



**Upper Tribunal  
(Immigration and Asylum Chamber)  
IA/36715/2013**

**THE IMMIGRATION ACTS**

**Heard at Manchester  
On August 21, 2014**

**On August 26, 2014**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE ALIS**

**Between**

**MR SAQIB AKRAM**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME  
DEPARTMENT**

Respondent

Representation:

For the Appellant: Miss Smith, Counsel, instructed by  
Richard

Nelson Solicitors

For the Respondent: Mr McVeety (Home Office Presenting  
Officer)

**DETERMINATION AND REASONS**

1. The appellant, born July 10, 1987, is a citizen of Bangladesh. On July 23, 2013 he applied to vary his leave to remain in the United Kingdom.
2. The respondent refused his application to vary his leave and made a decision to remove him under section 47 of

the Immigration, Asylum and Nationality Act 2006 on August 29, 2013.

3. On September 6, 2013 the appellant appealed under Section 82(1) of the Nationality, Immigration and Asylum Act 2002 and he argued removal was not in accordance with the Immigration Rules and was unlawful because it was incompatible with his human rights.
4. The matter was listed before Judge of the First-tier Tribunal Brunnen (hereinafter referred to as “the FtTJ”) on March 26, 2014 and in a determination promulgated on April 14, 2014 he dismissed the appeal finding the appellant had failed to satisfy the Immigration Rules and there was nothing exceptional about the facts of the case that would lead to an unjustifiable harsh result that justified him considering the case outside of the Immigration Rules.
5. The appellant appealed that decision on April 24, 2014. Permission to appeal was refused by Judge of the First-tier Tribunal Williams on May 6, 2014. Permission to appeal was renewed to the Upper Tribunal and on June 19, 2014 Upper Tribunal Judge Eshun found it was arguable the FtTJ may have erred by failing to consider and give weight to the rights of each family member and failed to make a finding as to whether the appellant suffered from social anxiety which was relevant to the proportionality of removal. Permission to appeal was granted on all grounds although the third ground did not persuade her.
6. The respondent filed a Rule 24 response in which she argued there had been no material error in law.
7. The appellant was in attendance at the hearing.

### **SUBMISSIONS ON ERROR OF LAW**

8. Miss Smith argued all three grounds. She submitted:-
  - a. Ground One. Whilst the FtTJ had considered the appellant’s rights under article 8 he had failed to consider the appellant’s family’s rights in the event the appellant was removed. Whilst the appellant was an adult she submitted that the FtTJ should have considered the family life that existed and should have found that this family life went beyond the normal emotional ties for all of the family and not merely for the appellant. There was evidence before the FtTJ of how the removal would affect his

mother from the mother herself, the appellant and his stepfather. The FtTJ did not have regard to this evidence.

- b. Ground Two. The appellant suffered from social anxiety disorder. In the Rule 24 response the respondent appeared to accept the FtTJ did not make a finding on this and this must amount to an error because this was a key part of his case as set out in both his, his mother's and his sister's statements.
  - c. Ground Three. The FtTJ applied an objective test when he should have applied a subjective test and in particular he failed to consider how the appellant felt and whether his belief was genuine.
9. Mr McVeety rejected these grounds of appeal. He argued courts should be careful about dissecting each line of a determination. The Tribunal had made this clear in the recent decision of VHR (unmeritorious grounds) Jamaica [2014] UKUT 00367 (IAC). He submitted:-

- a. Ground One. The FtTJ was fully aware of all the facts and in particular he noted:
  - i. The appellant was able to return on his own to Bangladesh for six weeks to sort out a family feud.
  - ii. His sister worked for a very successful accountancy firm and was often away from the appellant for long periods working.
  - iii. He came to the United Kingdom as a student and stayed with a friend of his stepfather's-a person he did not know.
  - iv. He often had to cope on his own when his mother and stepfather returned to Bangladesh.

The FtTJ had regard to these factors as well as the fact the family had clearly discussed with him the implications of his mother marrying his stepfather and relocating to the United Kingdom. The family did this in the knowledge that the appellant would be unable to live permanently in the United Kingdom and this is a factor the FtTJ had regard to in his determination. There was no error on this ground.

- b. Ground Two. Whilst the Rule 24 letter accepts the FtTJ did not make a finding there was no concession

this was material. The FtTJ considered all of the evidence between paragraphs [87] to [90] and found the appellant's social anxiety did not engage mean removal would be unjustifiably harsh.

- c. Ground Three. His personal problem had nothing to do with his immigration status. He would have this problem whether he lived in Bangladesh or the United Kingdom. The fact he has had family support here in the United Kingdom had made no difference to his condition. The FtTJ accepted he had a medical condition but concluded that his location made no difference to this condition. The FtTJ accepted he did not wish to have intercourse before marriage but those beliefs were being followed both here and in Bangladesh. The FtTJ considered the appellant's condition correctly and there was no error.
10. Miss Smith responded to these submissions and argued that the decision in VHR did not concern a case where there had been an error in the assessment of the key issues. The FtTJ should have made findings on the medical evidence and the effect of his condition on other family members.
  11. I reserved my decision on the error of law.

#### **ERROR OF LAW ASSESSMENT**

12. The FtTJ heard this appeal on March 26, 2014 and subsequently promulgated a very detailed decision on April 14, 2014. It is clear from his careful examination of the facts and his findings he gave these facts careful consideration.
13. Three grounds of appeal have been argued before me and they can be summarised as follows:-
  - a. Not having regard to the individual family's own interests.
  - b. Not making findings on whether he had a social anxiety disorder.
  - c. Not considering the appellant's medical problem from the appellant's prospective.
14. In assessing the appellant's original appeal the FtTJ recorded the following:
  - a. The appellant's immigration history at paragraphs [6], [10], [15] and [25] of his determination. He subsequently made findings about his immigration status at paragraph [92] of his determination.

