IAC-FH-CK-V1

Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/09645/2019**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On the 29th September 2022	**On the 06th December 2022**

Before

UPPER TRIBUNAL JUDGE KEITH

Between

'MGM'
(ANONYMITY DIRECTION CONTINUED)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. Failure to comply with this direction could lead to contempt of court proceedings. The reason for anonymity is that the case involves personal medical evidence.

Representation:
For the Appellant: *Ms J Hassan*, instructed by Morgan Hill Solicitors
For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is the remaking of the decision in the appellant's appeal against the respondent's refusal of his human rights claim on grounds of right to respect for his private life pursuant to article 8 of European Convention on Human Rights ('ECHR'). My previous error-of-law decision is annexed to these reasons.

2. The appellant, a citizen of Bangladesh, had originally sought leave to remain in the UK on the basis of a protection claim, but that element of his appeal has since not been pursued, nor, on the basis of the appeal before me, is such a claim pursued. Instead, the sole issue is whether, by virtue of the appellant's PTSD and mental ill-health, refusal of leave to remain would breach his rights under article 8 ECHR. For the avoidance of doubt, the appellant had not claimed before the FtT, nor is his case before me, that refusal of leave to remain would breach his rights under article 3 ECHR. I had previously set aside the FtT's decision, promulgated on 19th November 2020, which had allowed the appellant's appeal, for the reasons set out in my error of law decision. In doing so, I preserved the FtT's findings that:

    a. the appellant was born in 1971, not 10 years later, as he claimed (§35), which means that he was aged about 43, when he last entered the UK in 2014, having left Bangladesh aged 25;

    b. at §§36 and 40, the findings that the appellant's parents, a lawyer and a teacher, had not been killed, as he claimed;

    c. the findings at §41 that the appellant had not been truthful in relation to other family members and support that is potentially available to him in Bangladesh; and

    d. at §45, his abandonment of a claimed fear of his uncle.

The issues in this appeal

3. The issues in remaking the FtT's decision are whether refusal of leave to remain would breach the appellant's right to respect for his private life. While there is no appeal under the Immigration Rules, I may consider whether there would be very significant obstacles to the appellant's integration into his country of origin, Bangladesh, (see paragraph 276ADE(1)(vi) of the Immigration Rules). In that context, the idea of "integration" calls for a broad evaluative judgment to be made as to whether the appellant will be enough of an insider in terms of understanding how life in the society in Bangladesh is carried on and a capacity to participate in it, so as to have a reasonable opportunity to be accepted there, to be able to operate on a day-to-day basis in that society and to build up within a reasonable time a variety of human relationships to give substance to his private or family life (see §14 of SSHD v Kamara [2016] EWCA Civ 813). I also bear in mind section 117B of the Nationality, Immigration and Asylum Act 2002. The appellant's English is limited (relevant to section 117B(2)); and he has been in the UK unlawfully

after the expiry in February 2015 of his visit visa issued on 5th August 2014 (relevant to section 117B(4)), so that little (but not no weight) should be attached to his private life established in the UK when he was here unlawfully.

4. In terms of medical evidence, I also bear in mind HA (expert evidence; mental health) Sri Lanka [2022] UKUT 00111 (IAC). As per headnote (5), as a general matter, GP records are likely to be regarded as directly relevant to my assessment of the appellant's mental health, but I have not been provided with his complete GP records. Finally, I bear in mind DC (trafficking: protection/human rights appeals) Albania [2019] UKUT 00351 (IAC), on the basis that Ms Hassan raised the issue, in submissions, that in the context of his human rights claim, he maintained that he had been the victim of modern slavery while working in Oman and initially when working in the UK. There was a negative "conclusive grounds" National Referral Mechanism decision, referred to expressly by the respondent in her refusal decision, which has not been the subject of any legal challenge.

The gist of the respondent's refusal

5. The core points taken against the appellant in relation to his private life, included the immigration history of being encountered working illegally in a restaurant and detained in June 2016; the limited period he had lived in the UK at the time, since 2014; and his ill-health, including a heart condition and being prone to bouts of fever.

6. Previous judges had also noted that the appellant's application for entry clearance had also referred to his having a wife, about which I say more later.

Documents and preliminary matters

7. The appellant provided two bundles, a main bundle which I refer to as appellant's bundle or "AB" and a supplementary bundle which I refer to as "SB". In addition, I was provided with a letter loose from a supporter of the appellant as well as a local refugee charity supporting him. Also, the respondent provided a conclusive grounds NRM decision dated 16th October 2018 which had not been included in either of the two bundles provided by the appellant. This was because the NRM issue was only raised by the appellant in the hearing today.

