IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-004003

First-tier Tribunal Nos: PA/52216/2021
IA/06433/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 18 November 2024

Before

UPPER TRIBUNAL JUDGE SHERIDAN
UPPER TRIBUNAL JUDGE KHAN

Between

The Secretary of State for the Home Department

Appellant

and

AA
(ANONYMITY ORDER MADE)

Respondent

Representation:
For the Appellant: Ms Gilmour, Senior Home Office Presenting Officer
For the Respondent: Ms Bayati, Counsel instructed by Cale Solicitors

Heard at Field House on 1 November 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant 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 REASONS

1. This is an appeal, by the Secretary of State, against a decision of Judge of the First-tier Tribunal Tozzi ("the judge") dated 2 August 2023.

2. For convenience, we will refer to the parties as they were designated in the First-tier Tribunal.

Introduction

3. The appellant is a citizen of Bangladesh born in 1994 who has lived (lawfully) in the UK since 2008. He has a significant criminal history including (a) a conviction in 2016 for drugs offences that resulted in a sentence of over two years; and (b) a conviction for possession of controlled drugs, for which he received a fine in 2022 (the offending giving rise to this conviction took place in 2020).

4. A deportation order against the appellant was made under section 32(5) of the UK Borders Act in April 2021 and in May 2021 the respondent made a decision to refuse the appellant's protection and human rights claim.

5. The appellant maintains that he cannot be deported because:

   (a) he faces a risk of serious harm in Bangladesh due to a land and power dispute involving his family and therefore is entitled to protection under the Refugee Convention and/or under Article 3 ECHR; and

   (b) deporting him would violate Article 8 ECHR.

Relevant Law

6. This case turns on whether the judge correctly applied Section 117C of the Nationality, Immigration and Asylum Act 2002. Given the significance of this provision to the appeal, we set it out in full. Section 117C provides:

> 117C Article 8: additional considerations in cases involving foreign criminals
>
> (1) The deportation of foreign criminals is in the public interest.
>
> (2) The more serious the offence committed by a foreign criminal, the greater is the public interest in deportation of the criminal.
>
> (3) In the case of a foreign criminal ('C') who has not been sentenced to a period of imprisonment of four years or more, the public interest requires C's deportation unless Exception 1 or Exception 2 applies.
>
> (4) Exception 1 applies where -
>
> (a) C has been lawfully resident in the United Kingdom for most of C's life,
>
> (b) C is socially and culturally integrated in the United Kingdom, and
>
> (c) there would be very significant obstacles to C's integration into the country to which C is proposed to be deported.
>
> (5) Exception 2 applies where C has a genuine and subsisting relationship with a qualifying partner, or a genuine and subsisting parental relationship with a qualifying child, and the effect of C's deportation on the partner or child would be unduly harsh.
>
> (6) In the case of a foreign criminal who has been sentenced to a period of imprisonment of at least four years, the public interest requires deportation unless there are very compelling circumstances, over and above those described in Exceptions 1 and 2.

> (7) The considerations in subsections (1) to (6) are to be taken into account where a court or tribunal is considering a decision to deport a foreign criminal only to the extent that the reason for the decision was the offence or offences for which the criminal has been convicted."

7. Where a foreign criminal has been sentenced to imprisonment for less than four years, which is the case in this appeal, the effect of section 117C(3) is that deportation of that person will not be justified if either of the Exceptions stipulated in subsections (4) and (5) applies. See para. 17 of *HA (Iraq) v Secretary of State for the Home Department* [2020] EWCA Civ 1176.

Decision of the First-tier Tribunal

8. The judge did not accept that the appellant would face a risk on return to Bangladesh. This aspect of the decision is not challenged and therefore is not considered further. As part of the assessment of the appellant's protection claim, the judge considered the application of Section 72 of the 2002 Act. The judge's findings on this issue are challenged in the grounds. However, for the reasons explained below, it has not been necessary for us to consider this.

9. After finding that the appellant could not succeed either under the Refugee Convention or the Human Rights Convention on the basis of his claim to face a risk of serious harm or persecution in Bangladesh, the judge considered the appellant's claim that deporting him would violate Article 8 ECHR through the framework provided by Section 117C of the 2002 Act.

10. The judge considered both of the Exceptions set out in sub-sections (4) and (5) of Section 117C.

11. *Exception 1*: The judge's analysis of Exception 1 is set out in paragraphs 80 – 82 of the decision. The judge found that sub-section (4)(a) was met as the appellant has been lawfully resident in the UK for over half of his life. With respect to sub-section (4)(b) (social and cultural integration in the UK), the judge found in para. 81:

> "The appellant has studied and worked in the UK, growing up through his teenage years into adulthood. I have taken into account that his criminal offending is inconsistent with social integration in the UK. However, I note that it took place during a period when the appellant was much younger and was suffering from a gambling addiction, associating with the wrong crowd. Since release from prison the appellant has settled within his family unit, he is relied upon as a carer for his mother, assists his sister who suffers from mental health issues, is married with a child and has steady employment. On balance, I find that he is socially and culturally integrated in the UK."

