IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2021-000094

First-tier Tribunal No:
HU/05789/2019

THE IMMIGRATION ACTS

Decision & Reasons Issued:

24th January 2025

Before

UPPER TRIBUNAL JUDGE RUDDICK

Between

MOSAMMAD MONIRA AKTER

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: R. Halim, instructed by AWS Solicitors
For the Respondent: A. Ahmed, Senior Home Office Presenting Officer

Heard at Field House on 13 January 2025

DECISION AND REASONS

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge Khudail ("the Judge") dated 17 May 2021 dismissing her appeal against the respondent's decision of 13 March 2019 to refuse her human rights claim, made on 02 May 2017.

2. The appellant was denied permission to appeal by the First-tier Tribunal in a decision sent on 15 July 2021, and on 3 August 2021, she renewed her application to the Upper Tribunal. Her application to the Upper Tribunal was not decided until 25 January 2024. In the decision granting

permission, Upper Tribunal Judge Blundell recorded that it had not been possible to identify the cause of the regrettable delay.

Background

3. The appellant is a citizen of Bangladesh born in 1987. She entered the UK on 26 September 2012 with entry clearance as a Tier 4 student valid until 10 May 2014. She applied successfully to extend that leave until 30 October 2016. On 26 October 2016, she made an application for Indefinite Leave to Remain as the dependant of her husband, Mahabubar Rahman, who is also a citizen of Bangladesh. On 18 April 2017, the respondent refused that application and certified it as clearly unfounded, with the result that the appellant had only an out of country right of appeal (which she did not exercise).

4. On 2 May 2017, the applicant made the application that ultimately led to this appeal. The basis of the application when it was made was as a dependant on her husband's application for further limited leave outside the rules, but on 25 September 2017, the applicant's representatives wrote to the respondent to vary the application. The letter of 25 September 2017 set out in detail that the appellant had begun suffering gynaecological problems in March 2013 and the couple had started fertility treatment in 2016. The unsuccessful settlement application of October 2016 and the pending application for further leave were both said to have been on the basis of the appellant's medical conditions and the couple's ongoing fertility treatment: "so that at the very least the treatment could be completed before exiting the country". The appellant was now seeking to vary her application to one made in her own right, because she was pregnant and expecting a child in February or March 2018. As the appellant's solicitors clarified, "We are instructed that [the appellant] is not seeking long term leave. But for a shorter leave so that she could safely deliver her baby and once the baby gets better and is in a position to fly, then she would be happy to return."

5. In response to a request from the Home Office for updating medical evidence in July 2018, the appellant's solicitors wrote that she was suffering from depression and medical complications following the birth of the child.

6. The respondent initially refused the appellant's 2017 further leave application in a decision dated 28 August 2018, again certifying it as clearly unfounded. The appellant then applied for permission to challenge that decision by way of judicial review, with the consequence that the respondent issued a new refusal decision on 13 March 2019. The respondent noted that the basis of the application had been the imminent birth of the appellant's child, but that the child had since been born. The appellant did not meet the requirements of any Immigration Rule, and taking into account the child's young age, the parents' ability to reintegrate in Bangladesh and the fact that the child's grandparents and uncles "reside in Bangladesh and can provide support" to the family as

they resettled, it would be in the child's best interests and not disproportionate under Article 8 for the family to return to Bangladesh together.

The appellant's "new matter"

7. The appellant appealed, and in an appeal statement dated 5 January 2021, she raised for the first time that she was at risk of honour violence on return to Bangladesh because hers had been a love marriage. In summary, she and her husband had chosen to marry against their parents' wishes. Faced with her stubbornness, her parents had eventually relented and agreed to the marriage, pretending to others in their community that the marriage had been arranged. The couple were then married in Bangladesh shortly before leaving for the UK in 2012. By 2014, however, the parents' community had discovered the truth, and the appellant's father had tried to find someone to kill her in the UK for "dishonouring" him. Her mother interceded and a compromise was agreed: the appellant's father would pay her a share of the family property, she would remain in the UK, and their ties to each other would then be severed "legally/socially/mentally." The appellant duly flew to Bangladesh in 2015 to sign a Memorandum of Agreement with her parents to this effect. The appellant said that if she returns to the country now, her father will try to kill her, and the rest of both her and her husband's family have cut all ties with them.

8. On 11 January 2021, there was a case management review hearing. This was followed by email correspondence between the parties in which the respondent refused to consent to the Tribunal's consideration of this new matter, saying that if the appellant feared persecution on return to Bangladesh, she should make an asylum claim.

