IAC-AH-SAR-V1

Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: HU/05313/2020**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On the 13th October 2021	**On the 26th October 2021**

Before

THE HONOURABLE MR JUSTICE SAINI
(SITTING AS A JUDGE OF THE UPPER TRIBUNAL)
UPPER TRIBUNAL JUDGE KEITH

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR MD TAJUL ISLAM MAMUN
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:
For the Appellant: Mr G Dingley, Counsel
For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. Although this is the appeal of the Secretary of State we will refer to the Secretary of State as the respondent and to Mr Mamun as the appellant to avoid any confusion with how the parties were referred to before the First-tier Tribunal.

2. This is an appeal by the Secretary of State against the decision of First-tier Tribunal Judge O'Rourke (the judge) on 30 March 2021. By this decision

the judge allowed the appellant's appeal against the refusal of his human rights claim on 5 March 2020. The context of that refusal was service on 8 March 2019 of a decision to deport the appellant. The appellant contended below that the refusal to withdraw the deportation decision was unlawful under Section 6 of the Human Rights Act 1998, specifically Article 8 ECHR. The appellant is a foreign criminal for the purposes of Section 32(5) of the Borders Act 2007. The index offence is a conviction for making threats to kill for which the appellant was convicted on 16 February 2017 and for which he was sentenced to two years in a young offenders' institution.

3. The appellant's immigration history is as follows. He was born on 24 December 1997 in Bangladesh and he entered the UK aged 10 as a dependant with his mother and siblings on 4 October 2008. He was granted indefinite leave to remain as a dependant on his mother's application on 29 October 2010. Unfortunately, almost immediately following the grant of indefinite leave to remain he began offending with the first matter being a reprimand for indecent exposure on 22 February 2011 following which he amassed a further series of convictions totalling eight convictions for ten offences with three reprimands and cautions ranging from theft, possession of a controlled article for use in fraud, threats to kill, driving a motor vehicle under the influence of drugs, and sending by communication indecent or menacing messages for which he was sentenced to four weeks' imprisonment. The detailed criminal history of the appellant is set out in some detail in paragraph 9 of the judge's decision and we will not repeat it. After the respondent's refusal of the human rights claims he was sentenced to three years and four months' imprisonment for purchasing a prohibited weapon and supply of cocaine and cannabis. That sentencing did not occur until 4 March 2020 but the fact of his conviction has been referred to in the papers before us.

4. The respondent considered the appellant's claim to respect for his private and family life in a detailed decision letter. It was accepted that he had been present in the UK for the majority of his life. It was noted that he did not have a wife or partner or children. However, in respect of his private life, the respondent did not accept that the appellant was socially and culturally integrated into the UK. We note that the respondent did not address the separate question as to whether there were very significant obstacles if the appellant was returned to Bangladesh. The respondent did however consider the issue of "very compelling circumstances". We note that the respondent referred at paragraph 20 of the decision letter to the significant public interest in the appellant's deportation given the nature and circumstances of his offending and relied in particular upon the remarks of the sentencing judge. Those remarks are significant and were also noted by the judge in the First-tier Tribunal. In summary, the sentencing judge remarked that the appellant had engaged in a campaign of terrorising a family with threats to kill, that these were not idle threats and they were repeated and detailed. Overall, the respondent concluded in the decision letter that the appellant could return and integrate into Bangladesh. The respondent also considered and rejected an Article 3 ECHR claim based on claimed mental and physical conditions suffered by

the appellant. The Article 3 ECHR matter is no longer live and we say nothing further about it.

The FtT's Decision

5. The judge referred to the applicable law at paragraphs 5 to 7 of his decision and the well-known principles in **Razgar [2004] UKHL 27**. There is no suggestion by Mr Clarke for the respondent that there was any error of law in the judge's identification of the applicable legal principles. There was reference by the judge at paragraph 3(iii) to matters of social and cultural integration and very significant obstacles, albeit by reference to paragraph 339A of the Immigration Rules. At paragraph 7 the judge briefly touched on Section 117C of the 2002 Act. Having recited briefly the undisputed and disputed facts between paragraphs 8 to 14, and the former largely relating to the appellant's offending, the judge concluded that the appellant was socially and culturally integrated into the UK (paragraph 18). The judge explained that the appellant had lived nowhere else since the age of 10 other than the UK. He noted that the bulk of his schooling was here and his entire immediate family was also within the UK and that he was clearly in an ongoing relationship with them. The judge referred to the case of **CI (Nigeria) v Secretary of State for the Home Department [2019] EWCA Civ 2027** for support for the proposition that it was hard to see that criminal offending and imprisonment would ordinarily (and by themselves and unless associated with a breakdown of relationships) destroy the social and cultural integration of the individual. We will return to the **CI** case in due course because it has been the focus of certain submissions by Mr Clarke.

