



**IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER**

Case No: UI-2024-000026

First-tier Tribunal No:
PA/51178/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 16th of May 2024

Before

UPPER TRIBUNAL JUDGE SMITH

Between

**N A
[ANONYMITY DIRECTION MADE]**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Sharma, Counsel instructed by KC Solicitors Ltd

For the Respondent: Mr C Avery, Senior Home Office Presenting Officer

Heard at Field House on Thursday 25 April 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Appellant (N A) is granted anonymity. No-one shall publish or reveal any information, including the name or address of the Appellant, likely to lead members of the public to identify the Appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND DIRECTIONS

BACKGROUND

1. By a decision promulgated on 21 February 2024, I found errors of law in the decision of First-tier Tribunal Judge Thorne itself dated 26 November 2023 dismissing the Appellant's appeal against the Respondent's decision refusing his protection and human rights claims in the context of a decision to remove the Appellant to his home country, Bangladesh. My error of law decision is annexed hereto for ease of reference.
2. Although I found errors of law in Judge Thorne's decision, those were limited to his reasoning and conclusion in relation to the human rights (Article 8 ECHR) grounds. I found no errors of law in his determination of the appeal on protection, Articles 2 and 3 ECHR grounds and therefore preserved up to paragraph [27] of his decision. I gave directions permitting the Appellant to file further evidence for the re-hearing. An additional bundle was filed albeit I did not receive that until the day of the hearing.
3. I had before me a bundle of documents running to 199 pages, comprising the core documents for the appeal before this Tribunal, and the Appellant's and Respondent's bundles before the First-tier Tribunal. I refer to documents in that bundle as [B/xx]. I also received an additional bundle running to 13 pages which I refer to below as [SB/xx]. I have considered all documents but refer only to those which are relevant to determination of the issues which remain. I also heard oral evidence from the Appellant and one of his uncles (MSU). Again, I have considered all their oral and written evidence but refer only to that which remains relevant. Mr Sharma also filed a speaking note for the hearing.
4. Having heard evidence and submissions from Mr Sharma and Mr Avery, I indicated that I would reserve my decision and provide that in writing with reasons which I now turn to do.

THE ISSUES AND LEGAL FRAMEWORK

5. The Appellant abandoned his protection claim before Judge Thorne and his Article 2 and 3 ECHR claims fell away in consequence. A summary of his protection claim appears at [2] of my error of law decision. The Appellant's human rights claim which remains relies on his mental health, his relationship with his family members in the UK with whom he lives and the problems he says he would face on return to Bangladesh.
6. In relation to his mental health problems, Judge Thorne found that those did not reach the threshold required for an Article 3 ECHR claim and that finding was preserved as it was not challenged.

7. What remains therefore is consideration of whether the Appellant can show that there are very significant obstacles to his integration in the UK (under paragraph 276ADE(1)(vi) of the Immigration Rules - “the Rules” - now paragraph PL.5.1(b) of Appendix Private Life to the Rules). That is the only basis on which the Appellant could succeed within the Rules.
8. The test for whether there are very significant obstacles to integration involves a high threshold. That test is explained in further detail in Secretary of State for the Home Department v Kamara [2016] EWCA Civ 813 as follows:

“14. In my view, the concept of ... ‘integration’ into the country to which it is proposed that he be deported, ... 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.”

9. I then have to consider the Appellant’s case outside the Rules, weighing his private and if appropriate family life against the public interest. When carrying out that balancing assessment, I must have regard to the factors set out at section 117B Nationality, Immigration and Asylum Act 2002 (“Section 117B”). Those read as follows so far as relevant:

“117B Article 8: public interest considerations applicable in all

cases

- (1) The maintenance of effective immigration controls is in the public interest.
- (2) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are able to speak English, because persons who can speak English—
 - (a) are less of a burden on taxpayers, and
 - (b) are better able to integrate into society.
- (3) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are financially independent, because such persons—
 - (a) are not a burden on taxpayers, and
 - (b) are better able to integrate into society.
- (4) Little weight should be given to—
 - (a) a private life, or

- (b) a relationship formed with a qualifying partner, that is established by a person at a time when the person is in the United Kingdom unlawfully.
- (5) Little weight should be given to a private life established by a person at a time when the person's immigration status is precarious.”
10. It is not suggested that the Appellant is in a relationship with a qualifying partner. I have left in reference to Section 117B(4)(b) only because it is relevant to Mr Sharma’s argument that the Appellant’s family life which he says exists between him and his family members in the UK is deserving of more weight because it does not fall within the “little weight” provisions of Section 117B(4)(b) (see in that regard [18] of my error of law decision).
11. In relation to the issue whether family life exists as a matter of law between the Appellant and the family members with whom he lives, Mr Sharma submitted that the Appellant is dependent on those family members and that there is real, effective or committed support provided to him. That test emerges from the case of Kugathas v Secretary of State for the Home Department [2003] EWCA Civ 31 (“Kugathas”). Kugathas has been considered since on a number of occasions. Although I was not taken to any cases by either advocate, I have found of assistance what is said by the Court of Appeal in a relevant in-country case, Mobeen v Secretary of State for the Home Department [2021] EWCA Civ 886 (“Mobeen”) about the test which applies as follows:
- “44. The relevant principles relating to family life in the case of adults have been explored in a line of well-known authorities including Kugathas; Singh v ECO New Delhi [2004] EWCA Civ 1075 (‘Singh 1’); ZB (Pakistan) v SSHD [2009] EWCA Civ 34 (‘ZB’); Singh v SSHD [2015] EWCA Civ 630 (‘Singh 2’); Britcits; AU v SSHD [2020] EWCA Civ 338 (‘AU’). The position can be summarised as follows.
45. Whether or not family life exists is a fact-sensitive enquiry which requires a careful assessment of all the relevant facts in the round. Thus it is important not to be overly prescriptive as to what is required and comparison with the outcomes on the facts in different cases is unlikely to be of any material assistance.
46. However, the case law establishes clearly that love and affection between family members are not of themselves sufficient. There has to be something more. Normal emotional ties will not usually be enough; further elements of emotional and/or financial dependency are necessary, albeit that there is no requirement to prove exceptional dependency. The formal relationship(s) between the relevant parties will be relevant, although ultimately it is the substance and not the form of the relationship(s) that matters. The existence of effective, real or committed support is an indicator of family life. Co-habitation is generally a strong pointer towards the existence of family life. The extent and nature of any support from other family members will be relevant, as will the existence of any relevant cultural or social traditions. Indeed, in a case where the focus is on the parent, the issue