The appellant's adjournment application, later abandoned

8. The appellant did not give witness evidence. The context of this was, as Ms Hassan explained, that the appellant is suffering from PTSD and therefore for medical reasons he is not able to give evidence. His vulnerability is relevant in a second respect, specifically in the context of his ability to provide instructions. This arose at the beginning of Ms Hassan's submissions, when she made submissions that the appellant maintained that he had been the victim of modern slavery perpetrated by

a lawyer of a prominent international law firm, with offices in London. I queried whether those allegations had been the subject of a police investigation in the context of an NRM referral. At this stage, she initially applied for an adjournment on the basis that she had not been provided with a copy of the NRM decision, was not aware why it had not been challenged and whether there had been enquiries made of the police as to the alleged perpetrator and in turn whether that perpetrator might be contacted. She asked for an adjournment for two reasons. First, the appellant was more comfortable providing Ms Hassan instructions, even accompanied by his friend who was present today, outside a formal setting and Ms Hassan emphasised his vulnerability. Second, Morgan Hill Solicitors had not been instructed at the time of the NRM referral and there might be additional lines of enquiry that could be pursued. I bore in mind and referred Ms Hassan to the authority of SB (vulnerable adult: credibility) Ghana [2019] UKUT 00398 (IAC) and, applying the Joint Presidential Guidance Note No 2 of 2010, I considered how the appellant's mental ill health was relevant to the adjournment request. I first of all discussed with Ms Hassan whether the appellant was legally competent and able to provide her instructions. She confirmed that there was nothing in her view to suggest that he was not legally competent, albeit that he would feel more comfortable in providing instructions outside a formal setting. In relation to the second issue of what, if any, evidence were to be adduced if I were to grant an adjournment application, she did not point to any specific document but said that this would allow lines of enquiry to be pursued, including a data subject access request about whether the NRM competent authority had liaised with the police and in turn whether they had made contact with the alleged perpetrator. I discussed with her whether in fact an adjournment may result in no additional documents being adduced at all and whether such an application may be speculative. She nevertheless maintained that there could be lines of enquiry open and that this would be a more cost effective and quicker route than making further submissions as part of a fresh claim. I also canvassed with her whether, if there were new issues raised, these were ones that might require the respondent's consent in terms of it being a new matter and Ms Everett in response confirmed that these may well constitute new matters. I adjourned the hearing for an hour and a half over the lunch break to allow to see if Ms Hassan was able to take instructions on points around the NRM decision and also further instructions about what specific evidence, if any, the appellant was seeking to adduce. On returning in the afternoon, Ms Hassan indicated that she was no longer pursuing the adjournment application and was content to proceed on the basis that the evidence before me was sufficient to show that even on the balance of probabilities, the appellant had been the victim of modern slavery and that this was relevant to his ability to integrate into Bangladesh.

The Law

9. I have already referred to the authorities of Kamara, HA, and section 117B of the 2002 Act. I am also aware of, and have applied, the well-known five

stage test in Razgar v SSHD [2004] UKHL 27. I do not recite the remainder of the law, the principles of which the representatives accepted was agreed.

Findings of fact

10. I considered all of the evidence presented to me, whether I refer to it specifically in these findings or not.

11. The respondent's refusal letter dated 18th September 2019 refers to the appellant's immigration records. The appellant was issued visas in May 2007 and December 2007 as a domestic worker employed by a lawyer whose contact details were of his law firm. When questioned by the Entry Clearance Officer in May 2007, the appellant said that he was employed as a cook. His later visa applications in September 2008 and 2013 were refused. His visa application in 2008 was refused on the basis that the previous dates when the appellant had entered and left the UK did not correspond to those of his sponsoring employer, so that the Entry Clearance Officer was not satisfied that he had been accompanying his employer for the purpose of working for him. In addition, his alleged employer had stated that the appellant was going to the UK for a private visit rather than as his employee. In his application on 8th September 2013, the appellant applied as an overseas domestic worker, stating that he was married, (at box 5), and he provided at boxes 40 to 46 his wife's name, her identification as a British overseas citizen, her date of birth and her town of residence. It is unnecessary to name her. The appellant contends that his sponsoring employer who was mistreating him and torturing him physically completed the application form and that it was false in describing him as being married.

The claim of trafficking

12. I address the appellant's claim to have been trafficked. I am conscious of the diagnosis of PTSD which Dr Mala Singh, in her 2020 report starting at page [15] AB, had described at §10.3, page [23] AB as being consistent with his claims, including of modern slavery in Oman and then the UK. However, I am also conscious that she said that his PTSD was consistent with another part of his account, namely his claimed fear of persecution by his uncle in Bangladesh, which has been rejected. I am conscious of not falling into the trap of what is sometimes referred to as the "Mibanga" error (Mibanga v SSHD [2005] EWCA Civ 367) of discounting a medical report because of concerns about the credibility of the subject matter of that report. However, in this case, whilst the respondent has accepted that the appellant suffers from PTSD, the causation of it is disputed, and the fact that at least part of the causation is ascribed by the author to the appellant's false claim of adverse interest in Bangladesh calls into question the second claimed cause of modern slavery. This is all the more so in the context of the report not referring to complete GP records and the author basing her assessment of causation, at least in part, on observations of the appellant, without complete records. I am conscious

of, and accept, Ms Hassan's point that Dr Singh had expressly addressed whether the appellant was manufacturing or exaggerating his symptoms (§10.2, page [23] AB) but this does not address the issue of the causation of PTSD and whether in fact there might be alternative causes for his PTSD other than ill-treatment in Bangladesh or in Oman and the UK.

