



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-004586
First-tier Tribunal No: HU/59945/2022

THE IMMIGRATION ACTS

Decision and Reasons Issued:

On 19th of January 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE MALIK KC

Between

ABDUL HANNAN
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE
FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: Mr Mahbubal Alam, Legit Solicitors

For the Respondent: Ms Alexandra Everett, Senior Presenting Officer

Heard at Field House on 24 November 2023

DECISION AND REASONS

Introduction

1. This is an appeal by the Appellant from the decision of First-tier Tribunal Judge Mailer (“the Judge”) promulgated on 14 September 2023. By that decision, the Judge dismissed the Appellant’s appeal from the Secretary of State’s decision to refuse his human right claim.

Background

2. The Appellant is a citizen of Bangladesh and was born on 2 January 1953. He claims to have arrived in the United Kingdom on 20 February 2005 as a visitor and lived here ever since. He made a human rights claim based on Articles 3 and 8 of the European Convention on Human Rights in an application for leave to remain made on 20 August 2020. The Secretary of State refused that claim, with a right of appeal, on 1 December 2022. The Judge heard his appeal from the Secretary of State's decision on 21 August 2023. He gave oral evidence and relied on his medical condition. He had a bypass surgery in 2022 and said to have stable angina, pre-diabetes, hay fever, urticaria, lower back pain, osteoarthritis of the knee, dry eyes, nocturia and wax in his ears. He also relied on his residence and life in the United Kingdom and lack of any meaningful connections in Bangladesh. The Judge held that his removal from the United Kingdom would not be incompatible with Article 3 on account of his health. The Judge further held that there were no very significant obstacles to his integration into Bangladesh and his removal from the United Kingdom would not be incompatible with Article 8. The Judge dismissed the appeal on all grounds in a decision promulgated on 14 September 2023. Permission to appeal from the Judge's decision was granted on 17 October 2023.

Grounds of appeal

3. The Appellant has pleaded four overlaying grounds of appeal. First, the Judge failed to properly consider the ground of appeal based on Article 3. Second, the Judge failed to take into account all relevant considerations in deciding whether there were very significant obstacles to the Appellant's integration into Bangladesh. Third, the Judge failed to properly consider the ground of appeal based on Article 8. Fourth, the Judge failed to properly consider the issue as to the availability of support in Bangladesh.

Submissions

4. I am grateful to Mr Alam, who appeared for the Appellant, and Ms Everett, who appeared for the Secretary of State, for their assistance and able submissions. Mr Alam developed the pleaded grounds of appeal in his oral submissions. He invited me to allow the appeal and set aside the Judge's decision. Ms Everett resisted the appeal and submitted that the Judge's findings of fact were open to him and disclosed no error of law. She invited me to dismiss the appeal and uphold the Judge's decision.

Discussion

(1) Article 3 claim

5. The Judge, at [84]-[106], discussed the evidence adduced by the parties and, at [107], dismissed the Article 3 claim in these terms:

“Having regard to the evidence as a whole, I find that the appellant has not shown on the balance of probabilities that his medical condition is of a type or severity, that his removal would result in a breach of Article 3 of the Human Rights Convention.”

6. In my judgment, this amounts to a plain error of law. The Judge dismissed the Article 3 claim by using the standard of balance of probabilities. The standard of balance of probabilities does not apply to Article 3. The applicable standard of proof is lower than balance of probabilities.
7. The Supreme Court’s judgment in *AM (Zimbabwe) v Secretary of State for the Home Department* [2020] UKSC 17 [2020] 2 WLR 1152, adopting *Paposhvili v Belgium* [2016] ECHR 1113 [2017] Imm AR 867, provides that an applicant, in order to succeed on Article 3 ill-health grounds, must provide evidence demonstrating that:
 - (1) they are seriously ill,
 - (2) they have provided substantial grounds for believing that there is a real risk that, if returned to the receiving country,
 - (i) appropriate treatment would either be absent (i.e., unavailable to anyone) or inaccessible to them in particular; and
 - (ii) this absence or lack of access to appropriate treatment would expose them either,
 - (a) to a serious, rapid and irreversible decline in their state of health resulting in intense suffering, or
 - (b) to a significant (i.e., substantial) reduction in life expectancy.
8. In *AM (Article 3, health cases) Zimbabwe* [2022] UKUT 131 (IAC), at [1] of the judicial head note, the Upper Tribunal noted that, for the purpose of (1) above, the burden of establishing that an applicant is seriously ill is on them. For the purpose of (2) above, it is also for an applicant to adduce evidence capable of demonstrating substantial grounds for believing that there is a real risk of proscribed consequences. The Upper Tribunal, at [3], clarified that, for the purpose of (2)(ii)(a) above, it is insufficient for an applicant to merely establish that their condition will worsen upon removal or that there would be serious and detrimental effects. What is required is intense suffering. Generally speaking, whilst medical experts based in the United Kingdom may be able to assist in this assessment, many cases are likely to turn on the availability of and access to treatment in the receiving state. Such evidence is more likely to be found in reports by reputable organisations, clinicians and country experts with

contemporary knowledge or expertise in medical treatment and related country conditions in the receiving state. Clinicians directly involved in providing relevant treatment and services in the country of return and with knowledge of treatment options in the public and private sectors are likely to be particularly helpful. The Upper Tribunal, at [4], added that it is only after the threshold test has been met and thus Article 3 is applicable, that the returning state's obligations summarised in *Savran v Denmark* [2021] ECHR 1025 become of relevance.