is the extent of the dependency of the older relative on the younger ones in the UK and whether or not that dependency creates something more than the normal emotional ties.

47. The ultimate question has been described as being whether or not this is a case of 'effective, real or committed support' (see *AU* at [40]) or whether there is 'the real existence in practice of close personal ties' (see *Singh 1* at [20]).

48. Assuming that family life is established and Article 8 thus engaged, the relevant question (when dealing with the application of Article 8 to the removal of non-settled migrants who have developed a family life with someone while residing unlawfully in the host state) can be put in one of two ways, one positive and one negative:

i) Whether or not the applicant's right to respect for his/her family life under Article 8 imposes on the host country an obligation to permit him/her to continue to reside there (a positive obligation); or

ii) Whether or not removal would be a disproportionate interference (a negative obligation).

As was remarked in *Ali v Secretary of State for the Home Department* [2016] UKSC 60; [2016] 1 WLR 4799 (by Lord Reed at [32]), however, the mode of analysis is unlikely in practice to make any difference to the outcome. One is essentially asking the same question and considerations of onus of proof are unlikely to be important where the relevant facts have been established. Ultimately, whether the case is considered to concern a positive or negative obligation, the question is whether a fair balance between the relevant competing interests has been struck.

49. A central consideration when assessing the proportionality of the removal of non-settled migrants from a contracting state in which they have family life is whether the family life was created at a time when the persons involved were aware that the immigration status of one of them was such that the persistence of that family life within the host state would from the outset be 'precarious'. In such cases, it is likely only to be in exceptional circumstances the removal of the non-national family member will constitute a violation of Article 8 (see *Agyarko* at [49] approving *Jeunesse* (at [108])).

50. What was meant by 'exceptional circumstances' was made clear at [54] to [60] in *Agyarko*, namely circumstances in which a refusal would result in unjustifiably harsh consequences for the individual such that the refusal of the application would not be proportionate. This is to be assessed in the context of a proportionality exercise which gives appropriate weight to the policy in the Immigration Rules, considers all factors relevant to the specific case in question, and ultimately assesses whether, giving due weight to the strength of the public interest in the removal of the person in the case before it, the Article 8 claim is sufficiently strong to outweigh it. In general, in cases concerned with precarious family life, a very strong or compelling claim is required to outweigh the public interest in immigration control."

12. Mobeen was a case concerning elderly parents seeking to join their adult children in the UK. What is said at [49] and [50] of that judgment undermines the argument which Mr Sharma sought to put forward at error of law stage regarding the weight to be given to family life if established between adult relatives as opposed to spouses (relying on Section 117B(4)(b)). I do not rely on the judgment in that regard since I

did not hear argument on the point. However, and in any event, as I pointed out to Mr Sharma at the hearing, whether termed as private or family life, the issue for me is the weight to be given to the substance (rather than terminology) of the right when assessed against the public interest. The public interest still bears the weight to be attributed to it based on the status of the individual seeking to remain.

EVIDENCE AND FINDINGS

13. The Appellant is now aged twenty-two years. He claimed to fear his father and cousin as a result of a land dispute. He took land documents belonging to his grandfather and his cousin threatened to stab him unless he handed those over. The Appellant therefore fled the family home and went to live in Dhaka sometime after September 2016 (when he would have been aged fourteen years). All of that was accepted by Judge Thorne ([19] of his decision). He also there accepted that the Appellant was sexually assaulted in Dhaka, and in Dubai and Turkey on his way to the UK. I will come to the evidence about the Appellant's mental health below, but Judge Thorne accepted, at [19] of his decision that the Appellant suffers from depression, is on medication for that condition and has in the past experienced suicidal thoughts.
14. Judge Thorne did not accept however that the Appellant would be at risk on return to Bangladesh as there would be a sufficiency of protection against such risk if it arose from his father or cousin and the Appellant could relocate within Bangladesh to avoid such risk ([24]).
15. Judge Thorne also did not accept that the Appellant would be at risk of suicide on return to Bangladesh. He would have access to "suitable medical treatment" in Bangladesh ([27]).
16. I had before me a witness statement from the Appellant dated 17 May 2023 ([B/24-31]) and one from his uncle, MSU, also dated 17 May 2023 ([B/32-35]). I also had a statement from the Appellant's grandmother dated 17 May 2023 ([B/36-38]) which I have taken into account below but to which I give less weight as she did not attend to give evidence which is however entirely understandable given her age. The Appellant's uncle and grandmother are relatives on the Appellant's mother's side.
17. I deal first with the evidence about how the Appellant came to the UK. Having left Bangladesh in 2018 and travelling through Dubai and Turkey (where he was assaulted as referenced above), the Appellant reached Greece. He was transferred from there to the UK under Dublin arrangements to join his uncle who is a British citizen. He arrived on 20 November 2019 and has been living with his uncle, his grandmother and his uncle's family since then. He was at that stage (just) a minor. However, he has never been granted leave to remain in the UK. His asylum claim was considered and refused prior to discretionary leave

being considered by which time he was an adult and did not qualify as such.

