IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-004516

First-tier Tribunal No: HU/00246/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 7th March 2024

Before

UPPER TRIBUNAL JUDGE BRUCE
DEPUTY UPPER TRIBUNAL JUDGE WELSH

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

RAJIBUL HOQUE
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:
For the Appellant: Mr Broachwalla of Counsel, instructed by ICS Legal
For the Respondent: Ms Nolan, Senior Home Office Presenting Officer

Heard at Field House on 5 January 2024

DECISION AND REASONS

Introduction

1. We refer to the parties as they were in the First-tier Tribunal, with Mr Hoque as the Appellant and the Secretary of State as the Respondent.

2. This is an appeal against a decision of First-tier Tribunal Judge Coutts ("the Judge"), promulgated on 5 September 2023. By that decision, the Judge allowed the Appellant's appeal against the decision of the Secretary of State for the Home Department to refuse his claim under Article 8 of the European Convention on Human Rights ("ECHR").

3. His claim arose out of the making of a deportation order following his being convicted, on 26 February 2021, of three offences of causing serious injury by dangerous driving, for which he was sentenced to concurrent terms of imprisonment of 3 years and 2 month.

4. No anonymity order was made previously and there is no need for one now.

Factual background

5. The Appellant is a national of Bangladesh, born in 2000. He has lived in the United Kingdom ("UK") since 2011 and was granted indefinite leave to remain in 2013. At all times his residence has been lawful. Prior to his conviction, he was a man of good character.

6. On 9 August 2022, the Respondent notified the Appellant of the decision to deport him and to refuse his human rights claim. The Appellant appealed the Respondent's decision pursuant to section 82 of the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act").

7. By the date of the appeal hearing, the only issues in dispute between the parties were whether (i) the Appellant had demonstrated that there would be very significant obstacles to integration into Bangladesh, it being accepted by the Respondent that he met the other requirements of Exception 1 (section 117C(4) of the 2002 Act) and, if not, (ii) whether there were very compelling circumstances, over and above those described in Exceptions 1 and 2 (section 117C(6) of the 2002 Act).

8. At the appeal hearing there was little, if any, challenge to the evidence adduced by the Appellant and therefore the question for the Judge was whether the evidence adduced by the Appellant was sufficient to meet the requirements of section 117C of the 2002 Act.

The decision of the First-tier Tribunal

9. The Judge allowed the appeal because he found that the Appellant had demonstrated that there were very significant obstacles to integration into Bangladesh. The Judge reached this conclusion based on the cumulative effect [39] of the following factors:

(1) The Appellant has significant mental and physical disabilities as a result of the car accident which had led to his conviction and sentence [30] and, as a result of these disabilities, would struggle to find employment and will require on-going medical care [38].
(2) The Appellant's mental health will deteriorate on return to Bangladesh [36].
(3) The Appellant has been in the UK since he was 10 years old and is now 22 years old [30].
(4) The Appellant cannot read or write Bengali and cannot speak the language fluently [31].
(5) The Appellant knows nobody in Bangladesh and would therefore not have the support of family and friends to assist him to integrate [31].
(6) The Appellant's family in the UK have provided, and continue to provide, the Appellant with significant emotional and practical support which the Judge found to be a "significant factor" [37].

The grounds of appeal and grant of permission

10. The Respondent relies upon the following grounds:

    (1) Ground 1 - failure to apply the "elevated threshold when assessing whether the Appellant established that there will be very significant obstacles to integration".
    (2) Ground 2 – failure to give adequate reasons for the conclusion that there are very significant obstacles to integration.

11. Permission to appeal on Ground 2 was granted by First-tier Tribunal Judge Athwal and on Ground 1 by Deputy Upper Tribunal Judge Grimes.

The Upper Tribunal hearing

12. Ms Nolan relied on the grounds of appeal and Mr Broachwalla on the Appellant's skeleton argument (drafted by a colleague). Both advocates made supplementary oral submissions. During the course of this decision, we address the points they made.

Discussion and conclusions

13. This is not a case in which it is suggested that the Judge was unaware of the correct legal test; rather, the Respondent's submission is that, from an analysis of the reasoning, the Judge has either misunderstood/misapplied the legal test or has inadequately explained why he reached the conclusion he did. Thus, grounds 1 and 2 are inter-linked.