9. The appeal came before the Judge for full hearing on 30 April 2021. The appellant was represented by Mr Halim, as she was at the hearing before me. The appellant gave evidence and was cross-examined. The Judge helpfully set out at [14](a)-(m) the matters on which the appellant gave evidence in response to questions from Mr Halim. This included details of her dispute with her family at [14](c)-(j). At [15](a)-(f), the Judge set out the issues on which the respondent cross-examined the appellant. These were her mental health, the medical facilities available in Bangladesh, and her job prospects there. It is common ground that the respondent did not cross-examine her about her relationship with her family.

10. The final question to the appellant was put by the Judge:

> "16. I asked the appellant whether she had any siblings in Bangladesh and she confirmed she has two brothers but they are under the influence of her father and listen to his instructions."

The challenged decision

11. The Judge dismissed the appeal in a carefully reasoned decision. She set out the appellant's immigration history at [2-6], the respondent's reasons for refusal at [7](a)-(c), the evidence before her at [8], and the respondent's reason for refusing to consent to consideration of the appellant's protection claim in this appeal at [9]. At [10], she confirmed, "I have carefully considered the evidence provided." At [11]-[17], the Judge then set out how the hearing was conducted, the evidence that was given, and that she had heard submissions from the parties that she had taken into account in making her decision. The legal framework for appeals based on Article 8 was set out clearly at [18]-[19], and the contents of the relevant rule – Para. 276ADE – at [20].

12. At [22], the Judge recorded that Mr Halim had submitted that she should consider the issue of the appellant's relationship with her family within the context of Para. 276ADE, "given that the respondent in her decision states the appellant can rely on her family". The respondent's position was recorded as being simply that the appellant should make an asylum claim [23].

13. At [24], the Judge set out the definition of a new matter in Mahmud (S85 NIAA 2002 – "new matters") [2017] UKUT 488 (IAC), and at [25], she applied that framework to the appeal before her and found that:

> "The respondent in her refusal to give consent identifies the appellant has the option to claim asylum which to date she has not done. I accept that the first time the appellant raised this was in her statement dated 05 January 2021 and the respondents view about jurisdiction to consider the asylum claim is correct. However, the factual matrix as presented regarding support from families has been considered by the respondent in her refusal decision and the appellant has raised the issues with her family in this context. Therefore, I do not find, it is a new matter to consider this evidence, within the confines of paragraph 276 ADE, of the Immigration rules."

14. There has been no challenge to the Judge's decision on this issue, which is carefully reasoned.

15. The key section of the Judge's decision that I am asked to consider is entitled "Within the Immigration Rules 276 ADE". The Judge began by directing herself as to what Para. 276ADE requires, with reference to both the respondent's published policy and the leading case of Treebhawon and Others (NIAA 2002 Part 5A - compelling circumstances test) [2017] UKUT 00013 (IAC).

16. Turning to the facts of the appellant's claim, the Judge identified the appellant's "primary reason for not being able to return to Bangladesh" as "revolv[ing] around her claimed fear from her father", and cited Mr Halim's summary of that fear in his skeleton argument [29].

17. At [30]-[36], the Judge gave her reasons for rejecting this aspect of the appellant's account. These are:

(i) The appellant did not raise this fear until 05 January 2021, after the refusal decision [30].

(ii) The appellant claimed that her father had threatened to kill her in 2014 and she had cut all ties with her family in Bangladesh in 2015, but in their representations in support of her 2017 application, her solicitors said she would be "happy" to return to Bangladesh after the birth of her child. [31] Nor did her solicitors raise any issues with her family when the respondent asked for a update in July 2018. If she had been in genuine fear, it was not credible that she would not have mentioned this to her solicitors, and if she had mentioned it, it is not credible that they would not have raised it with the respondent or advised the appellant to claim asylum. "Accordingly, I find it damaging that the appellant did not mention the issues with her family in her initial application or subsequently when she had the opportunity to do so." [32]

(iii) It was not plausible that the appellant would have travelled back to Bangladesh to settle financial matters and cut her ties to the country if she had genuinely believed her family would act on their threats to kill her [34]. Nor was it clear why her father "would have her return, disown and pay her as this would draw the attention of society and exacerbate the situation." [33] It was not credible "that the appellants father would pay her £17,000 to disown her. Particularly given on the appellants own account, she has been living in the UK since 2012 and was not in his life or social circle." [34]

(iv) For these reasons, the Judge did not accept that the appellant did not have the support of her family. [34]

(v) The Judge was "fortified" in this finding by the contents of several of the documents in the appellant's bundle. These included her parents' identity cards, which had been issued in September 2017 and August 2020; the Judge asked rhetorically, "how would the appellant get copies of recently issued identity cards, if she has no contact with said family members"? [35] In addition, in a letter dated 04 March 2018, a doctor at Newham University Hospital had written, "Mrs Akter is hoping that her mother might be granted a UK visa and we would strongly support this application".