18. The Appellant wished to attend college, but his progress and the progress of his asylum claim were delayed by the Covid-19 pandemic. Nevertheless, he has completed studies in English and mathematics whilst in the UK.
19. Dealing then with his mental health, the Appellant says that during December 2021, his anxiety about his situation worsened which led to sleeplessness and he sought counselling at his college.
20. At [B/65] is a letter from the Appellant's college tutor, Chloe Jacobs dated 11 May 2023. Ms Jacobs was the Appellant's ESol tutor when he attended college from 2019 to June 2022. As Mr Avery pointed out, this describes the Appellant as being "of excellent character, with a strong work ethic" and being "very friendly and supportive of his classmates". There is no reference to the Appellant having sought counselling at that time. I accept that this might not have been made known to the tutor which might explain the omission. I also note the error in dates given by Ms Jacobs. She says that the Appellant attended college from September 2019 but that cannot be since he did not arrive in the UK until November. The letter is written nearly a year after the Appellant ceased studying and therefore Ms Jacobs may have forgotten that the Appellant sought counselling. It is nevertheless notable that the Appellant's mental health was not something which made any impression on Ms Jacobs.
21. As Mr Avery also pointed out, this letter shows that the Appellant was able to pursue his studies without difficulty notwithstanding the mental health problems which he claimed to have experienced at that time. The Appellant is no longer attending college due to his lack of status.
22. The evidence about the Appellant's mental health problems is summarised in a letter from his GP dated 15 March 2024 ([SB/2-3]) which reads as follows:

"Summary

[NA] suffers from a number of different and at times debilitating conditions as detailed above. Most of their problems stem from a long standing issues of anxiety and depressive disorder. From his history it can be seen he has been prescribed various of different medications which did not work previously. He is currently taking Mirtazapine 30mg and is under the care of the mental health team.

Patient informed the surgery that he has went through a lot in Bangladesh and is unable to return there due to traumatic events that happened there.

Patient reports that recently his mental health has gotten worse. He reports that it's impacting most areas of his life and that it's affecting his day-to-day life and activities. Patient has been suffering from insomnia, a reduced appetite, and is unable to focus on anything

else. He mentions that he is feeling stressed and hopeless about the future as he does not know what is going to happen to him.

He feels that this is all affecting his physical and mental health. He is feeling extremely exhausted and overwhelmed by the current situation. He is constantly overthinking and he is in constant fear.

He has attended and spent a lot of time and effort seeing us at the surgery. He is tired of dealing with all the problems and feels that they do not have the energy to deal with them.”

23. The current problems as referred to “detailed above” in that summary are stated to be “mixed anxiety and depressive disorder” dating back only to April 2023. Based on this evidence, I cannot accept the categorisation of the Appellant’s mental health problems as a “long-standing” issue. I accept the Appellant’s evidence that he had two counselling sessions whilst at college, but I have no evidence about those, why he sought them and what was discussed about the causes of any mental health problems. There is no evidence of any depressive disorder at that time. Furthermore, the Appellant himself admitted that those had not helped because he was not talking about his problems. In his own words, he saw no point in continuing.
24. As Mr Avery also pointed out, the GP’s letter neither provides an express diagnosis of any mental health condition nor does it give an opinion arising from the self-reporting there set out. Mr Sharma pointed out that the GP says that the Appellant has attended the surgery many times for his problems which is borne out by the medical records in the main bundle, but that fact alone does not indicate that the Appellant is suffering from any particular mental health condition. It merely reflects the Appellant’s own concerns about his mental health dating from April 2023.
25. For the foregoing reasons, I can place only limited weight on the medical evidence. The Appellant presented as a very quiet and perhaps shy individual, but he gave evidence calmly and without any evident difficulty. Aside offering breaks (which the Appellant did not need to take), it was not suggested by Mr Sharma that he needed to be treated as a vulnerable witness.
26. In any event, the Appellant’s treatment in the UK thus far has consisted only of medication some of which is said not to work. At [B/55] is a letter from Let’s Talk dated 20 April 2023 (again consistent with the Appellant’s problems stemming only from that date). That rejects the Appellant for use of its service. It does so because “your current difficulties with current difficulties [sic] with suicidal thoughts fall outside the remit of IAPT” and that “our service would not adequately meet your needs”. Again, that appears to be based on self-reporting following a self-referral. Although the letter refers to “a telephone referral to the Crisis Team” who would contact the Appellant to offer support, there is no evidence that this occurred.