13. Dr Singh described the appellant's worsening psychological condition in 2020. Her assessment followed a report produced pursuant to Rule 35 of the Detention Centre Rules dated 15th December 2018 at page [50] AB. That report in turn described burn scars on the appellant's arms and his right thigh, a laceration scar on the right side of the appellant's head and his inability to walk due to a pain in his right buttock. The Rule 35 report stated at page [54] AB that he had scars which may be due to his 'claimed history' and that he was depressed and anxious. The 'claimed history' was described as being beaten from 1996 to 2014 whilst working for a family in Oman, when he was slapped and kicked on a daily basis; he had boiling oil poured on him; and he was beaten with sticks. Ms Hassan points out that the scarring evidence was not addressed in the NRM decision although, as she accepted, the NRM "conclusive grounds" decision dated 16th October 2018 predated the Rule 35 report.

14. I turn to the 2018 NRM decision, a copy of which was provided loose. An NRM referral had been made whilst the appellant was in immigration detention on 23rd June 2016, with the support of Refugee Support Devon. The "consideration minute document" records that the competent authority had liaised with the Devon and Cornwall Police and a specialist victim support worker. It records on the one hand a consistency of the appellant's claims to have travelled with the employer on three occasions and his alleged mistreatment, but on the other hand, what the competent authority regarded as inconsistencies and a lack of credibility in the appellant's account. The Entry Clearance Officer had previously refused the appellant's application for entry clearance based on the inconsistency between the appellant's entry and exit dates, when compared with those of his putative employer/trafficker, which the competent authority regarded as damaging the appellant's credibility. To put the disparities in context, the alleged perpetrator was in the UK for a period of five days on the first occasion; three days on the second; and three weeks on the third. In contrast, the appellant was present for over four months on the first occasion; and almost six months on the second. It was not consistent with his claim to be working for his putative employer/trafficker and his application in 2008 was to enter as a visitor, unconnected to his alleged trafficker. Moreover, he had returned to his employer twice in 2007 and 2014 despite his employer having left the UK many months previously.

15. The NRM decision also recorded that the appellant was inconsistent about the beatings that he claimed to have received. He had stated in a witness statement of August 2018 that he had been regularly beaten, the last time very badly, in the UK, after which his trafficker had taken all of his possessions. However, four days later on 17th August 2018, the appellant claimed that no exploitation had in fact occurred in the UK.

16. The NRM competent authority did not accept that the appellant's claimed traffickers had forced him to work for them for 11 years, when in reality, the appellant was left alone in the UK for many months, in his persecutor's absence. When his employer had left the UK in 2014, rather than seeking assistance from the UK authorities, the appellant had been encountered working in a restaurant, two years later in June 2016. Ms Hassan now asserts that he had merely been present in the restaurant owned by his friend and supporter and that he had not been in fact working. However, she accepts the NRM decision was not challenged at the time and indeed, if it had been disputed it could have been pursued on the basis of the notes of the officer who had encountered the appellant. In essence, I regard Ms Hassan's submission as no more than an assertion by the appellant via Ms Hassan that he was not encountered working, when there was a clear decision that this was the case, unchallenged since the NRM decision in 2018. The NRM decision also records that no evidence had been received to suggest that the appellant was suffering from any mental health issues, with the earliest reference to health issues in the limited NHS records that have been provided, to PTSD, on 22nd January 2019. It is quite possible that the Rule 35 assessment prompted the medical referral for PTSD. There is no evidence to which I have been referred which mentions any medical intervention or illness which predates the Rule 35 report, nor was the issue of scarring drawn to the competent authority's attention.

17. As Ms Hassan accepts, while I do not belittle in any way the competence of the author of the Rule 35 report, such reports are not compliant with the "Istanbul Protocol" and are for very specific purposes. They are a short-form assessment by a doctor as to whether somebody's continued detention in an immigration removal centre would be injurious to their health, or whether a doctor is concerned that someone may have been the victim of torture. Rule 35 reports do not purport to be expert scarring reports nor are their authors necessarily specialists, for example in psychology or psychiatry. They are, by their nature, short-format reports. While I therefore attach some weight to the Rule 35 report, its evidential value is limited.

18. Ms Hassan submitted that the location of the burn scar on the appellant's upper thigh was unlikely to have been self-induced. For her part, the respondent has not suggested self-induced harm. The Rule 35 report indicates scarring on both of the appellant's arms and an upper thigh. While the Rule 35 author says that it could be consistent with the appellant's account, it is equally true, as with the diagnosis of PTSD, that there could be other causes. In relation to burn scars, these might include industrial injuries as a result of the appellant having worked for many years as a cook. I return to the point, which Ms Hassan accepted, that the appellant has produced no specialist scarring report (as opposed to the basic Rule 35 report) and there is no explanation for why he could not.

19. I also bear in mind that there remains the two year gap between when the appellant claimed to have been freed from the influence of his claimed

traffickers in 2014 and when he was encountered in 2016. Despite living with, and being supported by a friend, he made no attempt to get help from the NRM competent authority, until he was encountered and detained in 2016. The competent authority had specifically identified the appellant's delay in reporting the issue at an even earlier stage, when he was apparently travelling through airports by himself and not under the immediate control or influence of his alleged trafficker. Moreover, before remaining in the UK, the appellant had visited the UK for periods far longer than his claimed trafficker.

