 15(2A)

application with a further report and I did not, therefore, consider that to be a reason for further time to be given when the nature of the further evidence was so vague.

24. Accordingly I concluded that the re-making of the decision in the appeal should proceed. Mr Gill advised me that there was to be no oral evidence and I therefore heard submissions from both parties.

25. Mr Gill relied upon the judgment in Rhuppiah v Secretary of State for the Home Department [2018] UKSC 58 in submitting that section 117A(2)(a) allowed for some flexibility in the consideration in section 117B(5) that little weight should be given to the appellant's private life in the UK and that the provisions of section 117B could not put decision-makers in a strait-jacket which constrained them to determine claims under Article 8 inconsistently with the article itself. He submitted that DUTJ Bowler adopted the wrong approach in that regard. He submitted that DUTJ Bowler wrongly put weight on the English language requirement in section 117B(2) because the appellant was, as a person aged over 65, exempt from that requirement in accordance with the Home Office guidance, and that the consideration was not applicable to a person of the appellant's age. He submitted further that DUTJ Bowler failed to consider the type of precariousness of the appellant's immigration status, in that she had been coming to the UK since 2011 and had built up a family and private life prior to her application, having been provided with multi-entry visas by the respondent and not having been in the UK unlawfully or abused the immigration system. He submitted that precariousness was therefore a thin argument. There were therefore limited public interest factors against the appellant. Matters had moved on since Judge Lenier's decision and the appellant was older and her mobility had decreased. There were strong factors against the public interest, namely the appellant's history of isolation since her husband's death, the emotional abuse from her son Hanif and the lack of a support system in Bangladesh, as well as the important care that she provided to her nephew Tanvir and his best interests as a disabled person and the interests of the other family members in the UK such as her daughter. Mr Gill submitted that the appellant's situation was compelling, that she had a strong case and that the appeal should be allowed.

26. Mr Wain submitted that the starting point was that the appellant did not meet the requirements of the immigration rules. He relied upon the judgment in Ali and Bibi, R (on the applications of) v Secretary of State for the Home Department [2015] UKSC 68 which made clear that there was no Article 8 right to have a private and family life in a country of choice, and on the case of Younas (section 117B (6) (b); Chikwamba; Zambrano) Pakistan [2020] UKUT 129 which held that the UK's immigration system was undermined if people were able to circumvent it by not applying for the correct entry clearance. He submitted that the appellant's immigration status was precarious and that that was a matter to be weighed in the balance, albeit not determinative. With regard to the new medical report, Mr Wain submitted that it should not be given weight as Dr Karim had not considered the possibility of the appellant fabricating or exaggerating symptoms, in accordance with the guidance in HA (expert evidence, mental health) Sri Lanka [2022] UKUT 111, and was not an expert on the availability of treatment in Bangladesh. Mr Wain asked me to find that the appellant's removal to Bangladesh would not give rise to unjustifiably harsh consequences and that the appeal should be dismissed.

Analysis

27. As I mentioned to Mr Gill during his submissions, it was not for me to consider whether or not DUTJ Bowler had erred in law. She had made a decision and had set

aside Judge Peer's decision with preserved findings and it was for me to re-make the decision with those preserved findings in mind.

28. It is relevant, therefore, to clarify the preserved findings from Judge Peer's decision which DUTJ Bowler specified were the findings at [30] - [47], [49] - [50], [56] - [57], [59] and [60] - [64], which can be summarised as follows:

- The appellant would be returning as a single and elderly woman facing the difficult societal norms that women face in Bangladesh... there will be some real difficulties for the appellant in returning to Bangladesh
- There was a lack of realistic family support for the appellant in Bangladesh, as the appellant could not realistically live with her daughter due to cultural constraints or her son who was a drug addict and that the son she had lived had engaged in a 'level of emotional abuse' towards her.
- the realistic prospect for the appellant on return was that she would be living independently and was not used to living in that way
- the appellant is in a situation of some difficulty facing real hurdles to the operation of her day to day life on return to Bangladesh
- there is evidence from medical professionals that the appellant suffers from anxiety and depression
- the evidence is to the effect that the appellant lives in the United Kingdom with her elderly sister and a niece and so has emotional support from those persons but the evidence is not to the effect that the appellant herself requires particular care with everyday tasks. By contrast, the evidence is that the appellant is herself a source of emotional and practical support for her sister and in particular her nephew
- there is no evidence to suggest that there are no care options and no suitable care options for the appellant in Bangladesh should she need residential care or that there would be no possibility of finding any in home help and support with day to day living
- the appellant will face difficulties navigating circumstances on return to Bangladesh due to her age, illiteracy, and mental health issues.
- there are no very significant obstacles to the appellant's reintegration into Bangladesh
- the appellant has lived for over six years in the United Kingdom with her sister, nephew and niece and their family ties have strengthened during that time, her nephew assumes financial responsibility for her
- the appellant has established substantial private life in the United Kingdom given the period of over six years that she has been in the United Kingdom and has particularly strong relationships with her sister and her nephew which have inevitably deepened over time.
- the appellant is illiterate and does not present as having any ability in the English language
- there is evidence that the role the appellant plays in the household she lives in is 'essential' and twofold in being a key presence for both her own sister and her adult nephew and it is fanciful to think that any meaningful relationship with him can be continued if she were to leave the United Kingdom.
- the appellant faces the prospect of removal to Bangladesh to live in isolated circumstances where she will not be in close proximity in time or space to family who are capable of and willing to assume responsibility for her unlike her sons in Bangladesh. The family in the United Kingdom presents as the network of family relationships and ties which are meaningful for the appellant.

