Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: UI-2021-000982
HU/50108/2021; IA/00648/2021

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On: 7 July 2022	**On: 27 September 2022**

Before

UPPER TRIBUNAL JUDGE O'CALLAGHAN
DEPUTY UPPER TRIBUNAL JUDGE SAINI

Between

NAHIM AHMOD MANNA
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Z Raza, Counsel, instructed by Charles Simmons Solicitors
For the Respondent: Mr S Whitwell, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. This is an appeal against the Decision of First-tier Tribunal Judge Borsada dismissing the Appellant's appeal against the Secretary of State's decision dated 8 December 2020 refusing to grant him leave to remain.

Background

2. The Appellant appealed against that decision and was granted permission to appeal by Upper Tribunal Judge Sheridan in the following terms:

> 1. The judge (Judge of the First-tier Tribunal D S Borsada) found in paragraph 13 that he could give only limited weight to the appellant's private life because of his precarious immigration status. It is arguable that the judge fell into error by not considering whether this was an exceptional case with particularly strong features of a private life which meant that the generalised normative guidance in s117B of the NIAA 2002 about the weight to attach to a private life should be overridden: see paragraph 49 of *Rhuppiah v Secretary of State for the Home Department* [2018] UKSC 58. The reason why it is arguable that there are "particularly strong features" of the appellant's private life is that he has been in the UK since the age of 12 and the judge found in paragraph 10 that he has "a very significant private life in the UK" and that he "cannot be criticised on the basis of this immigration history which he had no control over."
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> 2. Whilst I do not restrict the grounds that can be pursued, I make the observation that I consider the other arguments in the grounds of appeal to be weak. The grounds argue that the judge failed to provide a broad evaluative judgment when assessing whether the appellant would face very significant obstacles integrating into Bangladesh. However, it is plain from paragraph 10 that the judge undertook a broad evaluative assessment the judge considered the appellant's ties to Bangladesh, his education, the assistance he would receive from family, his health, and his apprehensiveness about returning (due to his subjective fear). The grounds argue that the judge did not attach sufficient weight to the appellant's subjective fear of return to Bangladesh; but the weight to attach to this was a matter for the judge. Nor do I think that there is an arguably contradictory finding in the decision as to the existence of family life. The judge accepted that the appellant has a family life with his sister and nephew, but not that the family life went beyond the normal emotional ties such that article 8 ECHR was engaged.
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> 3. The grounds identify an arguable error and therefore permission is granted.

3. We were not provided with a Rule 24 Response from the Appellant however Mr Whitwell indicated the appeal was resisted.

4. At the start of the hearing, Mr Raza reformulated his pleaded grounds into three discrete bases of appeal, namely:

a. Paragraph 276ADE(1)(vi): Failure to take account of material matters regarding the Appellant's immigration history in having entered at age of 12 years and having remained since then;

b. Article 8 Proportionality assessment: Unlawful consideration of s.117B(5) and the little weight provision regarding private life; and

c. Unlawful Assessment of Family Life illustrated by a contradiction in description of that relationship between the sister's family and the Appellant in the Decision.

Findings

5. We heard argument from both parties following which we reserved our decision which we now give.

6. In respect of Ground 1, we do not find that there is a material error of law. When Mr Raza's arguments were distilled to their purest form, it transpired that his argument turned upon a passage from Judge Borsada's findings at §10 which reads as follows:

> "… Whilst I do not doubt that the re-adjustment will be hard, this in my view is insufficient to meet the test under paragraph 276 ADE in circumstances in which the appellant does have social and cultural ties to his native country and speaks the language of it too. I also consider that the education he has received in the UK would be an asset on his return and that with the help of his family in Bangladesh he would be able to make the re-adjustment given that there are no other factors that would make it difficult i.e. he is a fit, well-educated and healthy young man who would surely thrive. I do understand why the appellant is apprehensive and fearful about returning but there is no real basis for these subjective fears and the appellant's adaptability in coming to the UK and thriving here will stand him in good stead on his return particularly given that he does have a family there to whom he can turn to for help..."