27. Although I accepted Judge Thorne’s finding that the Appellant has in the past suffered from suicidal thoughts, there is little evidence of those. Besides this letter which appears to be based on self-reporting, there is a note of “fleeting suicidal thoughts” in an entry in the medical notes also on 20 April 2023 ([B/41]) (which may therefore relate to the same consultation as recorded in the Let’s Talk letter). That entry however goes on to say that the Appellant has “no plan”, fights these thoughts and is “afraid of hurting himself”. There is no further record of any suicidal thoughts or ideation, and it is not said that the Appellant has ever self-harmed or attempted suicide. I concur therefore with Judge Thorne’s finding that the Appellant is not at risk of suicide if removed.
28. There is no evidence of the Appellant having received counselling in the UK other than his own evidence of the two sessions whilst at college. In the supplementary bundle at [SB/4] is a letter from Talking Therapies dated 9 February 2024 which organisation apparently conducted a telephone assessment with the Appellant and recommended cognitive behavioural therapy (CBT). However, that evidence shows only that the Appellant has been added to a waiting list and is unlikely to receive any therapy for at least six months. The letter also recommends access to a computerised programme known as the Silver Cloud. In his oral evidence, the Appellant said that he had accessed the programme and continued to do so when it updated. However, that is an online resource. The Appellant said that it involves answering questions and reading about help to change.
29. Based on the evidence, I accept that the Appellant may be experiencing some anxiety and depression which he appears to attribute for the most part to his situation in the UK rather than to his previous traumatic experiences (see in that regard [27] of his statement at [B/28]). There is no diagnosis of any mental health condition, and it is notable that the Appellant was able not only to function at college but to excel. It is of note that the Appellant said in oral evidence that because he cannot go to college now, he sits around at home most of the time and watches television. In those circumstances, it is perhaps understandable that he feels depressed. The Appellant himself said in his oral evidence that when he is doing something, his mind is on other things.
30. The Appellant has not produced evidence regarding availability of treatment for mental health in Bangladesh. The Respondent refers in his decision letter to the available evidence about healthcare in Bangladesh generally ([B/102-106]).
31. Mr Sharma refers in his speaking note to the “Country Policy and Information Note: Medical treatment and healthcare: Bangladesh” dated July 2022 (“the CPIN”). He referred to [10.1.1 – 10.1.2] which concerns State facilities for treating those with mental illness, stigma surrounding mental illness and the availability of psychiatrists.

However, I do not find any of that evidence to be relevant in this case. The Appellant is not under the care of a psychiatrist in this country. He is not even receiving counselling. He has not been admitted to hospital whether as an in-patient or outpatient for mental health care. He shows no observable signs of mental illness. As already noted, the Appellant's college tutor was seemingly unaware that he had any mental health problems at a time when he said he had sought counselling albeit for a very short period.

32. It is accepted in Mr Sharma's speaking note that the CPIN shows that the medication which the Appellant is prescribed is available (10.1.4). He makes the point that the evidence does not give information about price and availability. The evidence does however show that the medication is available at a public facility (rather than private) and there is evidence that there are supply problems in relation to another form of medication, but nothing is said about supply issues of the Appellant's medication. In any event, the Appellant has provided no evidence that he could not obtain the medication at an affordable price in Bangladesh.
33. I turn then to the situation which the Appellant would face in Bangladesh. The Appellant remains in contact with his mother. I accept given Judge Thorne's findings which I preserved regarding his relationship with his father and dispute with his cousin, that the Appellant would be unlikely to return to his home to live.
34. The Appellant has however worked in Bangladesh. In his witness statement ([7]), the Appellant describes how his father used him to work in agriculture and for that reason he was unable to get an education. The Appellant's uncle confirmed in his oral evidence that most jobs in rural areas would be in agriculture. However, the Appellant has also worked in other jobs. He said he had worked in a fish market but often he would not be paid. The job was not stable. He also confirmed that he had worked in a biscuit factory. When the Appellant was asked (by Mr Sharma) why he said that he would have no job prospects on return to Bangladesh, he said it was because he had no qualifications. He has however now had the benefit of three years in education in the UK and has some qualifications in English and mathematics. The Appellant gave his evidence in English and is able to speak the language well. There is no reason he could not use those qualifications on return.
35. The Appellant admitted that he had friends in Bangladesh in the past. He retained some contact with them via Facebook. However, he said that there were "lots of issues in Bangladesh" and that they kept asking him questions which was making him anxious and so he broke off contact. There is however no reason why the Appellant could not re-establish contact on return to Bangladesh with friends and possibly also extended family members. He can retain contact with his mother from within Bangladesh in the same way as he does now.

36. The Appellant's uncle was asked about his ability to support the Appellant financially on return to Bangladesh. He admitted that he provides the Appellant with accommodation and maintains him in the UK (indeed that is the main basis for the Appellant's case that he enjoys family life with his uncle). However, he said that he would struggle to do so if the Appellant returned to Bangladesh.
37. I did not accept MSU's evidence in that regard. He said that his wife might not accept the situation if he were to prioritise the Appellant's upkeep over that of his family. He considered it might cause friction. He has his own children who are growing up and whose tuition would require funding. However, his evidence was also that, if the Appellant stays in the UK, he intends to sell a property he owns so that he, his wife and children and the Appellant could move out of the home they currently share with other extended family.
38. If MSU's wife is prepared to accept the family's living arrangements being disrupted in order to continue to provide for the Appellant in the UK, I cannot accept that she would object to her husband providing continuing financial support to his nephew in Bangladesh. Although I accept that the cost of one additional person living within an existing family unit may not be extensive, the cost of living in Bangladesh is likely to be substantially less than in the UK. I consider the evidence given by the Appellant's uncle in this regard to be exaggerated as to the difficulties. I do not accept that he could not continue to provide financial support as he has done in the UK to the Appellant in Bangladesh.
39. Moreover, the Appellant also has other family members (on his maternal side) living in the UK and there is no evidence that they could not assist. The Appellant's uncle in oral evidence said that he did not know whether they would do so. I have no evidence that they could not assist if necessary.
40. I turn then to continuing contact between the Appellant and his family in the UK were he to be removed. The Appellant said that he would find it difficult to maintain contact from Bangladesh because of the time differences and problems of internet connections (as I understood his evidence in rural areas). The time difference between the UK and Bangladesh is five hours. That is unlikely to cause problems of communication. I have already found it unlikely that the Appellant would return to his home area and would most likely have to go to an urban area for work. The problems which the Appellant says he faces with continuing communication therefore are not significant.
41. The Appellant says in his statement ([24]) that he does not wish to return to Bangladesh because he would have "no job prospects, no financial resources, no savings, no source of income, no assets or suitable accommodation". I accept that the Appellant is unlikely to