- the appellant's removal to Bangladesh will disrupt the equilibrium that has been built with her nephew and sister and the evidence is that the impact on them will be adverse. It is unrealistic to contend in the circumstances that a relationship could be maintained if the appellant returns to Bangladesh.

29. As Mr Wain commented himself, there are many positive findings that have been preserved for the appellant. It is also to be noted, from those preserved findings, that the appellant's case has not been put on the basis of family life in the Article 8 sense, but rather it has been accepted that she has strong family ties in the UK and a strong private life here. Article 8 is clearly engaged and the only issue in re-making the decision is where the balance lies in the proportionality assessment.

30. It is not in dispute that the appellant cannot meet the requirements of the immigration rules. Judge Peer found that there were no very significant obstacles to the appellant's integration in Bangladesh and her findings in that regard are preserved. I do not need to repeat them. Neither is there any question of the appellant being able to meet the requirements of the adult dependent relative rules, aside from the lack of entry clearance. The evidence is that she has physical ailments and mental health concerns, but nothing that requires long-term personal care to perform everyday tasks, at least at the current time, and there was insufficient evidence to satisfy Judge Peer that she could not obtain the required level of care in Bangladesh.

31. The public interest in the appellant's removal is therefore significant and something compelling or exceptional is required to outweigh that public interest of maintaining an effective immigration control. That is particularly so when considering the public interest factors in section 117B, whereby regard must be given to the fact that the appellant does not speak English and that little weight should be given to her private life since it was established at a time when her immigration status was precarious. I note that, with the appellant's financial support from her family and her access to healthcare privately, the relevant public interest factors in that regard have neutral application.

32. With regard to section 117B(2), Mr Gill submitted that the English language ability did not apply to the appellant since the guidance exempted people over the age of 65, but it seems to me that that applied to assessments made under the immigration rules and not to section 117(2). I cannot, therefore, ignore the matter as being a negative factor weighing against the appellant. I find some merit, however, in his argument that the purpose of the English language requirement was to enable integration into the UK, whereas such a necessity would likely be reduced by the appellant's age.

33. As for section 117B(5), the little weight to be given to the appellant's private life, I have regard to Mr Gill's arguments relying upon Ruppiah. The appellant's immigration status is undeniably precarious and was so at the time her private life was established, whether that is considered as being when she first visited the UK in 2011 or when she last entered the UK in 2015. She has never had anything more than leave to enter as a visitor. Section 117A(2)(a) requires that I have regard to the consideration in section 117B(5) that little weight should be given to the appellant's private life in the UK in such circumstances, which I do. I accept, however, that there is some scope for flexibility in considering the extent of the little weight to be given to the appellant's private life, as Mr Gill submitted, and I take account of the fact that the appellant has not been in the UK unlawfully, in so far as she has made her various applications at a time when she had leave or, since February 2019 within the period permitted to make a further application. Whilst she has made successive applications, the decisions refusing the applications were found by the Tribunal to have been wrongly certified as

clearly unfounded or wrongly considered as having no realistic prospect of success. It cannot be said that there has been an abuse of the system by the appellant and it is relevant to note the finding made by Judge Lenier that the appellant's immigration history showed general compliance and that there was no deliberate attempt to circumvent the immigration rules through entry as a visitor. Judge Lenier accepted that the appellant had intended, when entering the UK in 2015, to leave and return to Bangladesh in accordance with the conditions of her visa but had been persuaded by her family to apply to remain in the UK owing to their concerns about her circumstances and lack of support in Bangladesh.

34. Nevertheless the appellant has to demonstrate something compelling about her circumstances to outweigh those public interest concerns in order to succeed in the proportionality balancing exercise. It was Mr Gill's submission that the appellant's case was so strong and her circumstances so very compelling that it was bound to succeed. I do not accept that that is the case, but I do accept that ultimately the balance falls in her favour, given her age and infirmity, her strong family ties in the UK and lack of support in Bangladesh and her particular family circumstances. There are distinguishing factors in this case which I consider to tip the proportionality balance away from the public interest.

