Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: HU/14949/2016**

THE IMMIGRATION ACTS

Heard at Manchester, Piccadilly **Decision & Reasons Promulgated**
On 19th December 2017 **On 3 rd January 2018**

Before:

DEPUTY UPPER TRIBUNAL JUDGE MCGINTY

Between:

MR HASSAN AHMED
(NO ANONYMITY ORDER MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Timson (Counsel)
For the Respondent: Mr McVeety (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. This is the Appellant's appeal against the decision of First-tier Tribunal Judge Thorne promulgated on the 3rd March 2017, in which he dismissed the Appellant's Human Rights appeal.

2. The full reasons for the decision are set out within the decision of Judge Thorn, and are a matter of record and are therefore not repeated in their entirety here, but I have fully taken account of the same in reaching my decision. Permission to appeal has been granted in this case by Deputy Upper Tribunal Judge Chapman on the 2nd October 2017, who found that although the grounds of appeal were not of particular significance in identifying arguable errors of law he found that it was apparent that the decision did disclose arguable errors of law, and he went on to find that there were three arguable errors in law. Firstly, he said it was arguable that although at [27] the Judge concluded the Appellant did not establish that there would be very significant obstacles to his reintegration back into Bangladesh and then had gone on to say that he would deal with that in the analysis of Section 19 of the Immigration Act 2014, Deputy Upper Tribunal Judge Chapman said that it was arguable that the Judge had not recognised that the consideration of whether very significant obstacles is different and a different test in the assessment of proportionality when assessing his application under Section 19 of the Immigration Act 2014. Secondly, Deputy Upper Tribunal Judge Chapman said that it was arguable that there was an error in law in that the Judgment in the Court of Appeal in the case of MM v The Secretary of State for the Home Department [2014] EWCA Civ 985 had been overturned by the Supreme Court, a week prior to the hearing. In the third arguable ground, as stated by Deputy Upper Tribunal Judge Chapman, it was said that it was arguable that the Judge had failed to give any or any adequate or proper reasons for her findings at both paragraphs 42 and paragraph 57(vi) through to (xii) of the decision.

3. I am also grateful to the oral submissions of both Counsel which I have fully taken account of and again which are recorded within the record of proceedings.

4. Although Mr Timson sought to argue that Judge Thorne had failed to give any or any adequate reasons for his finding that there would not be very significant obstacles to his reintegration back into Bangladesh at [27], that paragraph cannot be read in isolation, and actually has to be read in

conjunction with the findings made at [57] of the decision. In that regard, as the Judge clearly set out those findings which were relevant to whether or not there would be very significant obstacles, and were dealt with at [57] and included the finding that the Appellant was financially independent, the Appellant was young, well-educated, resourceful and in good health. The First-tier ~Tribunal Judge did not accept the Appellant had forgotten all about his life in Bangladesh or that he forgot how to speak Bangla or Sylheti or to not be able to learn it again were he to be returned. In addition, the Judge found that the Appellant had substantial cash savings and had not proved on the balance of probabilities he would not be able to find suitable employment or accommodation in Bangladesh and specifically stated that the Appellant had not proved that living in Bangladesh would entail serious hardship for him or there were significant obstacles to his reintegration into Bangladesh.

5. Mr Timson sought to rely upon a letter from Dr Chaudhry regarding the care that the Appellant's grandmother needed and the statement of the Appellant himself at paragraph [9], in terms of the care that his grandmother needed, and sought to argue that there was family life between them and the Judge had not considered the care needed by the grandmother, and then simply said that the evidence was unclear as to what care and support he gave to his grandmother. However, in fact, having considered the record of proceedings, it does not appear that in fact Mr Timson argued before the First-tier Tribunal Judge in his closing submissions, that there was family life and a sufficiency of dependency as to give rise to family life between the Appellant and his grandmother. The argument but before the First-tier Tribunal Judge was simply based on the basis of his private life.

6. In respect of [57(vi)] the Judge was entitled to find that the evidence was unclear as to what care and support the Appellant gave to his grandmother. Although Mr Timson sought to reply upon the letter from Dr Chaudry, in which it was said that she is elderly and does require quite a lot of help at home it would be helpful for her to have a family member to help with daily living duties and that she needs help from her grandson with household chores and general support, that in itself was not clear as to exactly what support he

gave her, the Appellant's own statement at [8] simply says that she is heavily dependent on him and he undertakes all the household duties. Again, that had not been specified as to what duties he actually did or what her health prevented her from doing. However, in any event, as stated above, it was not specifically sought to be argued that there was a family life between them such as to mean that his removal would be in breach of his right to a family life with his grandmother.