18. For these reasons, the Judge concluded at [36] that:

> "her account of bringing dishonour has been concocted to aid her claim given the respondent raised that her daughter had family and friends who could support reintegration. I find she still has contact with her family and that they are in fact supportive of her."

19. The Judge went on to make a series of unchallenged findings: the appellant had resided in the UK for approximately 8 years and 7 seven months at the date of hearing, and the lawfulness of some of the residence was in dispute [37]; she had mixed anxiety and depressive disorder [38];

mental health care would be available in Bangladesh [39], so the appellant's ability to integrate would not be hindered by her ill mental health [40]; the appellant was highly educated, fit and had valuable work experience, and hence she had not shown that she would be unable to find work on return [42]; the appellant had confirmed in her oral evidence that she still had friends in Bangladesh, she had lived there during her formative years, and she had last returned in 2015. She would have retained knowledge of the culture, norms, etc. of the country [43].

20. Only one aspect of the Judge's reasoning here has been challenged: her finding at [41] that her family would support her financially on return.

21. For these reasons, Para. 276ADE was not met [44]. The Judge then went on to conduct a balancing test, taking into account the factors listed at Section 117B of the Nationality, Immigration and Asylum Act 2002, and to resolve it against the appellant.

The appellant's grounds of appeal

22. The appellant has been granted permission to appeal on a single ground: it was procedurally unfair for the Judge to have rejected her account of her relationship with her family when none of the material points taken against her in the determination had been put to her by the respondent at any time, or by the Judge at the hearing.

23. There was no Rule 24 response from the respondent and no skeleton argument from either side. The respondent has not challenged the Judge's jurisdiction to make findings about the relationship between the appellant and her family.

The hearing

24. At the hearing before me, I had the appellant's composite bundle, in two parts, running to 503 pages in total. I am grateful to both representatives for their thoughtful submissions, which I have taken into account in making my decision.

Legal framework

25. In deciding whether the Judge's decision involved the making of a material error of law, I have reminded myself of the principles governing the approach to decisions of the First-tier Tribunal that are set out in a long line of cases, including Ullah v Secretary of State for the Home Department [2024] EWCA Civ 201, at [26], Yalcin v SSHD [2024] EWCA Civ 74, at [50] and [51], Gadinala v SSHD [2024] EWCA Civ 1410, at [46] and [47], and Volpi & Anor v Volpi [2022] EWCA Civ 464, at [2-4] and of the danger of "island-hopping", rather than looking at the evidence, and the reasoning, as a whole. See Fage UK Ltd & Anor v Chobani UK Ltd & Anor [2014] EWCA Civ 5 [114].

26. More specifically, I have taken into account relevant principles of procedural fairness, as recently summarised and reiterated in Abdi & Ors v Entry Clearance Officer [2023] EWCA Civ 1455 at [29]-[30]. In general,

> "What fairness requires is essentially an intuitive judgment which is dependent on the context of the decision; although it is possible to identify a number of general principles, they cannot be applied by rote identically in every situation. An overall judgment must be made in the light of all the circumstances of a particular case."

27. Putting adverse points to a witness before their evidence is rejected is generally in the interests of, and sometimes required by, fairness. It may also be "necessary for the integrity of the court process in enabling the tribunal to reach a sound conclusion." Abdi at [33], citing TUI UK Ltd v Griffiths [2023] UKSC 48 at [55].

28. Nonetheless, the First-tier Tribunal is "an expert body", and it is entitled to reject evidence that has not been challenged before it. Abdi [29] Implicitly underlying this principle is an essential distinction between the judge, who is an expert and impartial decision-maker, and the parties. Principles about whether the respondent can subsequently complain about the judge accepting evidence that she chose not to cross-examine on are therefore not directly applicable, and Mr Halim's reliance on MS (Sri Lanka) v Secretary of State for the Home Department [2012] EWCA Civ 1548 at [14] is somewhat misplaced.

