Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/06446/2016**

THE IMMIGRATION ACTS

Heard at Manchester Civil Justice Centre	**Decision & Reasons Promulgated**
On 14 May 2019	**On 21 May 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE BIRRELL

Between

MOHAMMED SHAMSADOR RAHMAN
(ANONYMITY NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Moksud of IIAS
For the Respondent: Mr D Tan Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this

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Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.

2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Bannerman promulgated on 21 December 2016, which dismissed the Appellant's appeal against the refusal of a protection claim.
3. Grounds of appeal were lodged arguing that the Judge gave perverse reasons for the rejection of the Article 8 private life claim and that he made adverse credibility findings that were not open to him.
4. On 16 January 2017 Designated Judge Manuell gave refused permission to appeal and the application was renewed. On 20 March 2019 Judge Chalkley gave permission to appeal.

5. At the hearing I heard submissions from Mr Moksud on behalf of the Appellant that:

6. In assessing the credibility of the asylum claim the Judge failed to take into account the medical evidence because the Appellant had scars.

7. The Appellant was not to blame if he could not recall things because he was unwell.

8. The Appellants previous solicitors had not raised issues in his first claim which was held against the Appellant.

9. On behalf of the Respondent Mr Tan submitted that:

10. The grounds don't identify any specific error in the Judges consideration of the protection claim.

11. In relation to the medical evidence the Judge dealt with that at paragraph 71 and identifies its limits.

12. He found the Appellants evidence vague and inconsistent.

13. In relation to the suggestion that the Appellant was a vulnerable witness whose evidence had to be considered in that light that was not an argument advanced at the hearing.

14. In relation to Article 8 16 years of residence without more was not enough to establish a private life claim. While the findings were brief, they reflected the law.

15. In reply Mr Moksud on behalf of the Appellant submitted argued that in the 2010 claim the Appellant was unrepresented.

The Law

16. Errors of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational conclusions on facts or evaluation or giving legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.

17. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue under argument. Disagreement with an Immigrations Judge's factual conclusions, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence that was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration judge concludes that the story told is untrue.

Finding on Material Error

18. Having heard those submissions I/we reached the conclusion that the Tribunal made no material errors of law.

19. In relation to the challenge to the asylum aspect of the Judge's decision tt was open to the Judge on the evidence before him to find that the Appellants asylum claim was not credible. The factual matrix against which the Judge assessed the

claim which was made for the first time in 2016 when the Appellant had been detained for removal was that he had entered the UK in 2000 allegedly in fear for his life and had not made an asylum claim or sought to regularise his status until 2010 when he made a human rights claim. Contrary to what was asserted by Mr Moksud the Appellant gave evidence that he was legally represented in 2010 (paragraph 27) but blamed the solicitor for not advancing an asylum claim which he told them about at that time and there is no reference to such claims in any of the witness statements prepared in support of the application and it was not raised in the previous appeal. The Judge was entitled to treat with caution an assertion that solicitors would choose not to advance an asylum claim articulated to them in favour of an arguably less persuasive Article 8 claim based only on private life.

20. It cannot be argues that in assessing the credibility of the Appellants asylum claim the Judge did not consider the medical evidence because he set out the two sources of such evidence in the record of proceedings at paragraphs 49-51 and 51 and while he does not specifically make findings in respect of the report from Sri Lanka at page 9 of the bundle it would have been open to him to note that the report that the report at times makes little sense being headed '*Descars Certificate'* and stating '*He was seafaring Physical Assault'* . It had also been submitted that the report was dated 2016 and related to events from 1994 but gave no detail of the source material on which the report was based. In respect of the Rule 35 report the Judge found that this was merely a record of scarring and the explanation given by the Appellant being consistent with the scars. It would also have been open to the Judge to find that this was not an expert report in the sense that consideration has not been given to other possible causation and therefore the report carried less weight. The medical evidence was not determinative of the case and the Judge rightly recognises that in asserting that he has considered the evidence in the round with the other evidence in the case.

21. In relation to Article 8 it would have been helpful if the Judge had considered this in a structured way by reference to paragraph 276ADE(vi), the tests in Razgar and the provisions of s 117B6 focusing on the legal tests that the Appellant had to meet if he hoped to succeed. Mr Moksud quite properly accepted that 16 years

residence with unlawful/precarious status without more was not enough to succeed in a private life claim. The Judge noted that the Appellant had no family in the UK and while he claimed to have friends 'he makes no significant play of this factor' because there was no evidence of these friends or indeed any engagement with the community other than the NHS in his bundle. He notes the only ongoing treatment he received was an inhaler for asthma and this could be addressed in Bangladesh.

22. A more detailed and structured focus on these legal tests by the Judge would have also highlighted that this was a private life claim only and in that respect 117B(4) of the Nationality Immigration and Asylum Act 2002 requires that private life established when status is precarious must be given little weight and the Judge was required to take into account that he did not apparently speak English and was not self sufficient. In respect to re integration in Bangladesh the Appellant spoke Sylheti had a wife and family in Bangladesh who the Judge may have found that he was still in contact with given the fact that he had found his claim otherwise to be wholly 'incredible' particularly since his case was that he had 'chosen' not to remain in contact with them rather than fallen out with them; that he had worked in Bangladesh. While Mr Moksud claimed he was 'vulnerable' the only evidence of that was within the medical notes from his immigration detention over 14 months before the hearing when he made an unsuccessful suicide attempt that Page 27 of the medical notes suggests was made against a background of no previous attempts and made only when others were present to assist and the Appellant confirmed he had no future intent to self harm. There was no medical evidence from any source relating to the period after his release from detention to suggest that there was a ongoing suicide risk before the Judge and he was entitled to find on the evidence before him that given his only ongoing health issue was asthma this was not a matter of such weight as to result in a grant of leave under Article 8. Mr Moksud was unable to identify any evidence in respect of the Appellants private life in the bundle that the Judge failed to take into account

23. As to the duty to give reasons I take into account what was said by the Court of Appeal in MD (Turkey) [2017] EWCA Civ 1958 at paragraph 26:

“The duty to give reasons requires that reasons must be proper, intelligible and adequate: see the classic authority of this court in Re Poyser and Mills’ Arbitration [1964] 2 QB 467. The only dispute in the present case relates to the last of those elements, that is the adequacy of the reasons given by the FtT for its decision allowing the appellant’s appeal. ***It is important to appreciate that adequacy in this context is precisely that, no more and no less.*** *It is not a counsel of perfection. Still less should it provide an opportunity to undertake a qualitative assessment of the reasons to see if they are wanting, perhaps even surprising, on their merits. The purpose of the duty to give reasons is, in part, to enable the losing party to know why she has lost. It is also to enable an appellate court or tribunal to see what the reasons for the decision are so that they can be examined in case some error of approach has been committed.” (my bold)*

24. I am therefore satisfied that while the Judge’s determination could have been more structured and detailed when read as a whole it set out findings that were sustainable and adequate given the absence of relevant evidence in the bundle.

CONCLUSION

25. **I therefore found that no errors of law have been established and that the Judge’s determination should stand.**

DECISION

26. **The appeal is dismissed.**

Signed Date 17.5.2019

Deputy Upper Tribunal Judge Birrell