return to his family home. However, I do not accept that he could not find work on return. His college tutor speaks of him as having a strong work ethic. He could be assisted financially by his uncle and other family members in the UK whilst he finds work which would then assist him to find accommodation. Other than his mental health issues, which I have not accepted as being significant, the Appellant is a healthy, young man.

42. As Mr Avery pointed out, the Appellant's statement indicates that he left Bangladesh "to make a better life for [himself]" and that he does not wish to return to Bangladesh. The Appellant however has to show that he would face very significant hardship were he to return such that he would be unable to reintegrate.
43. I deal then with the Appellant's situation in the UK. He lives at present with his uncle, his uncle's wife and children and his grandmother. He has uncles, aunts and a grandmother in the UK. He says also that he has "many friends" and other extended family members. He says that he has built "strong private and family ties with [his] friends". There is however no evidence from those persons before me.
44. There is limited evidence about the nature of the relationship between the Appellant on the one hand and his uncle and uncle's family on the other. I accept however that the Greek authorities applied for the Appellant to join his uncle here and that his uncle has been accommodating and maintaining him in the UK ever since. There is limited evidence of emotional support. It was for example striking that when MSU was asked about the possibility of the Appellant's return to Bangladesh, he said that the Appellant would have no emotional support but added "if he needs to talk, we are here". That does not suggest that the Appellant has formed an emotional dependency. The Appellant did not say that he did. As above, his evidence about why he could not continue contact from Bangladesh was based only on the practicalities of continuing contact remotely. When MSU was pressed about providing support to the Appellant on return, his evidence focussed largely if not entirely on what financial support could be offered.
45. I accept that MSU and possibly other family members in the UK have maintained and accommodated the Appellant financially whilst he has been in the UK. Since he has been unable to work due to his lack of status, that is understandable. He is also said to provide some assistance to his grandmother but she lives with MSU and his family and there is no reason why they or other family members could not provide such support if the Appellant were to return to Bangladesh. I do not find that there exist more than the usual emotional ties between adult family members. I accept that family life exists but based only on the financial support which the Appellant obtains from his uncles and

aunts in the UK and that he cohabits with his uncle, his uncle's family and his grandmother.

46. The Appellant says that he has integrated in the UK. I accept that he speaks English. However, there is little evidence of social and cultural integration beyond his attendance at college. I accept that the Appellant would have liked to continue with his studies and was prevented from doing so due to lack of status. I also accept that he is unable to work due to factors beyond his control. However, the evidence of his life at present is that it is spent with members of his family with whom he lives. Although the Appellant's uncle and grandmother speak in their statements of the Appellant having adapted to the British culture and way of life, there is limited evidence of a private life formed in the UK.

FINDINGS AND DISCUSSION

Very Significant Obstacles

47. I do not accept that the Appellant would face very significant obstacles to his integration in Bangladesh. He was born and lived there until the age of eighteen. Whilst he experienced problems whilst in Bangladesh, including sexual assaults whilst working in Dhaka, it is notable that he has not suffered significant mental health problems as a result. His problems in the UK stem from April 2023 and on his own evidence arose in the main from his precarious situation here coupled with the challenges of the pandemic.

48. As to the Appellant's mental health, his problems are not significant. I accept that he suffers from depression and anxiety. He may have had suicidal thoughts in the past but there is no evidence that he ever acted on them even to the extent of any planning. I have found that he is not a suicide risk on return.

49. The Appellant has worked in Bangladesh. Whilst MSU may be right to say that in rural areas, the only work is in agriculture and I accept that the Appellant found that work hard in the past, there is no reason why the Appellant could not return to an urban area. He left home at a young age and found work. That work may have been very precarious but he is now older and has qualifications which may well assist him to find work more suited to those qualifications.

50. I have found that the Appellant will be able to rely on the support of his family in the UK whilst he find his feet. He will be able to re-establish contact with friends from the past and possibly also his extended family. He can maintain contact with his mother as he has whilst in the UK. He can also maintain contact remotely with his family members in the UK.

51. The Appellant having had to survive on his own in the past whilst still a child and having managed even then to find work, will know how society works in Bangladesh and will be able to participate in it and form or re-form relationships. His mental health problems are being treated currently with medication and an online resource. He can access both in and from Bangladesh.
52. For those reasons, the Appellant has not met the high threshold which applies to the test under paragraph 276ADE(1)(vi) of the Rules (now paragraph PL.5.1(b) of Appendix Private Life to the Rules).
53. There is no suggestion that the Appellant can meet any other of the Rules. His appeal therefore fails within the Rules.