20. Considering the evidence in the round, I have considered the conclusive grounds NRM decision as part of that evidence, as the authority of DC (trafficking: protection/human rights appeals) Albania invites me to do. I am not bound by that decision, albeit it was assessed to the same evidential standard of proof as the appellant must demonstrate to me. I take into account there was a Rule 35 report but also the limitations on such a Rule 35 report. I accept that there is a diagnosis of PTSD for which Dr Singh ascribes, at least in part, the cause as being the appellant's claimed trafficking. I am also conscious, however, that Dr Singh also ascribed other causes which have been found not to be accurate.

21. Crucially, there was an abundance of evidence that could potentially have been adduced that has not. This includes specialist scarring evidence. In relation to why he has never sought to challenge the NRM decision previously, Ms Hassan had the opportunity to take instructions over the lunch break, but no explanation has been provided for why, for example, the appellant has not pursued further police assistance against his claimed trafficker, who was named in his entry clearance application as working for a prominent international law firm. Put another way, this is not a case where the alleged trafficker is potentially uncontactable and unidentified.

22. I also take into account that the previous FtT judge had made significant criticisms of the appellant's general credibility, conscious that someone may be untruthful in some aspects of their evidence, but truthful in other respects.

23. In summary, given the significant gaps in the evidence; the limited weight that can be placed on some available evidence (the Rule 35 report); the weaknesses in other evidence (Dr Singh's report, not based on full records and ascribing his PTSD to causes later found to have been false, in part); and the concerns raised in the NRM decision about the appellant's credibility, which the FtT shared, I am not satisfied that the appellant has shown that he has been the victim of trafficking, as he claims.

Other very significant obstacles

24. I turn to the other aspects of the claim which are said to constitute very significant obstacles to the appellant's integration in his country of origin, Bangladesh. The FtT's preserved findings include that he has family members in Bangladesh, who would be willing and capable of providing

him with support. Even his UK friend and supporter has indicated that at least in the short term, he would endeavour to support the appellant, were he returned to Bangladesh, if he was able to do so.

25. I also find that the appellant has worked and is working for his friend, the proprietor of a restaurant in the UK, as the UK authorities discovered when they encountered him in 2016. I address the issue of whether his health has worsened recently, below. He is an experienced cook (he claimed also to have worked as a cook for his alleged trafficker). If he were to return to Bangladesh, he has a work history and an ability to work, which would assist in his integration into Bangladesh, as an insider.

26. Also relevant to his integration is whether he is married. I also do not accept his claim, albeit one maintained in an earlier visa interview, that he is unmarried. I reach the conclusion that he his married for a number of reasons. First, it is in the context of the preserved finding that he is older than claimed, with a year of birth of 1971. Second, I bear in mind the context of the FtT's assessment of his general credibility. Third, while he denied having a wife in 2007, on which he now relies, he included her details in his 2013 application, so the marriage may have taken place between 2007 and 2013. Fourth, in his 2013 application, he did not merely state that he was married, but he provided her name; date of birth; status as a British overseas citizen; and her town of birth.

27. I turn next to the question of whether the appellant's mental ill health has deteriorated in recent years and return to Dr Singh's report. The appellant says that his mental health has deteriorated since December 2019. When the Community Mental Health Team psychiatrist assessed the appellant on 28th June 2019, as reported at page [39] AB, he diagnosed the appellant as having PTSD, but stated:

> "There is no evidence of any other psychopathology, no psychotic symptomatology at all. There is self-harming in an attempt to manage affect disregulation but they do not have suicidality as intent. I there consider that this case could be managed within the trauma pathway through the Depression and Anxiety Service. He presents as casually dressed amenable and engaged in the interview. He does comprehend English reported but preferred to use an interpreter. There is evidence of trauma as already reported, cognition and insight preserved. No biological symptoms of depression.
>
> Risk Assessment
>
> Self-harming to manage affect disregulation by burning and sometimes overuses the prescribed medication for the purpose of sleeping but not with the intention of dying. There is no evidence of risk to others or from others. His symptoms are very much within the context of traumatic experiences, and he is currently facing a claim for an asylum seeker and is engaged in that process."

28. The appellant was later examined on 10th December 2019 by the same mental health team. The appellant had described himself as "feeling fairly well between June to September 2019" (page [34] AB) but he described his mood as having deteriorated since October 2019 due to his ongoing dealings with the respondent. Of note, the respondent's refusal decision was dated 18th September 2019. The same medical letter recorded that the appellant had a final FtT hearing scheduled for December 2019, and he was very scared that he would be sent back to his country where he had not lived for many years, which he said had led to an increase in self-harming behaviour with scratches on his arm. He said that he had "spent half [his] life but had nothing to show for it." He had been unfairly treated and had never engaged in criminal activity. The assessor referred to the appellant taking Sertraline and his engaging with a support worker with the local refugee agency. The appellant was described as having frequent and intense suicidal thoughts, but he did not currently have any plans to end his life and did not intend to act on those thoughts. His support from his support worker helped to cope with those thoughts. The assessor did not regard it as advisable for the appellant to engage in therapy for his historic trauma as it could destabilise him further and he did not require treatment for his secondary trauma symptoms.