12. The judge then considered sub-section (4)(c) (obstacles to integration in Bangladesh). The judge found that the appellant would face very significant obstacles integrating, primarily because of the absence of a support network and difficulties he would face in accessing work.

13. Having found that Exception 1 was satisfied, there was no need for the judge to proceed to consider Exception 2, as meeting the requirements of Exception 1 was determinative of the appellant's article 8 case: see para. 7 above. However, the judge did consider Exception 2 and found that it, too, was satisfied.

14. *Exception 2.*The key findings regarding a Exception 2 are in paragraphs 84 – 89, where the judge found that the effect of the appellant's deportation would be unduly harsh on both the appellant's partner and his (British citizen) child.

Grounds of Appeal

15. The respondent's grounds challenge three aspects of the decision:

(a) the judge's finding that section 72 of the 2002 does not prevent consideration of the appellant's asylum claim;

(b) the judge's finding that Exception 1 is satisfied; and

(c) the judge's finding that Exception 2 is satisfied.

Analysis

16. We have not set out the submissions of Ms Gilmour and Ms Bayati. However, our analysis of the case reflects the submissions they made. We wish to express our gratitude for the high quality of the submissions.

Section 72

17. Section 72 of the 2002 Act is relevant where a person who would otherwise be afforded leave to remain as a refugee is not entitled to such leave because he represents a danger to the community. At the hearing, both Ms Gilmour and Ms Bayati accepted that as the unchallenged finding of the judge was that the appellant does not face a risk of persecution in Bangladesh – and therefore that the appellant's protection claim failed irrespective of whether Section 72 applied - any error in respect of Section 72 was immaterial. We have therefore not considered the submissions in the grounds relating to Section 72.

Exception 1

18. There are three subsections in section 117C(4), all of which must be satisfied.

19. The respondent did not dispute before the First-tier Tribunal (or us) that subsection (4)(a) (lawful residence in the UK for most of the appellant's life) was satisfied.

20. Sub-section (4)(c) was in contention before the First-tier Tribunal and the grounds challenge the judge's finding that this condition was satisfied. However, before us Ms Gilmour accepted that the judge was entitled to find that the appellant would face very significant obstacles integrating Bangladesh and therefore that subsection (4)(c) was met.

21. Accordingly, the only area of dispute in the Upper Tribunal was subsection (4)(b): social and cultural integration in the UK. The submission in the respondent's grounds relating to subsection (4)(b) is as follows:

> "It is respectfully submitted that the FTTJ has provided inadequate reasoning as to why they find the appellant can be deemed socially and culturally integrated within the UK, when their consideration extends to his family life only [81]. Furthermore, it is noted he attained limited educational achievements and worked for the family business as a delivery driver. It is therefore unclear how the appellant can be

> considered socially or culturally integrated with the wider society and therefore satisfy section 117C(4)(b) to meet Exemption 1."

22. The difficulty with this submission is that it does not accurately reflect what the judge decided in para. 81, which we have set out above in para. 11. In para. 81 the judge did not limit himself to the appellant's family life; the judge also referred to the appellant growing up through his teenage years in the UK. Moreover, the grounds do not explain why involvement with a family in the UK over a prolonged period (where that involvement entails supporting a mother and sibling, being married, having a child, and having a steady job in a family business) is not sufficient, in and of itself, to demonstrate social and cultural integration in the UK. We are not persuaded that there is merit to the submissions in the grounds relating to subsection (4)(b).

23. In her oral submissions, Ms Gilmour developed a different argument concerning the judge's assessment of the appellant's social and cultural integration in the UK. She noted that the judge appears in paragraph 81 to have analysed the appellant's social and cultural integration on the basis that since leaving prison he has been a changed person who no longer is involved in criminality. Ms Gilmour observed that this appears to overlook that the appellant was arrested for a drugs offence in 2020. Although a strong submission, the difficulty with it is that it is not part of, or related to, any point raised in the grounds of appeal. The Court of Appeal has made clear that the Upper Tribunal should not normally permit grounds to be advanced that have not been pleaded. See para 69 of *Talpada v The Secretary of State for the Home Department* [2018] EWCA Civ 841 and para.32 of *Latayan v The Secretary of State for the Home Department* [2020] EWCA Civ 191. In the light of these Court of Appeal authorities, we are not persuaded that we should permit Ms Gilmour to advance her new argument.

24. For these reasons, we find that the grounds have not identified a basis to disturb the judge's conclusion that the requirements of Exception 1 are satisfied. It follows from Exception 1 being satisfied that deportation would violate article 8 ECHR: see paragraph 7 above.

Exception 2

25. As the decision in respect of Exception 1 is sustainable, it is not necessary for us to consider whether the judge erred in respect of Exception 2.

Notice of Decision

26. The decision of the First-tier Tribunal did not involve the making of a material error of law and therefore stands.

D. Sheridan

Judge of the Upper Tribunal
Immigration and Asylum Chamber

13.11.2024