Article 8 Outside the Rules

54. I have accepted that the Appellant has formed a family life with his family members in the UK based on their financial support in maintaining and accommodating him in the time that he has been in the UK (about four and a half years). I do not accept that the Appellant enjoys more than normal emotional ties with those family members due to lack of evidence in that regard.
55. As such, the interference with family life will be the removal of the financial support and maintenance of the Appellant in the UK. I have however found that this can be replicated when he returns to Bangladesh by remittances from those family members. Whilst I accept MSU's evidence that there may be little difference in the cost of an additional member of the family living with that family in the UK, there is also a lesser cost of living in Bangladesh. As such, and as I have found, the Appellant's family members in the UK will be able to continue their financial support on his return to Bangladesh.
56. I accept however in any event that the Appellant's ties with his family members and friends in the UK forms part if not most of his private life here. He has been in the UK only since November 2019. The existence of the pandemic for a substantial part of that time means it is less likely that he will have been able to form new friendships. I accept that he may have done so at college but I have little if any evidence of such friendships.
57. I accept that the Appellant has enjoyed studying whilst in the UK. I have accepted Mr Avery's submission that the Appellant's main purpose in coming to the UK was to build a better life and he has probably succeeded in that aim when he was able to do so. He has achieved qualifications in the short time in which he has been in the UK. He now speaks good English.
58. However, applying Section 117B, I can give only little weight to the Appellant's private life. In spite of Mr Sharma's valiant attempts to

persuade me that I should give more weight to the Appellant's family life because that does not fall within the "little weight" provisions of Section 117B, I cannot accept that. The relationship between partners which is to be given little weight if one partner is here unlawfully is likely to be stronger than between adult extended family members. It is likely that the latter relationships are not encompassed in Section 117B as they are not accepted in general to amount to family life. As I indicated above, in any event, the issue is the substance of the family life and not whether it is termed family or private life. On the evidence here, there is limited evidence of close emotional ties and I have accepted that family life exists based on the evidence of financial support. As such, I give little weight to both the Appellant's private and family life.

59. I accept that the Appellant speaks good English. He has been supported financially by his family and that support would continue if he remains. However, those factors are neutral under Section 117B.
60. Against the interference with the Appellant's family life, I have to balance the public interest. Although the Respondent allowed the Appellant to come to the UK to be with his uncle (at the request of the Greek authorities), the Appellant has never had leave to be in the UK. He claimed asylum and whilst his claim was not disputed on credibility grounds, it was rejected and not pursued before Judge Thorne.
61. The maintenance of effective immigration control weighs against the Appellant. He cannot meet the Rules. In order to succeed, he would have to show that the consequences of his removal to Bangladesh would be unjustifiably harsh. I do not repeat my findings above in relation to very significant obstacles to integration in Bangladesh which are however relevant also to the issue whether removal would be unjustifiably harsh. I accept that the Appellant will miss his family members in the UK. However, I repeat my finding that the emotional ties are not more than would normally exist between adult family members. The Appellant can maintain those remotely from Bangladesh. He will be able to re-form relationships with friends and possibly also extended family members on return. He will be permitted to work and has a strong work ethic (as described by his college tutor) which will enable him to do so. Other than his mental health problems which I have not found to be significant, he is a healthy young man.
62. Balancing the interference with the Appellant's private and family life against the public interest, I am satisfied that the Respondent's decision is proportionate and does not breach the Appellant's rights under Article 8 ECHR. I therefore dismiss the appeal.

CONCLUSION

63. The Respondent's decision under appeal is proportionate. Removal of the Appellant does not breach the Appellant's rights under Article 8

ECHR. The First-tier Tribunal found that removal would not breach Article 3 ECHR and I preserved that finding. I therefore dismiss the appeal on human rights grounds. The Appellant's appeal on protection grounds was not pursued before the First-tier Tribunal and was in any event dismissed by that Tribunal and not appealed further.

NOTICE OF DECISION

The appeal is dismissed on all grounds.

L K Smith
Upper Tribunal Judge Smith
Judge of the Upper Tribunal
Immigration and Asylum Chamber

10 May 2024



**IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER**

Case No: UI-2024-000026

First-tier Tribunal No:
PA/51178/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

.....On 21 February 2024.....

Before

UPPER TRIBUNAL JUDGE SMITH

Between

**N A
[ANONYMITY DIRECTION MADE]**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Sharma, Counsel instructed by KC Solicitors Ltd

For the Respondent: Mr N Wain, Senior Home Office Presenting Officer

Heard at Field House on Tuesday 6 February 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Appellant (N A) is granted anonymity. No-one shall publish or reveal any information, including the name or address of the Appellant, likely to lead members of the public to identify the Appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND DIRECTIONS

BACKGROUND

- 1.** The Appellant appeals against the decision of First-tier Tribunal Judge Thorne dated 26 November 2023 (“the Decision”) dismissing his appeal against the Respondent’s decision refusing his protection and human rights claims in the context of a decision to remove the Appellant to his home country, Bangladesh.
- 2.** The basis of the Appellant’s protection claim was that he had been subject to abuse both in Bangladesh and en route to the UK. He also said that he was involved in a family land dispute. He was a minor when he entered the UK. He was united with his uncle in the UK and lives with him. The Appellant suffers from mental health problems.
- 3.** At the hearing before Judge Thorne, the protection claim was abandoned. The Judge found that the Appellant was not entitled to humanitarian protection even if he faced the risks he claimed on return. There would be a sufficiency of protection. Those findings are not challenged.
- 4.** The Judge went on to consider the Appellant’s human rights claims. The claims under Articles 2 and 3 ECHR fell away with the protection claim. That finding is not challenged. The Judge also found that the Appellant’s mental health problems did not give rise to a case under Article 3 ECHR. That finding is not challenged.
- 5.** In relation to Article 8 ECHR, the Judge accepted that the Appellant had formed a private life in the UK but did not accept that the Appellant had a family life with his family with whom he continues to live in the UK. The Judge went on to consider proportionality but concluded that the decision to remove the Appellant was proportionate.
- 6.** The Appellant raises three grounds of challenge as follows:

Ground 1: the Judge erred in his conclusion that family life did not exist. The Judge failed to apply the correct test and his conclusion is contrary to the evidence and the findings of fact.