9. The Judge, at [88], referred to *AM (Zimbabwe)*. He, however, did not apply the lower standard of proof when considering the evidence and expressing his ultimate conclusion. His approach at [107] is inconsistent with *AM (Zimbabwe)* and what he observed at [88]. On one view, he has made two irreconcilable statements as to the burden of proof. This is sufficient to vitiate his decision. This appeal, given that it relates to Article 3, calls for anxious scrutiny. As was explained in *YH v Secretary of State for the Home Department* [2010] EWCA Civ 116 [2010] 4 All ER 448, at [24], in this context, there is a need for decisions to show by their reasoning that every factor which might tell in favour of an applicant has been properly taken into account. The Judge's reasoning and conclusion at [107] does not comply with the anxious scrutiny requirements.
10. The Judge, at [105]-[106], considered the issue as to the availability of support for the Appellant in Bangladesh in the context of the Article 3 claim. The Judge, at [105], stated:

"I find on the evidence that the appellant would continue to be supported by his family in the United Kingdom, at least for a short time, until he becomes self-sufficient."
11. There is, however, no explanation by the Judge as to how he expects the Appellant to become "self-sufficient" in the light of his age, health and conditions in Bangladesh. He, as noted above, is 70 years old and past retirement age. There is no adequate reasoning in the Judge's decision as to this conclusion.
12. Likewise, the Judge, at [106], stated:

"... the appellant stated that he has contacted friends in Bangladesh. Accordingly, he would also have a network of friends who would be able to support him."
13. The second sentence does not follow from the first sentence. The fact that the Appellant has contacted friends in Bangladesh does not necessarily mean that there is a network of friends able and willing to support him on return. The Judge has not given adequate reasons for this conclusion as well.

14. Accordingly, I conclude that the Judge's decision as to Article 3 is wrong in law.

(2) Article 8 claim

15. The Judge, at [108], held that there were no very significant obstacles to the Appellant's integration into Bangladesh in these terms:

"I also find in the circumstances that there would not be very significant obstacles to the appellant's integration into Bangladesh if required to leave the United Kingdom. He has resided in Bangladesh up to the age of 52. He has retained a knowledge of the life, language and culture there and would not have any difficulty re-integrating into life in Bangladesh again."

16. The Judge, at [112]-[119], considered the Article 8 claim generally and held that the Appellant's removal from the United Kingdom would be proportionate.
17. The Appellant, as noted above, is 70 years old. He is not in the best of health and is past retirement age. He has been away from Bangladesh for over 18 years. The Judge's reasoning in relation to Article 8, at [108]-[119], does not engage with these matters. In my judgment, the Judge has either not taken these matters into account in making his decision on the Article 8 claim, or gave insufficient reasons as to them.
18. The Judge, as noted above, at [105]-[106], considered the issue as to the availability of support for the Appellant in Bangladesh in the context of the Article 3 claim. Those reasons, on one view, may also apply to Article 8. However, the Judge's reasoning in that respect, as I explained above, is vitiated by an error of law.
19. Accordingly, I conclude that the Judge's decision as to Article 8 is equally wrong in law.

Conclusion

20. I entirely accept that I should not rush to find an error of law in the Judge's decision merely because I might have reached a different conclusion on the facts or expressed it differently. Where a relevant point is not expressly mentioned, it does not necessarily mean that it has been disregarded altogether. It should not be assumed too readily that a judge erred in law just because not every step in the reasoning is fully set out. Experienced judges in this specialised field are to be taken to be aware of the relevant authorities and to be seeking to apply them without needing to refer to them specifically. In this instance, for the reason set out above, I am satisfied that the Judge

erred on a point of law in dismissing the Appellant's appeal and the error was material to the outcome. I set aside the Judge's decision and preserve no findings of fact. Having regard to paragraph 7.2 of the Senior President's Practice Statement for the Immigration and Asylum Chambers, and the extent of the fact-finding which is required, I remit the appeal to the First-tier Tribunal to be heard afresh by a judge other than First-tier Tribunal Judge Mailer.

Decision

21. The First-tier Tribunal's decision is set aside and the appeal is remitted to the First-tier Tribunal for a fresh hearing.

Anonymity

22. In my judgement, having regard to the Presidential Guidance Note No 2 of 2022, *Anonymity Orders and Hearing in Private*, and the overriding objective, an anonymity order is not justified in the circumstances of this case. I make no order under Rule 14(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Zane Malik KC
**Deputy Judge of Upper Tribunal
Immigration and Asylum Chamber
Date: 12 January 2024**