- b. The appellant's social anxiety disorder at paragraphs [27] to [29], [42], [46], [58], [62] to [71] of the determination. He subsequently considered his social difficulties at paragraphs [84], [85], [87] to [91] of his determination.
  - c. The appellant's medical problem at paragraphs [13], [18], [31], [40], [53] to [56] and [66] of the determination. He subsequently considered this complaint at paragraphs [85] and [86] of his determination.
- 15. Miss Smith's submissions concern the FtTJ's approach to these issues.
- 16. Both representatives made submissions on the decision of VHR. The Tribunal in that appeal considered the approach representatives take in lodging appeals against First-tier decisions and at paragraph [7] of the determination the judges stated-
  - "In our judgement, the problem with Mr Chelvan's approach and this appeal is that he has sought to comb through the judgment as if it was a statute and pick bits here and there out of context whilst ignoring the overall findings of the Determination and Reasons and the conclusions."
- 17. The Tribunal in that decision went onto find at paragraphs [8] and [9]-
  - "8. ... It is not necessary for judges to record, analyse, rehearse and repeat the entire interstices of the evidence. The task of the First-tier Tribunal is to make reasoned findings on the key issues in the case and a clear decision.
  - 9. ... forensic criticism which in our judgement is quite unwarranted and unreal..."
- 18. Miss Smith has sought to distinguish this case from that decision by arguing the FtTJ did not deal with the key issues of the appellant's appeal. I reject this submission because the length and detail of the determination contradicts this submission. The FtTJ clearly and carefully recorded in considerable detail all the evidence including the various medical reports and assessments.

19. McCombe LJ in VW (Sri Lanka) [2013] EWCA Civ 522 said, "Regrettably, there is an increasing tendency in immigration cases, when a First-tier Tribunal Judge has given a judgment explaining why he has reached a particular decision, of seeking to burrow out industriously areas of evidence that have been less fully dealt with than others and then to use this as a basis for saying the judge's decision is legally flawed because it did not deal with a particular matter more fully. In my judgement, with respect, that is no basis on which to sustain a proper challenge to a judge's finding of fact".
20. It is with these decisions in mind that I have considered the respective submissions that have been made to me today.
21. Miss Smith's first ground of appeal centred on the FtTJ's approach to the effect removal would have on the various parties. Quite properly the FtTJ considered in some detail the effect removal would have on the appellant himself but it would be wrong to argue that this was the only effect of removal he considered. It is clear from the determination that the FtTJ considered all the family's evidence and he noted their respective concerns. In making his findings I am satisfied he took into account the whole family's concerns and the effect it would have on them. He properly applied the test set out in Gulshan [2013] UKUT 640 (IAC) and at paragraph [75] he noted the appellant's personal circumstances both here and in Bangladesh. He then accepted at paragraph [80] that the appellant was less independent of his mother and sister than other people of a similar age and he accepted the appellant had family life with his mother, sister and stepfather. At paragraph [87] he found, having considered all of the evidence, that the appellant's dependency on his family was not as high as he claimed. At paragraph [89] he noted the appellant had demonstrated he was able to live alone.
22. The FtTJ also had regard to his mother's and stepfather's situation and that they clearly were able to leave him alone and significantly at paragraph [92] he commented that the appellant's mother chose to come to the United Kingdom knowing full well that the appellant would be unable to join them on the same basis hence why she arranged for him to come here as a student. The FtTJ was aware of his sister's situation as he commented on this at paragraph [68] of his determination. The FtTJ found nothing in their circumstances that would engage article 8 outside of the Immigration Rules. Whilst I accept he spent more of his time on the appellant's situation this did not mean

he had no regard to the appellant's family. He did and the fact he did not go into so much detail does not amount to a material error for the reasons set out in VHR.

23. I turn now to Miss Smith's second ground of appeal. The FtTJ did not specifically make a finding on whether he suffered from social anxiety disorder but what he did was to consider all the evidence submitted and he made findings about his personal situation at paragraphs [84], [85], [87] to [91] of his determination. The FtTJ clearly had regard to his complaints and all of the reports submitted on his behalf. In particular, he spent some time discussing Ms Brown's and Dr Salim's report and he also had regard to his level of dependence on his mother and sister from paragraph [87] onwards. The FtTJ was required to consider the effect of his social anxiety disorder and this is what he did. He considered the causes of his disorder and made findings. These findings were open to him and there was no error.
24. The final ground of appeal related to the submission that he applied an objective test rather than a subjective test. The FtTJ clearly was aware of how the appellant felt about his medical condition because he recorded the evidence in his determination. He then examined the problem and that included whether the problem had improved here. He made a number of findings about his condition and why removal was not unjustifiably harsh. Those findings were open to him and were made in the knowledge of how the appellant felt.
25. I am satisfied that this was a well-prepared determination but the grounds of appeal, ably argued by Ms Smith, have no merit.

### **DECISION**

26. There is no material error of law and I uphold the original decision.
27. Under Rule 14(1) The Tribunal Procedure (Upper Tribunal) Rules 2008 (as amended) the appellant can be granted anonymity throughout these proceedings, unless and until a tribunal or court directs otherwise. No order has been made and no request for an order was submitted to me.

Signed:

Dated:

Deputy Upper Tribunal Judge Alis

A handwritten signature in black ink, appearing to read 'S. Alis', with a long horizontal stroke underneath.



TO THE RESPONDENT

I do not make a fee award as the appeal failed.

Signed:

Dated:

A handwritten signature in black ink, appearing to read "J. K. Alis", with a horizontal line underneath the name.

Deputy Upper Tribunal Judge Alis