29. The December 2019 letter repeated the appellant's account, since found not to be truthful, of the appellant's fear of his uncle in Bangladesh, whom he suspected was implicated in the deaths of his mother and father. This meant that the assessor's analysis of the risk to the appellant's mental health, in the context of the support available to him in Bangladesh was not based on an accurate account, namely that he has supportive family members in Bangladesh, as opposed to an uncle who might seek to harm him.

30. Dr Singh produced her medical assessment on 16th October 2020 based on the same inaccurate assumptions about the risk of persecution by family members in Bangladesh, as opposed to support from them. At §10.7, page [24] AB, she stated that he feared being killed by his uncle, which would worsen his PTSD and major depression, with a high risk of self-harm/suicide (§10.8). Put another way, whilst the existence of PTSD is not disputed, its cause is disputed and the FtT had found that it was unconnected with the appellant's uncle, and I have found that the appellant has not shown that he was the victim of trafficking. I queried with Ms Hassan whether she contended that the appellant would be unable to access medical facilities in Bangladesh, in the context of the appellant's parents being described as having held professional jobs (his father is or was a lawyer, and his mother a teacher). She accepted that psychological and medical support was available in Bangladesh.

31. Dr Singh was also concerned, at §10.11, page [25] AB, about the appellant not having lived in Bangladesh for 12 years, with no friends or family to support him and living an isolated life in the UK. Aside from the point that he has potential support in Bangladesh, there is also the evidence that I explored with Ms Hassan, albeit not accepted as reliable, of ongoing

contact with people in his home town in Bangladesh. He adduced letters from his old school dated January 2020, attesting to his school attendance and good character (pages [57] and [58] AB); and purported death certificates from a close acquaintance of his parents dated November 2019 (pages [59] to [60]. Ms Hassan responded that it was the appellant's UK friend had been able to adduce this evidence. However, this is also evidence that the appellant is able to make contact with old connections in Bangladesh, via his friend, so that he has been able to maintain contact with Bangladeshi society.

32. Whilst I accept that the appellant has not visited Bangladesh after 2014, on the respondent's case, or on his case, even earlier, he has been able to contact local supporters in his home area, to obtain purported death certificate and reports from his old school, in glowing terms. I am satisfied that via his friends he has had regular exposure through the diaspora community in the UK to Bangladeshi culture and society. This is a further mitigating factor that Dr Singh has not been able to address in her report as it was based on an alternative account which the FtT had rejected, namely persecution by his uncle, who was implicated in his parents' deaths.

33. I turn to the further evidence, since Dr Singh's report, included in the appellant's supplementary bundle ("SB"), which comprised a "clinical information summary" from his local NHS Trust and their "First Responder Service", as well as a local counselling service record. Just as Dr Singh did not have access to the appellant's full GP records (or does not refer to having such access), again, I should reiterate that the further evidence does not comprise complete GP records, as per the guidance in HA (expert evidence; mental health), to which I had drawn the appellant's attention in previous directions dated 11th July 2022. The clinical information summary stated that the appellant works (present tense) for a supportive family in October 2020 (pages [5] SB]). Ms Hassan submits that the medical advisor has misunderstood what the appellant has said, although this corroborates a past history of working and, I find, that the appellant is currently working for his friend. The summary states that in October 2020, he was not referred to further therapy, as he did not meet the threshold for further mental health input; he had the same issues as before, and while he was currently self-harming, he had no current plan or intent to take his own life. The nurse, who assessed the appellant, described his asylum status as being the driver for his difficulties.

34. A letter from an NHS First Response Service dated 3rd August 2022, at page [7] SB, refers to the appellant's friend reporting the appellant as having attempted an overdose and cutting himself, but others stopped him. However, even on the appellant's account, the reported intervener is a friend who has not given evidence and cannot, in that context, be described an objective or reliable witness. The Response Service assessment was via telephone only, and the assessor spoke only briefly to the appellant via an interpreter, because of the appellant's poor English, to seek his permission to speak to the friend. The friend reported the

appellant as currently safe and not having any suicidal ideation, but with very low mood and loss of all enjoyment.

35. The letter referred, at page [9] SB, to the appellant taking an overdose in July 2022, in an attempt to end his life and being taken to his GP surgery by his friend. I asked Ms Hassan whether there were any GP notes to confirm such a visit. Her instructions were that these had been requested, but there had been no response. The same letter referred to the appellant's counselling having ended around 12 months ago (page [10] SB) which Ms Hassan says is inaccurate and was a miscommunication. She referred to a letter from the counselling organisation 6th September 2022 (page [14] SB), in which they said they said that he had been a client since 27th July 2020 and that they "continue to work with [him.]"