6. Returning to the FtT decision at paragraph 19 the judge considered whether there would be very significant obstacles to the appellant's integration into Bangladesh. He reminded himself of the well-known authorities including the case of **Parveen v Secretary of State for the Home Department [2018] EWCA Civ 932** and he concluded as follows:

> "Applying the law, therefore, to the facts of this case, I find that the Appellant would face very significant obstacles to re-integration into Bangladesh, for the following reasons:
>
> (i) I had no reason to doubt the Appellant witnesses' evidence as to their lack of any ties or extended family in Bangladesh, upon whom, if they existed, the Appellant might be able to call for assistance. While his sister does have in-laws in that Country, it would be somewhat of a stretch to consider that they would accept responsibility for supporting the Appellant, particularly considering his criminal record and the danger he poses to others (to include within his own extended family). He therefore would be returning to a country where he effectively knows nobody.
>
> (ii) While I note the Appellant's mother's failure to previously mention in her statement the existence of her late father's house, I accept her evidence as to its isolation, lack of utilities and overall condition. It does seem unlikely, therefore that the Appellant would be able to live there, without significant hardship.

(iii) To his huge discredit, despite access to UK state education since the age of ten, it seems that the Appellant has no worthwhile qualifications, no training and no obvious skills. He has had only very minimal work experience and therefore, in a country such as Bangladesh, with a very large population and no-doubt high rates of employment/under-employment, he would be very unlikely to find worthwhile employment, potentially leading him back to criminal activity, or to become the victim of it. While he clearly does have a reasonably good grasp of Bengali, it does seem likely that he is not literate in the language, further reducing both his employment opportunities and possibility of social integration.

(iv) The Appellant's family are not well-off and would find it difficult to sustain the Appellant.

(v) I think it unlikely, applying **Kamara** that he would ever really become an 'insider' in Bangladesh, without pre-existing family and friends there and would not, therefore, develop a capacity to participate in that society, to build up relationships to replace the ones he has in UK. Also, applying **Sanambar**, he does not have the necessary 'robustness of character' to overcome the obstacles he would inevitably face".

7. At paragraph 21 and following the judge went on to consider the balance between the public interest and the appellant's right to a family and private life. His conclusion at paragraph 25 was as follows:

> "25. Conclusion. Accordingly, therefore, the Appellant's appeal must succeed. It seems possible, even from his own evidence (and certainly from that of his family) that he might now, finally, realise that both in terms of his criminal record and his residency rights, he has 'run out of road'. The most recent trial judge made it clear that if the Appellant commits further offences, it is inevitable that he will be awarded longer sentences. In that event, it is also inevitable that the Respondent will serve on him a further deportation decision. In appealing against any such decision, it seems very unlikely that the Appellant would again simply be able to rely on paragraph 399A/s.117C(3), but, instead, have to meet the considerably more rigorous test of showing 'very compelling circumstances, over and above those in Exception 1/399A', to outweigh the public interest in his deportation".

It is for these reasons the judge allowed his appeal.

The Appeal

7. Permission to appeal was granted on 14 April 2021 by Upper Tribunal Judge Martin with the observation that it was arguable that the judge had erred in inadequately reasoning the finding that the appellant met the exception contained in paragraph 399A of the Immigration Rules when he has continually offended in a serious manner. Upper Tribunal Judge Martin also referred to the fact that the sentencing judge stated that he had no doubt that the appellant would continue to offend and the OASys Report said that he was a high risk to children. Pausing there that is a reference to certain of the evidence before the judge to which we will come on to consider below.

8. As we have already indicated Mr Clarke appears on behalf of the respondent. Mr Gavin Dingley of Counsel appears on behalf of the appellant. We have received very helpful written and oral submissions from them. Those submissions have been developed this morning with a particular focus on certain points. Before we turn to the two grounds of appeal which have been pursued by Mr Clarke it is important that we make some preliminary observations which reflect the role of this Tribunal in appeals of the present type.