7. In respect of the findings at [57] between (i) and (v) the findings there were perfectly open to the Judge on the evidence before him. Indeed, the Appellant had given evidence in English and the Judge found that he could speak English and could financially support himself in the UK, which finding was perfectly open to him on the evidence. The Judge also was quite correct in saying there was a legitimate interest in maintaining an effective immigration control and no rules have to be applied if immigration control is to be workable, predictable and consistent. He also was entitled to find that the Appellant's private life was established at a time when his immigration status was precarious, given the fact at no time did the Appellant have indefinite leave to remain. Further the Judge was entitled to find that he never had a legitimate expectation that he would make the UK his home, despite having arrived here aged 11 and then left by his mother in the care of his grandmother. The Judge quite properly considered the question as to whether or not the Respondent had exercised her discretion in relation to the discretionary leave in an unreasonable and lawful way and gave clear and adequate findings for his reasons in that regard at [57(v)].

8. The Judge was perfectly entitled to find that there was no evidence to show that the uncles who live nearby could not provide care for his grandmother or that such support could not be provided by Social Services and the NHS. Those were findings open to him and there is no material error in that regard. Further, in respect of the Judge's finding that he did not accept that the Appellant had forgotten all about his life in Bangladesh or that he had forgotten how to speak Bangla or Sylheti or that he would not be able to learn it again were he to return, that put in the context of the Judge's finding that

the Appellant is young, well-educated and resourceful and in good health and in circumstances where he had entered the UK at the age of 11, the Judge has explained how for an educated person that he would not have forgotten all about his life in Bangladesh, or forgotten how to speak his languages of Bangla or Sylheti, or as he was well-educated, young and resourceful, that he would not be able to learn it again. The Judge's reasoning in that regard, although not the fullest, are sufficient and adequate to allow the Appellant to understand why those findings were made.

9. Again, in respect of the findings that Judge Thorne made at [(viii)] the Appellant would be able to find suitable employment and accommodation in Bangladesh, the Judge stated that he did have substantial savings and also again that has to be considered in light of the finding that he was Young, well-educated, resourceful, in good health. In such circumstances, the Judge has adequately explained why for someone who does have savings, and is young, well-educated and resourceful and in good health would be able to find suitable employment and accommodation. Although not the fullest of reasoning, there is not a complete absence of reasoning, and I find that the decision does give adequate and sufficient reasons for the findings made by Judge Thorne from paragraphs (vi) through to (xii).

10. Although Mr McVeety conceded that the decision was somewhat harsh and that other Judges may have reached a different conclusion, he argued that the decision was open to Judge Thorne on the evidence before him. In that regard, I agree with Mr McVeety, that although different Judges may have reached a different conclusion, it cannot be said that the decision being reached by Judge Thorne was not a decision open to him on the evidence, particularly when making findings regarding whether or not the Appellant would face very significant obstacles in reintegrating back into life in Bangladesh. The first and third ground of appeal as highlighted by Deputy Upper Tribunal Judge Chapman therefore lack merit, upon close analysis of the case. The reasoning does not require additional words to be added in as suggested by Mr Timson, and the reasons, albeit short and brief, are adequately and sufficiently explained within the decision itself.

11. In respect of the second arguable ground of appeal identified by Deputy Upper Tribunal Judge Chapman, in the case of MM v The Secretary of State for the Home Department [2014] EWCA Civ 985 that had been overturned by the Supreme Court the week prior to the hearing in the case of R (On the Application of MM) Lebanon v The Secretary of State for the Home Department [2017] UKSC 10, as Mr Timson conceded, that ground takes the matter no further, in that the point actually being made by Judge Thorne in respect of MM v The Secretary of State for the Home Department, that there was no intermediate test that had to be applied before he went on to consider Article 8 outside of the Rules. The decision of the Supreme Court did not change that position, and indeed, it is a correct analysis and statement of the law that there is no intermediate test that has to be applied before a Judge goes on to consider Article 8 outside of the Immigration Rules. Indeed, given the date of the decision in this case, the only applicable ground was that the decision was in breach of the Appellant's Human Rights under Article 8. The old ground of appeal that the decision was not in accordance with the law was no longer open to him therefore the Judge did have to consider the case albeit "through the lens" or "through the prism" of the Immigration Rules, and had to properly go on to consider it outside of the Rules, which he did.

12. The decision of First-tier Tribunal Judge Thorne does not disclose any material error of law, and the decision is maintained.

Notice of Decision

The decision of First-tier Tribunal Judge Thorne does not contain any material error of law and is maintained;

I make no Order in respect of anonymity, no such Order having been made by First-tier Tribunal Judge Thorne and no such Order having been sought before me.

Signed

RFMcGinty

Deputy Upper Tribunal Judge McGinty Dated 19th December 2017