29. Nor is the Tribunal required to "give the parties notice during the hearing of all the matters on which it may relay [rely] in reaching its decision." Abdi [29]. This is partly a question of realism and proportionality. In TUI v Griffiths, at [57], Lord Hodge cited the Judicial Committee of the Privy Council in Chen v Ng as follows:

> "In a perfect world, any ground for doubting the evidence of a witness ought to be put to him, and a judge should only rely on a ground for disbelieving a witness which that witness has had an opportunity of explaining. However, the world is not perfect, and while both points remain ideals which should always be in the minds of cross-examiners and trial judges, they cannot be absolute requirements in every case. Even in a very full trial, it may often be disproportionate and unrealistic to expect a cross-examiner to put every possible reason for disbelieving a witness to that witness, especially in a complex case, and it may be particularly difficult to do so in a case such as this, where the Judge sensibly rationed the time for cross-examination and the witness concerned needed an interpreter. Once it is accepted that not every point may be put, it is inevitable that there will be cases where a point which strikes the judge as a significant reason for disbelieving some evidence when he comes to give judgment, has not been put to the witness who gave it."

30. This pragmatism is also in keeping with the overriding objective, which defines dealing with cases fairly and justly to include dealing with them "in ways which are proportionate to the importance of the case, the

complexity of the issues, the anticipated costs and the resources of the parties and of the Tribunal."

31. If, as here, no issues of credibility have been raised in the refusal decision but further evidence adduced at the hearing raises such issues, these should normally be pointed out to the appellant or their representative at the hearing, so that they can be responded to either in evidence or submissions. Abdi at [31], citing MNM v Secretary of State for the Home Department [2000] UKIAT 00005.

32. However, it may not be unfair for this not to be done if "the points are obvious ones […] which [the appellant] could be expected to realise needed addressing in any event, such as inconsistencies with previous statements or a failure to raise a particular matter earlier." Abdi at [32], citing WN v Secretary of State for the Home Department [2004] UKIAT 00213. See also, TUI v Griffiths at [46] (citing Lord Hershell in Browne v Dunn as saying that "there was no need to waste time by cross-examining a witness where it is perfectly clear that he had prior notice that the opposing party intended to impeach the credibility of the story which he was telling.")

33. In this jurisdiction, moreover, Section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 puts legal representatives on notice of various matters that a judge is required to consider as potentially damaging to their client's credibility, regardless of whether they have been raised by the respondent. These include, as here, a delay in raising a human rights or protection claim until after being notified of a [negative] immigration decision.

34. Where a party has made inconsistent statements, they will have the choice of either addressing them proactively or focusing attention elsewhere. If they choose not to address them, fairness will not usually require that the inconsistencies be put to them. The Tribunal can usually remain silent, especially if the party is represented. Abdi [29]-[30], citing The Secretary of State for the Home Department v Maheshwaran [2002] EWCA Civ 173 [2004] at [4]-[5].

The respondent's policy

35. At the hearing before me, Ms Ahmed drew my attention to the respondent's published policy Rights of appeal, Version 15.0,[1] to explain why the presenting officer below may not have cross-examined the appellant regarding her relationship with her family. She apologised for raising this without prior notice, explaining that she was seeking to respond to Mr Halim's submission, based on MS (Sri Lanka), that the respondent should be taken to "accept, or at least not dispute" an account about which she declines to cross-examine a witness. Although I was

[1] According to the National Archives web archive, the version of this policy in effect at the time of the hearing was Version 10, first published on 18 December 2020. This contains the same instructions, at page. 30. https://webarchive.nationalarchives.gov.uk/ukgwa/20210225235239/https://www.gov.uk/government/publications/appeals

ultimately not persuaded that this policy assisted the respondent in this appeal, I am grateful to Ms Ahmed for raising the issue for consideration and discussion.

36. The respondent's policy states:

> "Action if the Tribunal considers a new matter without the SSHD's consent
>
> If the Tribunal considers a new matter without the SSHD giving consent for it to do so, it is acting outside its jurisdiction.
>
> If the SSHD withholds consent on the new matter and the Tribunal proceeds to consider the new matter, the PO should not make any representations or submissions relating to the new matter during the hearing.
>
> The PO should inform the Tribunal that in the view of the SSHD it has acted outside its jurisdiction and seek permission to appeal against the judgment if the appeal is allowed."