9. First, this Tribunal's jurisdiction is limited to correction of errors of law, and it is important to note that that means that a clear error of law must be identified by a party seeking to appeal. It is important to emphasise that disagreements on facts should not be dressed up as errors of law or as misdirections of law. Secondly, although it is important that a Tribunal provides clear reasons for its decisions, concise reasons are to be commended and not every factual issue which is argued before a court or Tribunal needs to be determined. What is important to an Appellate Court when it considers a decision under appeal, is that it should be able readily identify that the Tribunal below directed itself correctly in law and explained with reasoning (even if brief) why it came to particular conclusions. It is also clear that a first instance court or Tribunal has advantages over an Appellate Court when making findings based on oral evidence and undertaking assessment of the credibility of witnesses.

10. With those preliminary observations, which largely concern uncontroversial propositions we turn to the two grounds of appeal.

Grounds of appeal: discussion and conclusions

First Ground

11. The first ground of appeal which has been expanded upon orally this morning is that the judge failed to give any or adequate reasons for the finding that the appellant is socially and culturally integrated into the UK and particular reliance is placed by Mr Clarke upon the **CI** case, to which we have made reference, and the brief reasoning of the judge in relation to the social and cultural integration issues.

12. That reasoning appears in paragraph 18 of the decision and essentially consists of three points. We have touched on these points above. The third point was a reference to the **CI** case where the judge said as follows at 18(iii):

> "(iii) His entire immediate family are here and there is clearly an ongoing relationship with them, in view of their support of his appeal. In **CI (Nigeria) v Secretary of State for the Home Department [2019] EWCA Civ 2027**, the Court of Appeal said that it was hard to see how criminal offending and imprisonment could ordinarily and by themselves and unless associated with the breakdown of relationships destroy the social and cultural integration of someone whose entire social identity has been formed in the UK".

13. By reference to both the facts of the **CI** case and certain paragraphs of the judgment in that case (in particular, paragraphs 57 to 62) Mr Clarke forcefully submitted that the reasoning that one sees in paragraph 18 overall and in particular in (iii) of paragraph 18 does not suggest that the judge properly engaged with the legal principles in the **CI** case or indeed properly applied that case. In particular, a complaint is made that there was a lack of engagement by the judge with the issue of the appellant's offending and specifically how that affected the extent of the social and cultural integration into the UK.

14. We were taken to the facts of the **CI** case. It is clear that the appellant in **CI** was clearly in a very different factual position to that of the present appellant. It was said that the nature of the reasoning that one sees in paragraph 18 is simply insufficient. As we understand that particular challenge it is not a perversity challenge, but it is a more basic challenge of the type one often sees in public law cases that there has been a failure to give proper reasons.

15. In relation to the first ground, Mr Dingley both in his oral and written submissions has made the point that the reasoning in paragraph 18 of the judge's decision (albeit brief) needs to be seen in the context of his earlier findings. He submits that it is not so brief that it fails on the ground of a duty to give reasons but in fact shows that the judge was fully aware of the facts. Particular emphasis is placed upon paragraph 17 of the decision where just immediately prior to the reference in paragraph 18 to his conclusions the judge refers to the undisputed facts set out "above" which he adopted. Those undisputed facts essentially concern the history of the appellant's offending and so it is said the judge was accordingly fully aware of the facts and did not fail to take into account any specific matter.

16. Having considered both the **CI** case and the specific sub-grounds which are developed in the skeleton argument on behalf of the respondent in our judgment the submissions of the appellant and Mr Dingley are to be preferred.

17. First, it does not seem to us that it is relevant in the context of this case to focus on the particular facts of the **CI** case because the important point that emerges from that case is not the disposition on the facts but the issues of principle which were set out in the judgment of Leggatt LJ. Every case is going to be different on the facts, therefore comparing the facts of CI to the facts of the appellant in this case does not seem to us to assist. What one needs to consider is whether in the operative paragraph, that is paragraph 18, there is either such a brevity of reasoning or some obvious error of law that indicates something went wrong below.

18. We are not satisfied that that such errors can be established. It is clear to us that the judge was fully aware of the facts, he did not fail to appreciate and indeed repeatedly referred to the serious criminality of the appellant. He also directed himself in relation to the relevance of **CI**. Although Mr Clarke submitted that paragraph 18(iii) does not because of its brief reference to **CI** show a full appreciation of that case we do not consider

that submission to be made out. The summary in paragraph 18(iii) of **CI** seems to us to be plainly correct when one looks to the principle identified by Leggatt LJ in that case.