36. Having considered the evidence as a whole, I accept that the appellant has had a history of PTSD, as diagnosed by Dr Singh in 2020 which had endured since 2019, the key driver for which appears to be appellant's immigration status. There appear to have been some form of suicide attempts in the past, albeit I am not persuaded that there is reliable evidence that the more recent event in July 2022 constituted a genuine attempt in relation to suicide, bearing in mind that it was reported by a third party, it was said to have been referred to a GP, and there is no GP record. Moreover, even if there has been a recent suicide attempt, it is tied to the resolution of the appellant's immigration status.

37. I return to the fact that were the appellant returned to Bangladesh he would not be doing so in circumstances where he has any genuine, let alone objective fear of persecution by an uncle. He would be returning to family members whom he may have not seen for many years but where he has familiarity with Bangladeshi society, and access to it via his friend. I also find that he is married, and despite the couple's separation for many years, their relationship provides a further opportunity for reintegration. He has regularly and recently worked and would continue to be able to do so in Bangladesh. I have no doubt that he would be able to obtain psychological and medical services which would substantially mitigate the risk of suicide and/or further self-harm. In the circumstances, the appellant's immigration status would also have been resolved. That in turn would further facilitate his re-integration into Bangladeshi society, along with the support of family members, and the means to and likelihood of work. Despite his significant period of absence from Bangladesh, I have no doubt that he would be able to return as an "insider".

38. Turning to the wider assessment by reference to Section 117B of the 2002 Act, for almost all of the period since the appellant has remained in the UK, he has not had lawful leave, having overstayed his visa since February 2015.. I attach little weight to the private life established. There is no evidence that he has ever never paid any tax in the UK, and his integration is limited to fellow members of the Bangladeshi diaspora community with whom he lives and works, albeit unlawfully. His English is

limited. His mental health condition whilst an important factor in his favour, is ultimately outweighed by the clear public interest in the refusal of his leave to remain, in circumstances where there would be sufficient mitigating factors to supporting his health, on his return to Bangladesh. Put another way, in the overall Razgar analysis, the appellant's private life would be interfered with to a significant enough extent that his article 8 rights would be engaged. However, that would be for a lawful reason under the Immigration Rules. There are not very significant obstacles to the appellant's integration in Bangladesh and refusal of leave to remain is proportionate. In the circumstances, the appellant's claim to right to respect for his private life fails and is dismissed.

Conclusions

39. On the facts established in this appeal, there are not grounds for believing that the appellant's removal from the UK would breach his right to respect for his private life under article 8 ECHR.

Decision

40. The appellant's appeal on human rights grounds is dismissed.

Signed: J Keith

Upper Tribunal Judge Keith

Dated: **25th October 2022**

ANNEX: ERROR OF LAW DECISION

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/09645/2019 ('V')

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
And via Teams	**……**
on 26th May 2021	

Before

UPPER TRIBUNAL JUDGE KEITH

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

'MGM'
(ANONYMITY DIRECTIONS CONTINUED)

Respondent

Representation:

For the Appellant: Ms S Cunha, Senior Home Office Presenting Officer
For the Respondent: *Ms J Hassan,* instructed by Morgan Hill Solicitors

DECISION AND REASONS

Introduction

1. These are the approved record of the decision and reasons which were given orally at the end of the hearing on 26th May 2021. I shall refer to the appellant as the Secretary of State and the respondent as the Claimant, to avoid confusion. I maintain the anonymity direction as while the Claimant

no longer pursues a protection appeal, his appeal relates to personal medical issues, including discussions around suicide attempts.

2. Both representatives and I attended via Teams while the hearing was open to attend in-person at Field House. The parties did not object to attending via Teams and I was satisfied that the representatives were able to participate in the hearing.

3. This is an appeal by the Secretary of State against the decision of First-tier Tribunal Judge Boyes (the 'FtT'), promulgated on 19th November 2020, by which he allowed the Claimant's appeal on the basis of right to respect for his private life under article 8 ECHR, particularly in relation to his mental ill-health. The appeal had begun as a protection appeal, but that element of the appeal was no longer pursued before the FtT. The Claimant did not claim before the FtT that his return to his country of origin, Bangladesh, would breach his rights under article 3 ECHR.

4. In essence, the Claimant's claims involved the following issues: whether, by virtue of his mental health issues, said to be PTSD and of such severity to have involved a suicide attempt, there would be very significant obstacles to the Claimant's integration into Bangladesh, which he claimed to have left as a minor and had no family remaining there. The core points taken against the Claimant by the Secretary of State related to his disputed age (the respondent concluded that he was 10 years' older than he claimed and had left Bangladesh aged 25); that his parents were not dead, as he claimed, so that he had family in Bangladesh; and his medical condition was not severe enough to engage article 3 ECHR.

The FtT's decision

5. The FtT was highly critical of the Claimant's credibility (§43) and did not accept the Claimant's claimed age (§35) concluding that he left Bangladesh as an adult. At §§40 and 41 the FtT did not accept that the Claimant's parents had died as he claimed or that he had been truthful in relation to other family members who could support him in Bangladesh. At §§46 and 47, the FtT concluded that the Claimant had mental health problems and at §§49 and 50 considered the effects of his illness, including an attempt to take his own life as well as a diagnosis of severe PTSD.