14. Ms Nolan identified two factors in support of her argument.

15. Firstly, matters relevant to the Appellant's physical and mental health. Ms Nolan submitted that the Judge failed to take into account the fact that treatment was available in Bangladesh and thus failed to give adequate reasons to explain why the Appellant's disabilities amount to a very significant obstacle to integration. In relation to the emotional support currently provided by the Appellant's family, Ms Nolan submitted that the Judge did not explain why that support could not continue using modern means of communication and/or by the family visiting the Appellant in Bangladesh.

16. Secondly, in relation to the Appellant's lack of associations in Bangladesh, Ms Nolan submitted that the Judge failed to explain why this factor is relevant given the Appellant's family could travel with him to Bangladesh to help him settle.

17. Mr Broachwalla submitted that the Respondent's arguments were partly misconceived and partly an attempt to re-argue the appeal.

18. In relation to the Appellant's mental and physical health, he submitted that the Respondent's own evidence demonstrated that mental health facilities in Bangladesh are poor but, in any event, a key finding of the Judge was that the Appellant's family provided him with vital emotional and practical support. The Judge had accepted the evidence of the Appellant and that evidence included the written evidence that he struggles to bathe himself, cannot cook and cannot walk long distances.

19. He submitted that the suggestion that the Appellant's family could travel to Bangladesh with him to help him settle was not a matter put to the witnesses in the proceedings at the First-tier Tribunal. Further, even if the family could travel with him, this did not answer the question of who would provide the Appellant with the level of care he currently receives from his family members.

20. In conclusion, he submitted that the Judge referred himself to the correct law, asked himself the right questions and in reaching his conclusion, took into account the cumulative effect of the factors he had identified.

21. In considering the Judge's approach to the assessment of very significant obstacles, we have reminded ourselves of the judgment of the Court of Appeal in SSHD v Kamara [2016] EWCA Civ 183, in which Sales LJ (as he then was) stated at [14]:

> In my view, the concept of a foreign criminal's "integration" into the country to which it is proposed that he be deported, as set out in section 117C(4)(c) and paragraph 399A, is a broad one. It is not confined to the mere ability to find a job or to sustain life while living in the other country. It is not appropriate to treat the statutory language as subject to some gloss and it will usually be sufficient for a court or tribunal simply to direct itself in the terms that Parliament has chosen to use. 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.

22. As set out at paragraph 9 above, the Judge took into account a number of wide-ranging factors, none of which have been suggested by the Respondent to be irrelevant considerations, and his ultimate conclusion was based on the cumulative effect of these factors. In other words, the Judge carried out the broad evaluative assessment required of him.

23. It was not necessary for the Judge to make any findings in relation to the availability of health care in Bangladesh because the Judge did not find that the Appellant's disabilities/difficulties were of themselves a very significant obstacles to integration. Rather, the Judge reached what we consider to be the unsurprising conclusion that a person suffering from such difficulties will find it more difficult to integrate than a person who does not suffer from such difficulties and then took this into account as part of his overall assessment.

24. The Judge did not make any reference to the Appellant's family in the UK staying in touch using modern means of communication or by visiting him. However, given the Judge's unchallenged finding, which we note was supported by strong evidence, that the day-today practical and emotional support of family members was integral to the Appellant's well-being, he was entitled to focus on face-to-face contact rather than the possibility of remote or intermittent contact.

25. In relation to the suggestion that the Appellant's family could return with the Appellant and remain in Bangladesh for a period of time to settle, it is apparent from the decision of the Judge that no such suggestion was put to the witnesses - none of the family members who attended were required to be cross-examined. It cannot be an error of law to fail to take into account a matter that was not raised at the hearing. More importantly, in our judgment, is that any such temporary support does not address the finding of the Judge about the aforementioned practical and emotional care provided by the Appellant's family. Consequently, even if this was a relevant factor, it was a factor capable of carrying so little weight that it would have had no effect on the Judge's overall assessment.

26. It will always be the case that a judgment can be better expressed. In this case, the Judge might have more clearly distinguished between his findings of fact and his reasons for reaching his conclusion on the question of very significant obstacles. However, in our judgment, the Judge carried out a fair assessment of the evidence, identified the relevant factors, correctly applied the law and gave reasons that adequately explained his conclusion. We therefore conclude that there is no proper basis to assert that he did not apply the appropriate elevated threshold (Ground 1) nor any proper basis to assert that his reasoning was inadequate (Ground 2).

Notice of Decision

27. The decision of the First-tier Tribunal did not involve the making of a material error on a point of law and the decision to allow the appeal stands.

C E Welsh

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

27 February 2024