37. Following the discussion at the hearing before me, I am not persuaded that this policy has any relevance to the decision I have to make in this appeal. The respondent's reasons for failing to challenge certain evidence are a matter for her. The question before me is whether, in the absence of that challenge, the Judge's decision was reached fairly in this particular case.

38. Nonetheless, I feel it is worth noting that I consider this policy difficult to reconcile with the respondent's duties under the Procedure Rules to help the Tribunal further the overriding objective and to co-operate with the Tribunal generally.

39. As discussed at some length in the caselaw summarised above, in a legal system designed primarily along adversarial principles, the normal expectation is that the parties test their opponents' evidence through cross-examination and submissions. For precisely this reason, it may be particularly difficult to secure a fair hearing in this jurisdiction if the respondent is not represented. "Adjudicators will in general rightly be cautious about intervening lest it be said that they have leaped into the forensic arena and lest an appearance of bias is given." Maheshwaran at [3]. Yet at the same time, there may be gaps or inconsistencies in the evidence that need to be explored. The respondent's absence may therefore force the First-tier Tribunal judge to perform a difficult balancing act. See also Abdi at [31] ("Problems often arise as to how the tribunal can avoid giving an appearance of bias where, as has increasingly happened, the respondent is not represented at the hearing and so the usual adversarial testing of the applicant's evidence by cross-examination does not take place."); MNM at [18] ("it is very difficult for the adjudicator if the Home Office is unrepresented"); HA & Anor v Secretary of State for the Home Department [2010] ScotCS CSIH_28 [14] ("circumstances can arise in which the Tribunal cannot fairly adopt the passive role which a judge or a jury would ordinarily adopt. Such circumstances are particularly apt to

arise in situations where the Secretary of State is unrepresented at the hearing before the Tribunal. The difficulties which can arise in securing a fair hearing in such circumstances have long been recognised by the Tribunal itself.")

40. In spite of this, the respondent's policy instructs her presenting officers to act as if they are absent – to ask no questions and make no submissions - if a First-tier Tribunal judge decides to hear evidence about something the respondent considers to be a new matter. Although it was not Ms Ahmed's responsibility to justify the respondent's policy in these proceedings, no justification is apparent at first glance. As the policy itself recognises, if the respondent is unhappy with the First-tier Tribunal's decision to consider what she thinks is a new matter, she may appeal that decision on the ground that the Tribunal acted without jurisdiction. Her participation in the appeal after noting her objection will not prejudice that appeal, as she cannot thereby confer on the Tribunal a jurisdiction it did not have.[2]

41. It is also concerning that the respondent's policy could lead presenting officers to misunderstand the extent of the Tribunal's jurisdiction. The Tribunal has the jurisdiction to decide for itself what does, and does not, constitute a "new matter". Mahmud (S85 NIAA 2002 – "new matters") at [42]. The policy, however, does not expressly acknowledge this. Instead, it proceeds as if a Tribunal may simply decide to consider a "new matter" regardless of the respondent's lack of consent. This is an unlikely thing for an expert First-tier Tribunal judge to do, as the statute and caselaw are clear that they would then be acting outside their jurisdiction. Far more likely is what in fact happened in this case, namely, that a First-tier Tribunal judge, in the exercise of her lawful jurisdiction, makes a reasoned decision that the new material does not constitute a "new matter" and proceeds to conduct the hearing accordingly. By overlooking this possibility entirely, the guidance may encourage presenting officers to treat First-tier Tribunal decisions as ultra vires and without effect, rather than complying with them unless and until they have been successfully challenged by way of an appropriate application to the Upper Tribunal.

Discussion

42. This has not been an easy decision. The credibility points the Judge took against the appellant at [30]-[32] were precisely the type of inconsistencies that the caselaw identifies as obvious. Between 2016 and

[2] It is worth noting that the respondent's policy takes a more helpful approach when, in accordance with Rule 17(2) of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014, a Judge decides not to treat an appeal as withdrawn in spite of the respondent's withdrawal of the refusal decision. In Withdrawing decision, Version 4.0 (9 December 2021), presenting officers are instructed that, "If the Appeal Hearing does proceed, Presenting Staff will play a limited role in proceedings. Presenting Staff are to reiterate that the decision has been withdrawn. However, if the Hearing continues to be heard. cross examination and submissions will be limited to matters that are in contention or to deal with any new evidence or issues." Whether that helpful approach is taken in practice is not clear. See Maleci (Non-admission of late evidence) [2024] UKUT 00028 (IAC) [19]; ZEI and others (Decision withdrawn - FtT Rule 17 – considerations) Palestine [2017] UKUT 00292 (IAC) [19](f).

