



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/17803/2019**

THE IMMIGRATION ACTS

**Heard at Field House
On 7 December 2021**

**Decision sent to parties on
On 20 December 2021**

Before

**THE HONOURABLE MRS JUSTICE FARBEY DBE
(SITTING AS A JUDGE OF THE UPPER TRIBUNAL)
UPPER TRIBUNAL JUDGE GLEESON**

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MR AKM ABDUL MUKTHADIR KHAN
(NO ANONYMITY ORDER MADE)**

Claimant

Representation:

For the Appellant: Ms S Cunha, a Senior Home Office Presenting Officer
For the Claimant: Mr R Halim, instructed by Lawmatic Solicitors

DECISION AND REASONS

1. The Secretary of State appeals with permission against the decision of the First-tier Tribunal on 28 April 2021 sent to the parties on 3 August 2021 allowing the appeal of the claimant against the Secretary of State's decision to deport him to Bangladesh.
2. It is not in dispute that the claimant is a foreign criminal, having been convicted at Southwark Crown Court on 5 July 2019 on two counts of providing immigration advice when not qualified to do so, two counts of

fraud, and three counts of converting criminal property, for which he was sentenced to a total of 2 years' imprisonment, thereby triggering the automatic deportation provisions in Section 33 of the UK Borders Act 2007.

3. The First-tier Judge allowed the claimant's appeal because he was satisfied that the claimant had brought himself within section 32(2)(b) of the 2007 Act and that to remove this claimant would breach the United Kingdom's human rights obligations under Article 8 ECHR, as incorporated into the Immigration Act 2002 at Part 5A and into the Immigration Rules at Rules 399 and 399A.
4. The First-tier Judge considered that the claimant's British citizen daughter could not be expected to go with him to Bangladesh and that if she were required to remain in the United Kingdom without her father, there would be significant difficulty and instability, because her mother (Mrs Mitu) unfortunately has a longstanding history of schizoaffective disorder, including visual and auditory hallucinations, and also has both personality disorder and post-traumatic stress disorder. She is also in the third trimester of her second pregnancy, which was considered to be an additional risk to her future mental health.
5. A psychological report by Georgia Costa dated 20 April 2021 recorded that in January 2021, when Ms Costa saw the claimant's wife, she was experiencing visual and auditory hallucinations, which she had suffered for eight or nine years. The voices told her not to take her medication. She had panic attacks. Ms Costa assessed the wife as having personality disorder, post-traumatic stress disorder, and schizoaffective disorder. When anxious, or when the voices persuaded her to stop taking her medication, she would suffer relapses. Her mental health was not stable and there was a risk of relapse after the birth of her second child. Remaining in the United Kingdom without the claimant would be a serious risk to her mental health with a very strong possibility of psychotic breakdown and being sectioned. The First-tier Judge recorded that 'There was no specific challenge to this evidence by the respondent'.
6. Overall, the First-tier Judge found that for the claimant's daughter to remain in the United Kingdom without him would be unduly harsh. The relevant paragraphs of the First-tier Tribunal decision are at [53]-[55]:

"54. There was no specific challenge to this evidence by the Respondent. It was observed that there were other supportive features available to Mrs Mitu with the implication being that all would not be lost without the [claimant] being around and that ultimately it would not be unduly harsh for her to cope with such a situation. I must however, remember there are two aspects to considering the unduly harsh test; not just whether it would be unduly harsh for Mrs Mitu to not have her husband's support but also separately whether it would be unduly harsh for their daughter to remain in an environment, where her father is absent and her mother is at risk of deteriorating mental health.

55. On the basis of the length history of poor mental health, ongoing recurrences of hallucinations, periods of heightened symptoms, several examples over the years of significant self-harming or suicide attempts which have been made known to and noted by mental health services and the continuation of significant symptoms of mental ill-health despite being medicated; all features which are apparent from the medical documents for Mrs Mitu, I find that it is more likely than not that she will at some point in the future have further instances of significantly deteriorated mental health which will require intervention and cause her to be incapable of adequately single-parenting her daughter. Such a conclusion is in my view also in-keeping with the opinion of Georgia Costa which I therefore accept.”

(Emphasis added)

7. The Secretary of State appealed to the Upper Tribunal, arguing that the finding of undue harshness if the child remained in the United Kingdom with her mother had not been open to the First-tier Judge. She challenged the conclusions drawn from the undisputed mental health evidence, as to the risk to the claimant’s daughter if left in her mother’s sole care.
8. The Secretary of State’s challenge is in reality a disagreement with findings of fact by the First-tier Tribunal. It is settled law that the Upper Tribunal may interfere with findings of fact only in very narrow circumstances: see *AA (Nigeria) v Secretary of State for the Home Department* [2020] EWCA Civ 1296 and *R (Iran) & Others v Secretary of State for the Home Department* [2005] EWCA Civ 982 at [90] in the judgment of Lord Justice Brooke, with whom Lord Justice Chadwick and Lord Justice Maurice Kay agreed. In effect, before the Upper Tribunal can interfere, the factual findings must be perverse or *Wednesbury* unreasonable.
9. Ms Cunha for the Secretary of State did not seek to argue that the findings in question were either perverse or *Wednesbury* unreasonable, having regard to the Secretary of State’s failure to challenge the underlying mental health evidence. Ms Cunha relied on the reasons for refusal letter.
10. We have not found it necessary to trouble Mr Halim for submissions.
11. We are guided by the judgment of Lady Justice Simler (with whom Lord Justice Underhill and Lady Justice Asplin agreed) in *MI (Pakistan) v Secretary of State for the Home Department* [2021] EWCA Civ 1711 (18 November 2021) at [12]-[27] and [60]. We are satisfied that in this appeal, the First-tier Judge’s findings of fact as to undue harshness are sustainable. Both the ‘go’ and ‘stay’ factual matrices were considered and the vulnerability of the mother’s health was unarguably a relevant factor in whether this child could safely remain in the United Kingdom without her father.
12. There is no material error of law in the decision of the First-tier Tribunal and we uphold it. The Secretary of State’s appeal is dismissed.

Conclusions

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

We do not set aside the decision of the First-tier Tribunal.

Signed [Judith AJC Gleeson](#)
Upper Tribunal Judge Gleeson

Date: 8 December 2021