19. There are a number of sub-grounds as we have indicated within ground 1. Although it was primarily argued by Mr Clarke as an inadequate reasons ground there are further discrete complaints. The major complaint is that the judge failed to take into account the OASys Report. We reject that submission. It seems clear to us when one looks at the judge's reasoning as a whole that the OASys Report was in his mind, indeed he makes reference on more than one occasion. It also does not appear to us that there was anything in the OASys Report which demanded a conclusion that the appellant was not socially and culturally integrated into the United Kingdom. We further consider there is force in the point made by Mr Dingley that the OASys Report was not an expert report, it was just part of the evidence before the judge.

20. A further sub-complaint is made that the judge appears to simply rely upon the length of residence in the UK and the relationship with the family which it is argued in the light of **CI** is clearly insufficient. We do not read the judge's determination as being so limited. Albeit briefly expressed, the reasoning in paragraph 18 concerns matters beyond simply age. It also refers to the bulk of the appellant's schooling and the backdrop of these findings is the oral evidence about the appellant growing up largely within the UK. Therefore, we do not consider it is a fair reflection of the judge's decision to criticise him on the basis that he confined himself just to length of residence and the relationship with the family. Clearly the judge had in mind the broader social and cultural ties which the appellant had within the United Kingdom.

Second Ground

21. We turn then to ground 2 which is, in part, a "reasons" challenge but also a complaint about certain findings, or rather lack of findings made by the judge. The first point, and that which has been orally elaborated upon in clear and helpful terms this morning by Mr Clarke, is that the judge's finding that there are insurmountable obstacles is inadequately reasoned.

22. We have already set out earlier in our decision the full text of the material paragraphs of the judge's determination in paragraph 19 on the issue of the obstacles the appellant would face if being required to reintegrate into Bangladesh. We consider that the reasoning that the judge there provided is fulsome and shows no error of law. Therefore, we reject the overall challenge about inadequate reasoning. However, there is a further complaint made which is that the judge failed to resolve what are called clear material conflicts of fact in the skeleton argument on behalf of the respondent. What then happens in that skeleton argument are discrete complaints made in relation to particular findings that the judge made below.

23. The complaints can be summarised as follows. That it was a "stretch" that the appellant's sister's family in Bangladesh would not be able to assist

the appellant. That it was a perverse finding that the appellant may be forced to return to a life of crime due to lack of opportunities in Bangladesh. That it was wrong for the judge to make a finding that the appellant would be unable to obtain employment in Bangladesh (that was also said to be inadequately reasoned). It was also submitted that given the appellant is a person with no health issues, the judge ought to have made findings as to what help and assistance the appellant would need from his family were he to return to Bangladesh. There is also complaint that there has been a failure to clear inconsistencies regarding the respondent's mother's house in Bangladesh.

24. Having looked at the determination of the judge in the round we do not consider that insofar as findings were made, there is any arguable basis for saying that they were perverse. Specifically, findings in relation to the ties or lack of ties in Bangladesh, findings in relation to the accommodation and house, and findings in relation to what may happen in terms of the appellant being able to find work in Bangladesh, and findings as to his family's means, are all supported by the evidence.

25. The fact that the judge did not make findings on certain of the matters to which we have made reference is not a basis for impugning the overall decision that the judge made in paragraph 19 and in most litigation there are many issues and sub-issues that arise, and which do not require resolution.

26. What is important for this Tribunal is that we are satisfied that when one considers paragraph 19 and the evidence (such as it was before the judge) paragraph 19 is sustainable both as a matter of law and as a matter of fact. It is also important to note, as has been explained in the case law, that when one considers the issue of whether there are significant obstacles to reintegration into Bangladesh this is a broad "evaluative exercise" which is to undertaken by a decision maker having regard to all of the evidence. We underline that if the decision maker decides to identify particular evidence and to base his or her findings on that evidence (and to not refer to other facts or to decline to make findings) it will be a rare case in which a complaint will lie to this Tribunal that this in itself gives rise to an error of law.

27. That kind of complaint may lie in a case where the fact (or alleged fact) that was not considered in the evaluation would have been determinative. But when one looks at the particular complaints made by the respondent in her skeleton argument they are complaints which raise concerns facts (or alleged facts) which were if anything subsidiary to the overall issues before the judge.

28. For those reasons we also reject ground 2. In these circumstances the appeal is dismissed and we uphold the decision of the judge.

Notice of Decision

The decision of the First-tier Tribunal did not involve the making of an error on a point of law. The decision of the First-tier Tribunal stands.

No anonymity direction is made.

Signed Date 19 October 2021

Mr Justice Saini

Mr Justice Saini
Sitting as a Judge of the Upper Tribunal