Ground 2: the Judge erred in his finding that the Appellant did not speak English and was not financially independent.

Ground 3: the Judge failed properly to assess whether there were very significant obstacles to the Appellant’s integration in Bangladesh, bearing in mind, in particular, his mental health problems.
- 7.** Permission to appeal was granted by First-tier Tribunal Judge C J Gumsley on 3 January 2024 as follows:

“..2. ...Whilst separately set out, the grounds as pleaded essentially assert and provide examples of how it is said that the Article 8 assessment was flawed and inadequate in its consideration of the evidence provided and that there is irrationality as to the findings ultimately made. Whilst the latter point, in particular, is a high hurdle to overcome, given the specific circumstances of this case I am of the view that the grounds set out are at least arguable.

3. Consequently, permission to appeal is granted.”

8. The matter came before me to decide whether the Decision contains an error of law. If I concluded that it does, I must then decide whether to set it aside in consequence, either in whole or in part. If I did so, I must then either remit the appeal to the First-tier Tribunal or re-make the decision in this Tribunal.
9. I had before me a 200-page bundle including the core documents for the appeal, as well as the Appellant’s and Respondent’s bundles before the First-tier Tribunal.
10. Having heard submissions from Mr Sharma and Mr Wain, I indicated that I found an error of law on the first two grounds in particular. The Judge had erred by failing to give adequate reasons for finding that family life did not exist and had failed to take into account relevant evidence when considering the proportionality of removal. I was less impressed by the third ground but as I have to re-make the Article 8 decision as at date of hearing, I did not preserve any of the Judge’s findings in that regard. I preserved however up to [27] of the Decision dealing with the protection and humanitarian protection claim. I gave directions for a resumed hearing which are set out below.
11. I indicated that I would provide in writing my reasons for finding errors of law which I now turn to do.

DISCUSSION

12. Mr Sharma adopted the pleaded grounds of appeal. I take the grounds in turn.

Ground 1: existence of family life

13. The pleaded grounds refer first to [19] of the Decision setting out the facts as accepted by the Judge as follows:

“There is no dispute that A is a citizen of Bangladesh. I accept that A had a difficult childhood and decided to leave his family taking land documents that belonged to his grandfather. I also accept that his father’s cousin threatened to stab A unless A handed over the documents, and therefore A fled to Dhaka sometime after September 2016. I also accept that A was sexually assaulted in Dhaka and in Dubai and Turkey. I also accept the medical evidence that A suffers from depression which is being treated by medication and that he had in the past suicidal thoughts.”

- 14.** Mr Sharma submitted that, on those facts, the Judge was wrong to conclude that the Appellant did not enjoy family life with his extended family in the UK. He drew my attention to [31] of the Decision which reads as follows:

“I accept that A has a private life in the UK. However I do not accept that he has a family life in the UK which engages Article 8., Adopting the approach laid out in the case of **Kugathas v Secretary of State for the Home Department [2003] EWCA Civ 31** I conclude that in the specific factual circumstances of this case it has not been established that there exists between A and his uncle and extended family in the UK more than the normal emotional ties that one finds between a 21 year old adult and their extended family.”

- 15.** Mr Sharma submitted that the test for family life between adults is whether there is real, effective and committed support. The Judge had erred by looking for something beyond the norm. In this case, the Appellant had established on the evidence that he had a real emotional and financial dependency on his extended family in the UK. That was the evidence of the Appellant’s uncle recorded at [14] of the Decision and which the Judge had not rejected.

- 16.** As Mr Wain pointed out, the Appellant’s claimed dependency on his uncle and extended family was not one of the factors which the Judge had weighed in the balance when considering proportionality at [41] of the Decision. It could not therefore be said that the Judge had accepted that there was such dependency.

- 17.** I was initially unpersuaded that any error in this regard would be material in any event. As was said by Sir Stanley Burton in Singh and another v Secretary of State for the Home Department [2015] EWCA Civ 630 at [25], “the factors to be examined in order to assess proportionality are the same regardless of whether family or private life is engaged”. The main difference might be said to be the issue of interdependency between the person to be removed and the family remaining in the UK. In this case, that is not what is argued.

- 18.** However, I was persuaded to find an error of law by Mr Sharma’s submission that the difference in this case is the weight to be accorded to the Appellant’s Article 8 rights, applying section 117B Nationality, Immigration and Asylum Act 2002 (“Section 117B”). Section 117B(4) and (5) provide that only little weight can be given to a private life which is formed whilst an individual is in the UK unlawfully or with precarious status. The same does not apply to family life which is given only little weight if the relationship is with a partner formed whilst an individual is in the UK unlawfully.