2018, the appellant applied for indefinite leave to remain and further leave to remain as a dependant, varied the second application to one made in her own right, and provided the respondent with updating evidence while that final application was pending. She was represented throughout, and the detailed submissions made on her behalf not only failed to mention her fears about returning to Bangladesh, but went further and asserted that, but for her various medical needs, she would be happy to do so.

43. This is precisely the sort of inconsistency and failure to raise a particular matter earlier that Abdi suggests does not need to be put to a witness. In addition, the appellant's statement of 28 April 2021 confirms that it had been brought to her attention prior to the hearing. She says at [7] of that statement:

> "Following my attendance at a hearing on 11th January 2021, I have been specifically asked to confirm during the hearing, why my basis for asking permission to stay kept changing. I confirm that I have always presented my facts as existed at the relevant times."

If anything, this would seem only to add to the inconsistency, because it suggests that the facts "as existed" in 2016-2018 were that she would be happy to return to Bangladesh, but for her need for fertility treatment or medical care in the UK.

44. However, the Judge's reasons for rejecting the appellant's credibility did not end with these points. At [33]-[34], she also raised two plausibility points, one about the behaviour of the appellant in 2015 and one about the behaviour of her father. Implausibility is an inherently difficult credibility indicator, especially when applied to events outside the UK (see, e.g., HK v Secretary of State for the Home Department [2006] EWCA Civ 1037 [27-30]). These are not "obvious" credibility points. Nor can it be assumed that she could not have given a persuasive explanation if she had been asked for one, particularly bearing in mind what was said by the Court of Appeal in SH (Afghanistan) v Secretary of State for the Home Department [2011] EWCA Civ 1284 at [15].

45. I consider that the Judge erred in taking plausibility points against the appellant that were not put to her and that were not obvious. Given the strength of the obvious credibility points raised at [30]-[32], and the appellant's very limited effort to address them in her April 2021 statement, it may be that the Judge's decision as to the appellant's credibility would very likely have been the same even if she had not taken these additional adverse points. However, given that credibility must be assessed in the round and on the basis of all of the evidence, I cannot say that the decision would inevitably have been the same.

46. I have found it difficult to decide whether the Judge's credibility points at [35]-[36] were reached fairly, and given my decision about the points made at [33]-[34], I consider that I do not need to do so. On the one hand, the points are not as obvious as the inconsistencies and omissions identified at [30]-[32], as they are based on what could be considered

minor details within documents in the appellant's bundle that were presumably adduced for a different purpose. On the other hand, these are documents that the appellant and her representatives had chosen to adduce, and she (and her representatives) should have been familiar with their contents. They plainly contradicted her account of having broken off contact with everyone in her family, and this called for an explanation. Looking at the issue of fairness in the round, I consider that I do not need to resolve this question given my findings above about the plausibility points. I also note that the Judge herself did not put particular weight on these final points, treating them as an afterthought that fortified her in a decision she had already made.

47. There is no question that a mistake in assessing the credibility of the appellant's account of her relationship with her family was material to the outcome of this appeal. The Judge specifically relied on her finding that family support would be available both when deciding whether there would be very significant obstacles to the appellant's integration and when conducting her Article 8 assessment.

48. For these reasons, the decision of the First-tier Tribunal involved the making of an error of law and, in spite of the clear and careful reasoning of the decision overall, that error must be considered material.

Notice of Decision

The decision of the First-tier Tribunal involved the making of a material error of law and is set aside.

There has been no challenge to the decision of the First-tier Tribunal that it had jurisdiction to consider evidence about the appellant's relationship with her family where relevant to the issues before, her including very significant obstacles to integration and Article 8. That decision is therefore preserved.

Although there has been no challenge to the Judge's factual findings on other aspects of the appellant's case – such as her mental health or ability to find work in Bangladesh – these would naturally have been influenced by the Judge's negative assessment of the appellant's overall credibility and must also be set aside. Those findings would in any event now need to be updated, given the long delay in deciding this application.

The appeal is remitted to the First-tier Tribunal for a fresh hearing on all issues, including the appellant's relationship with her family so far as relevant to the Article 8 issues before the Tribunal, before any judge other than Judge Kudhail.

E. Ruddick

Judge of the Upper Tribunal
Immigration and Asylum Chamber

22 January 2025