35. The appellant is a 78 year old woman who, on the preserved findings of Judge Peer, suffers from anxiety and depression and would be returning to Bangladesh without any realistic family support to face isolated circumstances a long way away from any family who would be capable or willing to assume responsibility for her, having lost her husband and having never lived independently. Although there is no reason why she could not access care in a care home or through a live in carer, and whilst it has been found that she cannot demonstrate a lack of very significant obstacles to her integration in Bangladesh, she would be isolated from family and would not experience the same kind of support as provided by her family in the UK.

36. Although there is no evidence that the appellant has any serious medical issues requiring hospitalisation, she has various medical ailments and mental health issues as described in a letter dated 11 September 2020 from a private GP who had seen her in the past and had reviewed her more recently (page 167 of the appeal bundle before the First-tier Tribunal) and who indicated that her condition had significantly deteriorated since her previous appointment. There is unfortunately no recent evidence from the appellant's own GP, but the report from Dr Karim took account of her UK private GP records as well as her medical records from Bangladesh and was based upon a face to face consultation on 4 April 2024, which lasted two hours. I have regard to the fact that much of the report was based upon what was relayed to Dr Karim by the appellant and her daughter, but I note that he referred to the GP records and also undertook his own examination of the appellant, albeit brief, and I am therefore satisfied that weight can be given to his report to that extent. At section 5.6 and 6.1 of the report, and at 10.1, Dr Karim listed the appellant's various medical conditions and at 6.2 listed the medications she required, and mention was made of her mental health issues at 10.2, with a conclusion at 10.2 (iv) to (vi) that she suffered from severe anxiety, severe depressive episode and cognitive decline and dementia. At 11.2 Dr Karim noted that several of her medical concerns were chronic and at 11.3 that she had significant mental health concerns. It is also relevant to note that Dr Karim confirmed that the appellant did not have access to the NHS and was paying for her medical care privately. It is not suggested that the appellant could not access treatment for her medical issues in Bangladesh and her case is not put on that basis. As already mentioned it is also not the case that the appellant would have no access to care and support in Bangladesh. However her age, medical conditions and general

infirmity are clearly weighty issues to be taken into account in the proportionality balancing exercise.

37. It is, in addition, relevant to have regard to the appellant's circumstances in the UK and the support she would have to leave behind, as well as the impact of her departure upon her family members and in particular upon her nephew Tanvir. It is a preserved finding that the appellant has established a substantial private life in the United Kingdom given the period of over six years that she has been here and has particularly strong relationships with her sister and her nephew, and that it would be unrealistic to contend that those relationships, in particular the relationship with Tanvir, could be maintained if she returned to Bangladesh. The evidence of the essential role played by the appellant in the life of Tanvir was considered by Judge Lenier, at [115] to [120] of her decision, to be the strongest factor weighing in the appellant's favour at that time. However she considered ultimately that Tanvir would not be entirely bereft without her since he had only had the experience of living with her for a relatively short period of his life and she observed that the appellant would potentially be able to visit him from Bangladesh, noting that such visits could be curtailed as she aged. Clearly that has changed in that a further five years have passed whereby the bond between the appellant and Tanvir has strengthened and the appellant's ability to travel from Bangladesh would now be limited owing to her age and infirmity. Judge Peer clearly considered that the appellant's relationship with Tanvir, and the impact upon him of her departure from the UK, was a strong factor and she referred to the supporting evidence in that regard at [57] of her decision, one of the paragraphs preserved by DUTJ Bowler. Whilst these are aspects of the appellant's private life to which section 117B(5) applies, they are all indications of strong and compelling family ties, albeit not perhaps family life in the Article 8 sense and it is relevant to have regard to the fact that, as Mr Wain accepted, section 117B(5) is not determinative of the proportionality balance but is a matter to be considered in the overall balance.

38. Accordingly, balancing all of these factors, it seems to me that the appellant's removal to Bangladesh would result in unjustifiably harsh consequences for the appellant, as well as for her sister for whom she provides emotional support as well as assistance with Tanvir, and for Tanvir himself. I take full account of the fact that the appellant has never had any leave other than a visitor and cannot meet the requirements of the immigration rules and I have full regard to the condition in section 117B(5). I accept that there is a strong public interest in the appellant's removal from the UK in all relevant respects. However, for the reasons I have given above, it seems to me that that strong public interest is, in this particular case, owing to the appellant's specific circumstances and those of her family, as discussed above, notably her age, her deteriorating mental health and symptoms of dementia, her lack of any support system in Bangladesh, and her strong family ties in the UK and essential role in Tanvir's life, just sufficient to push the balance in her favour. For all these reasons I find the decision to remove the appellant to be disproportionate and in breach of Article 8. The appeal is therefore allowed on that basis.

DECISION

39. The making of the decision of the First-tier Tribunal having been set aside, the decision is re-made by the appellant's appeal being allowed.

S Kebede

Upper Tribunal Judge Kebede
Judge of the Upper Tribunal
Immigration and Asylum Chamber

19 April 2024