6. Whilst at §53, the FtT accepted that the Claimant's mental health issues did not automatically mean that the appellant should be permitted to remain, neither the Secretary of State nor had the Claimant had provided any information in terms of what could or should amount to very significant obstacles or the availability of resources to integrate the Claimant on his return, including accommodation; what family life existed; and the Claimant's abilities and skills, presumably relating to his ability to work in Bangladesh. At §56, the FtT concluded that in the light of paucity of evidence provided by both the Claimant and the Secretary of State, there were very significant obstacles to his integration into Bangladesh, with little evidence of any support network in that country. There was also

no evidence of the Claimant having any employment or place to reside in Bangladesh.

7. The FtT allowed the Claimant's appeal pursuant to article 8 ECHR.

The grounds of appeal and grant of permission

8. The Secretary of State appealed on three grounds. First, the FtT had effectively reversed the burden of proof at §§54 to 56, allowing the appeal on the basis that the Secretary of State had not provided evidence that the Claimant could access services in Bangladesh. Second, the FtT had erred in reaching that conclusion by failing to consider his earlier findings that the Claimant had lied about his parents having been killed; that there was a sibling and a potentially larger extended family together with a promise of support from the UK supporter. Finally, the expert medical report in relation to the Claimant's medical condition ought to have been assessed in light of the withdrawn protection claim. Had the expert known that the Claimant was in fact an adult when he left Bangladesh and that he had not faced the trauma as claimed, then even with a PTSD diagnosis she might have reached a very different conclusion as to the prognosis on his return to Bangladesh. The FtT had failed to assess the expert report in that light.

9. First-tier Tribunal Judge Gumsley granted permission on 29th December 2020. The grant of permission was not limited in its scope.

The hearing before me

The Secretary of State's submissions

10. Ms Cunha indicated that the appropriate case in relation to the article 8 claim was not AM (Zimbabwe) v SSHD [2020] UKSC 17, as the appellant was not pursuing an article 3 appeal. Instead, the relevant authority was GS (India) v SSHD [2015] EWCA Civ 40 and in particular, §§86 to 88 of that authority. The availability of family ties in an appellant's country of origin was critical to a Judge's assessment of an appellant's ability to access medical support in that country. Article 8 could not be pursued in lieu of a weak or non-existent article 3 claim – there had to be something more. Even in the context of article 33, §33 of AM (Zimbabwe) had confirmed that the Secretary of State was not required to prove the provision of adequate healthcare in the country of origin. In this case, the FtT had clearly reversed the burden of proof at §§54 to 56.

11. The FtT had to make an assessment of whether the Claimant would return to Bangladesh as an 'insider', able to access healthcare. In that context, the FtT had been highly critical of the Claimant's credibility and in particular, at §40, had made adverse findings about the continuing familial links to Bangladesh and the fact that the Claimant had left Bangladesh aged 25, and not 15, as claimed. The FtT had also not accepted the

potential risks or previous claimed persecution said to be the actions of an uncle.

12. It was in these circumstances that the burden was on the Claimant to prove that there were very significant obstacles to his integration in Bangladesh and it was not open to the FtT to effectively infer that on the basis of lack of evidence of country of origin medical provision, where the Claimant had not begun to make his case. The second ground crossed over the first ground, and Ms Cunha did not repeat that second ground, except to emphasise that the FtT had made specific findings about the ongoing familial links in Bangladesh.

13. The Secretary of State's third ground of challenge related to the FtT's analysis of Dr Singh's report. What was clear was that whilst the diagnosis of PTSD was accepted, the expert's conclusions about the risks to the Claimant in circumstances where the expert had proceeded on the assumption that the Claimant would return to Bangladesh alone, without friends or family, was a conclusion that might well have been different had the expert concerned had the benefit of the other findings of the FtT, including ongoing familial connections. What was important, referring to the well-known authority of Mibanga v SSHD [2005] EWCA Civ 367 was that the FtT ought to have considered the expert's report in the round, in the context of the other findings and instead here had taken that assessment in isolation and had therefore fallen into the so-called 'Mibanga trap'.

The Claimant's submissions

14. Ms Hassan said that it was perfectly possible, noting the well-known authority of Chiver (Asylum; Discrimination; Employment; Persecution) (Romania) [1994] UKUT 1078 for a Judge to accept one part of a claimant's case but not to accept his credibility in relation to another. Whilst the FtT had been critical of the Claimant's credibility in relation to other aspects of his claims, the expert report had never been challenged. The Claimant had not accepted his protection claim was false or exaggerated and it was for the Secretary of State to provide evidence in circumstances where she said that any risks to the Claimant's health, which had clearly been identified in Dr Singh's report, could successfully be mitigated. These had been set out in the report, including at page [11] of the report; and the Claimant had provided a 'prima facie' case capable of demonstrating the risk in Bangladesh. Whilst it was now said by the Secretary of State that there should be other considerations, that Ms Cunha had identified, those were ones that were not argued before the FtT and it was unfair to argue those now. To therefore suggest that the FtT had erred was misguided. Noting the authority of AM (Zimbabwe**),** the Claimant had provided the initial evidence and it was then for the Secretary of State to respond. The FtT was entitled to conclude, in the circumstances, that there had been no adequate response by the Secretary of State and therefore the risks were those outlined in Dr Singh's report.