- 19.** Ultimately, it may not matter much whether what is at issue is private life or family life. What is important is the strength of the life formed in

the UK. However, I am persuaded that, whether it be termed private or family life, when assessing the proportionality of removal at [41] of the Decision, the Judge has erred by leaving out of account the Appellant's dependency on his family in the UK.

Ground 2: English language and financial independence

20. At [41] of the Decision when assessing the proportionality of removal, the Judge set out various factors including the following:

“(c) The evidence does not establish that the appellant can speak English. I have not seen adequate reliable documentary evidence of this matter.

(d) The evidence does not establish that the appellant can be adequately supported and accommodated in the UK. I have not seen adequate reliable documentary evidence of this matter.”

21. As Mr Sharma pointed out, there was evidence that the Appellant speaks English. There is nothing to suggest that the Appellant is reliant for support on the State. He is supported by his uncle financially. Mr Sharma therefore said that the Judge had wrongly held those factors against the Appellant.

22. As Mr Sharma accepted, even if favourable to the Appellant, those factors can be only neutral. Mr Wain relied on that point and said that any error could not be material. It was not evident that the Judge had held these factors against the Appellant. Mr Sharma said that in context, it must be the case that the factors were held against the Appellant.

23. Having carefully considered this point, I accepted that the error (which was to ignore relevant evidence) was material. The way in which the Judge has referred to those factors indicates the taking into account of a negative. Those factors if established in the Appellant's favour (as the evidence appears to show) would be neutral.

24. Again, in the overall balancing exercise, and certainly taken alone that error might not affect the outcome. However, I am persuaded that, taken with the error under the other grounds, this error could make a difference.

Ground 3: Mental health claim

25. As Mr Wain pointed out and as the pleaded grounds accept, the Appellant does not pursue a medical claim based on Article 3 ECHR. What is argued is that the Appellant's mental health should have led to a finding that there are very significant obstacles to the Appellant's integration under paragraph 276ADE(1)(vi) of the Immigration Rules (“Paragraph 276ADE(1)(vi)”).

- 26.** The pleaded grounds make reference in this regard to the Respondent's guidance entitled Country Policy and Information Note Bangladesh: Medical treatment and healthcare Version 2.0 July 2022 ("the CPIN"). The pleaded grounds accept that the CPIN was not produced in evidence or referred to in submissions before Judge Thorne. However, it is said that the Judge should have taken it into account as relevant published guidance in relation to the treatment available for mental health in Bangladesh.
- 27.** The Judge referred to the medical claim in the context of Article 3 ECHR at [27] of the Decision as follows:
- "In relation to any 'Article 3 Medical Claim', I accept A suffers from depression but there is inadequate evidence to establish that A would not have access to suitable medical treatment in Bangladesh. There is also inadequate up to date evidence to establish that he is at risk of suicide. There I conclude that the high threshold to establish a breach of Article 3 on medical grounds if removed from or required to leave the UK has not been met."
- 28.** As Mr Wain pointed out, those findings were not challenged in the context in which they were raised. As he also pointed out, therefore, the Appellant had not challenged the Judge's finding that there was suitable treatment available in Bangladesh. The CPIN was for that reason irrelevant. The more so since the Appellant had not relied on it at the hearing.
- 29.** I accept that whether the issue is considered under Article 3 ECHR or in the context of Paragraph 276ADE(1)(vi), the burden is on the Appellant to make out his case that treatment is not available. If he wished to argue that it was not, he should have produced the evidence about the treatment he receives in the UK and that such treatment was not available in Bangladesh. It was not for the Judge to make out the Appellant's case for him.
- 30.** However, I consider that the rather more obvious error in this regard is the Judge's failure to factor the Appellant's mental health into account when assessing the case under Paragraph 276ADE(1)(vi). That failure is sufficient to make out a case under the third ground even though this is not the way in which the case was pleaded or argued (including it seems before Judge Thorne).
- 31.** As I have already said, I have to consider Article 8 ECHR at the date of the resumed hearing and for that reason I would not have preserved the Judge's findings under Paragraph 276ADE(1)(vi) in any event. Whether there are very significant obstacles to the Appellant's integration in Bangladesh is to be considered on the updated evidence at the next hearing.

CONCLUSION

- 32.** For the foregoing reasons, I am satisfied that there are errors of law in the Decision. I set aside the Judge's Article 8 consideration at [28] onwards and the dismissal of the appeal on Article 8 ECHR grounds. I preserve the paragraphs up to [27] of the Decision and the dismissal of the appeal on protection and Articles 2 and 3 ECHR grounds.

NOTICE OF DECISION

The Decision of First-tier Tribunal Judge Thorne dated 26 November 2023 involves the making of an error of law. I set aside [28] to [50] of the Decision and the dismissal of the appeal on Article 8 ECHR grounds. I preserve up to [27] of the Decision and the dismissal of the appeal on protection and Articles 2 and 3 grounds. I make the following directions for the rehearing of this appeal (given orally at the hearing):

DIRECTIONS

- 1. By 4pm on Friday 22 March 2024, the Appellant shall file with the Tribunal and serve on the Respondent any further evidence on which he wishes to rely at the resumed hearing.**
- 2. The hearing will be relisted before me on the first available date after Tuesday 2 April 2024, face to face, with a time estimate of ½ day.**
- 3. The Appellant is to notify the Tribunal by no later than 1 March 2024 if an interpreter is required for the resumed hearing.**

L K Smith
Upper Tribunal Judge Smith
Judge of the Upper Tribunal
Immigration and Asylum Chamber

12 February 2024