7. As Mr Raza put it, as the Judge had already accepted that the Appellant has a "very significant private life in the UK", the above passage demonstrated that the Judge had failed to give weight to the Appellant's trepidation of returning to Bangladesh which is a factor missing from his overall assessment. The Appellant's trepidation was raised in the Appellant's witness statement including his not being able to read and write in Bengali and having been brought up and raised in the UK. However, we find that this argument is misconceived as the above passage read as a whole indicates that the Judge did give reasons why the Appellant is still able to return to Bangladesh and reintegrate into his

country of origin which was open to him to conclude. We note there was no challenge to the findings made by the Judge such as the Appellant's ability to speak the language, his education, his having a family support network in Bangladesh and his resources etc.. Given that the omission is a failure to consider the Appellant's subjective concern of returning to his country of origin, whilst we are prepared to accept that a person's trepidation in returning to their country of origin can be a generic factor to consider alongside all others, it could only have a material impact on the objective assessment of the ability to reintegrate where the trepidation is of such a nature as to materially hinder or hamper the person's ability to reintegrate. In this appeal, the trepidation on return to Bangladesh does not appear to take anything but an understandable and expected form that a migrant may possess when faced with the prospect of returning to a country they have not lived in for several years. In any event, even if we are wrong in our appraisal of Judge Borsada's findings at §10, we do not find that this factor would have altered the outcome of the Judge's assessment on reintegration given his placing weight on "generic factors" (see AS v Secretary of State for the Home Department [2017] EWCA Civ 1284 at [58]-[59] and Secretary of State for the Home Department v Kamara [2016] EWCA Civ 813 at [14]) giving reasons why the Appellant could re-adjust and thrive, such findings were open to the Judge to make.

8. Turning to Ground 2, Mr Raza relied upon a sentence from §13 of the Judge's decision which reads as follows: "Furthermore, the appellant at best had precarious immigration status and therefore I can give only limited weight to his private life in the assessment of article 8 and the private life grounds". In short, Mr Raza argued that the Judge was not confined to giving "limited" weight to the Appellant's private life according to s.117B(5) of the Nationality, Immigration and Asylum Act 2002 (pursuant to Rhuppiah v Secretary of State for the Home Department [2018] UKSC 58) and the Judge did not take into account the flexibility in the statutory test. However, we find that this point is unarguable as, were the Judge to be applying the terms of the statute without taking any flexibility into account, his finding would have read that "I can give only *little* weight to his private life" as opposed to the finding which was made, namely that he could only give "limited" weight to his private life. There is a distinction to be drawn between the terms "limited" and "little". When assessing the scale of weight that a Tribunal can attribute to private life, "little weight" plainly falls lower than "limited weight". Limited implies that a restricted amount of weight can be applied but does not necessarily mean that little weight has been applied. We also note that at §5(IV) of the decision, the Judge in fact rehearses the Appellant's arguments why the appeal should be allowed and specifically notes the argument now being

raised and states as follows: "…Also little weight did not mean no weight in the statutory assessment of private life having regard to the appellant's immigration history, lawful residence and accrual of a very significant private life in this country. I was also specifically referred to Rhupiah *(sic)* [2018] UKSC 58 and paragraph 49 thereof - in this case it was important to emphasise that the appellant had no control over his coming to the UK so that on its facts this was an unusual case (see also paragraph 57 of said case)". From this passage it is apparent that the Judge was alive to the argument which it is said he failed to consider, and consequently, in the absence of any other indication that the Judge failed to consider the flexibility available under section 117B(5), we do not find that this sentence indicates the Judge materially erred in law.

9. Finally, although Mr Raza indicated that Ground 3 was no longer pursued we have nonetheless considered the argument *de bene esse*. We note that the Judge found at §11 that the Appellant's relationship with his sister and her family did not engage Article 8 ECHR as the relationship did not "go beyond normal emotional ties two related adults" pursuant to Kugathas v Secretary of State for the Home Department [2003] EWCA Civ 31. In that light, it was infelicitous of the Judge to then state at §13 that the Appellant has a "family life" in the UK. This could be read as an inconsistency in isolation; however, when the decision is read as a whole, we find that the reference to family life at §13 is made in a non-Convention plain English sense given its context and given that the Judge has not reversed his previously-stated view that the ties between the Appellant and his sister and her family did not go beyond the normal emotional ties he expected to see between adults in order to find that the Convention was engaged in relation to a person's Article 8 rights protecting their family life from interference.

10. In light of the above findings, we find that the Decision of the First-tier Tribunal is free of material errors of law as alleged and the Decision of Judge Borsada shall stand.

Notice of Decision

The appeal is dismissed.

Signed: P Saini Date

Deputy Upper Tribunal Judge Saini