The Secretary of State's response

15. By way of brief response, Ms Cunha reiterated that the FtT's findings had specifically related to familial links to Bangladesh and the Claimant's age, both of which were pertinent to very significant obstacles. The expert report, if weight were attached to it, had to be considered in a broad evaluative assessment and in particular in the context of the findings made by the FtT.

Discussion and Conclusions

16. I conclude that the FtT did err on all three grounds as contended for by Ms Cunha. First, having made highly critical findings of the Claimant at §§43 to 54, but also accepting the Claimant's PTSD and previous suicide attempt, the FtT concluded at §56:

> *"In considering the appellant's case as of the date of the hearing I am satisfied that in light of the appellant's mental health issues and in light of the paucity of evidence provided by both himself and the Home Office there does exist very significant obstacles to his integration. These very significant obstacles are the fact that the appellant is in the throws of being treated for PTSD and his depressive illness and there was little evidence of any support network available to him in Bangladesh for him not to deteriorate further. There is no evidence of the appellant having any employment or a place to reside and such help as Mr [R] may give him is not an answer to the question".*

17. The difficulty with this analysis, as identified at the beginning of the hearing, is that the appellant was not pursuing an article 3 case, to which the rubric of the Claimant merely having to establish a prima facie case, to which the Secretary of State would have to respond, would apply. The FtT did effectively reverse the burden of proof. What compounded that first error was the FtT's analysis and reasoning, which failed to consider the apparent contradiction between the FtT's statement about the absence of a support network at §56; with the findings at §§40 to 42, in particular at §41, where the FtT concluded that:

> *"Further I find that the appellant again has not been truthful in relation to other family members and support that is potentially available to him in Bangladesh."*

18. This apparent contradiction is not resolved and is material, as it informs any analysis of the very significant obstacles to the Claimant's integration in Bangladesh, in particular the extent to which the Claimant may be able access mental health provision in Bangladesh, as an insider, with relevant family support.

19. Finally, in relation to the third ground, while the diagnosis of PTSD remains undisputed, when Dr Singh's report is read in context, it discussed, at §9.11, page [13], the risk to the Claimant's health on his return, as he had not lived in Bangladesh since he was 12; and had no family or friends who could support him there. The Claimant's age had been disputed and he was found to have left Bangladesh aged 25; with support potentially available in Bangladesh. Without criticism of Dr Singh or her credentials, she was proceeding on an analysis of the risk to the Claimant's health on factual basis, particularly relating to familial support, which the FtT clearly found not to be sustained. In other words, whilst Dr Singh's remarks were perfectly open for her to make on the basis of the factual assumptions, those assumptions were not in fact accurate and I accept that the FtT ought to have considered that she might not have the true picture of the Claimant's circumstances, in reaching her conclusions, which once again informed the FtT's assessment of very significant obstacles.

20. Taken together, these three grounds do, in my view, amount to material errors of law such that the FtT's conclusions are not safe and cannot stand, subject to the FtT's findings that are unaffected by the errors; namely, the FtT's findings that the Claimant was born in 1971 (§35); at §§36 and 40, the findings that the Claimant's parents had not been killed, as he claimed; the findings at §41 that the Claimant had not been truthful in relation to other family members and support that is potentially available to him in Bangladesh; and the abandonment at §45 of a claimed fear of his uncle. Therefore the findings before a remaking judge are quite narrow.

Disposal

21. With reference to paragraph 7.2 of the Senior President's Practice Statement, given the limited scope of the issues, it is appropriate that the Upper Tribunal remakes the FtT's decision which has been set aside, subject to the preserved findings.

Directions

22. The following directions shall apply to the future conduct of this appeal:

23. The Resumed Hearing will be listed before any Upper Tribunal Judge sitting at Field House at **a face-to-face hearing** on the first open date, time estimate **half a day**, with an interpreter in **Bengali, Dhaka dialect,** to enable the Upper Tribunal to substitute a decision to either allow or dismiss the appeal.

24. The Claimant shall no later than 4 PM, **14 days** before the Resumed Hearing, file with the Upper Tribunal and served upon the Secretary of State's representative a consolidated, indexed, and paginated bundle containing all the documentary evidence upon which he intends to rely. Witness statements in the bundle must be signed, dated, and contain a declaration of truth and shall stand as the evidence in chief of the maker

who shall be made available for the purposes of cross-examination and re-examination only.

25. The Secretary of State shall have leave, if so advised, to file any further documentation she intends to rely upon and in response to the Claimant's evidence; provided the same is filed no later than 4 PM **7 days** before the Resumed Hearing.

Notice of Decision

The decision of the First-tier Tribunal contains material errors of law and I set it aside, subject to the preserved findings at §§35; 36; 40; and 45 of the FtT's decision.

The Upper Tribunal will retain remaking of the appeal.

The anonymity directions continue to apply.

Signed J Keith Date: 1st June 2021

Upper Tribunal Judge Keith