IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-005320

First-tier Tribunal No: HU/57433/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 7 August 2023

Before

UPPER TRIBUNAL JUDGE READS

Between

CHONDROMALA BEGUM
(No Anonymity direction made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Read, Counsel instructed on behalf of the appellant.

For the Respondent: Ms Young, Senior Presenting Officer

Heard at Phoenix House (Bradford) on 26 July 2023

DECISION AND REASONS

1. Pursuant to section 12 (2) (b) (ii) of the Tribunals, Courts and Enforcement Act 2007, this is the remaking of the decision of Judge of the First-tier Tribunal promulgated on the 1 September 2022 following the decision promulgated on 13 June 2023 of the Upper Tribunal setting aside the decision of the FtT having taken into account the respondent's concession that the decision of the FTT involved the making of an error on a point of law. The Upper Tribunal set out the reasons in the decision promulgated 13 June 2023 (but dated 26/4/23).

2. The FtTJ did not make an anonymity order and no grounds were submitted during the hearing for such an order to be made.

The background:

3. The factual background to the appeal is set out in the decision of the FtTJ, the decision letter and the papers in the parties' respective bundles.

4. The appellant is a national of Bangladesh born on the 1 February 1937. On 27 November 2004, the appellant entered the UK with leave as a visitor, valid until 19 April 2005. On 21 March 2005, she made an application to remain as a dependent relative. This was refused on 2 September 2005 and the appellant appealed against the decision but withdrew her appeal on 9 February 2006. A further application was submitted as a dependent relative on 15 February 2006, but this was refused on 20 March 2006. On 2 December 2010, the appellant sought leave to remain outside the rules, but this again was refused without right of appeal on 25 May 2011. Further representation seeking leave outside of the rules were made to the respondent on 2 June 2011. The application was refused, and the appellant appealed that decision.

5. The appeal came before the tribunal and in a decision 11 December 2012 Immigration Judge Reed dismissed the appellant's appeal and her appeal rights became exhausted on 15 January 2013. The appellant remained in the United Kingdom.

6. Between April 2015 and September 2018 the appellant submitted several different applications, which were refused by the respondent with no right of appeal.

7. On 17 February 2021, the appellant applied for leave to remain under the family and private life rules.

8. The respondent considered her claim in a decision taken on 8 November 2021. The respondent refused the human rights claim that had been made noting that the appellant had no partner or child in the UK, that she could not meet paragraph 276 ADE (1) (i)-(iii),(vi) of the Immigration Rules based on the length of residence and that she had not lived continuously in the UK for 20 years and was not satisfied that there would be very significant obstacles to her integration if she returned to Bangladesh. The respondent also did not consider that circumstances were "exceptional" and concluded that they did not justify a grant of leave to remain outside the rules.

9. The appellant appealed the decision, and the appeal came before the FtTJ on 19 August 2022 (erroneously stated as 2021). In a decision promulgated on 1 September 2022, the FtTJ dismissed her appeal on human rights grounds both under the Rules and outside the Rules.

10. Permission to appeal was sought on behalf of the appellant which was granted by FtTJ Easterman on 16 March 2023. At the subsequent hearing , Ms Hashmi of Counsel appeared on behalf of the appellant and Mr McVeety, Senior Presenting Officer appeared on behalf of the respondent. As set out in the " error of law " decision, it had been conceded on behalf of the respondent that there had been the making of an error of law that was material to the outcome. Not all the grounds were conceded but it was accepted by the respondent that he decision should be set aside and be remade by the Upper Tribunal.

11. In summary, it was accepted on behalf of the respondent that the FtTJ erred in his consideration of the medical evidence concerning the appellant's medical conditions and on the consequent level of care necessary. It follows that as the FtTJ was not satisfied as to the level of care necessary, any consideration of the

availability of care outside of the UK was similarly flawed, which thus affected the overall assessment of proportionality.

12. Mr McVeety accepted that there had been a significant change since the decision made by the FTT in 2012. Whilst the FtTJ considered that a number of years had elapsed since the decision made in 2012, the FtTJ considered that the circumstances had not changed in Bangladesh (see paragraph 33). Again, even if it could be said that the appellant had available accommodation in Bangladesh, the reasonableness of the availability of care, which would also be based on the level of care required remains to be assessed on the basis of the error of law as conceded by Mr McVeety and as found above.

13. For the avoidance of doubt, there had been no challenge to the FtTJ's assessment that the appellant has established a family life in the UK (see paragraph 42) based on her length of residence with her family since her arrival, age, her medical conditions and the level of dependency shown upon those family members. That was to remain a preserved finding. As to evidence, the appellant did not give evidence before the FtTJ, and it was not anticipated that she would be required to do so at any resumed hearing. The issues for the resumed hearing were as follows. The issue of level of care necessary for the appellant and the availability of care and the assessment of proportionality therefore remains to be considered. Directions were given as follows: Any further evidence that is relied upon by the appellant is a matter for her legal representatives to file and serve on the Tribunal and the other party; including evidence relating to the appellant's current medical condition and care needs. Any further updated medical evidence can also be served and filed.

The resumed hearing:

14. At the hearing, the appellant was represented by Mr Read of Counsel and the respondent by Ms Young, Senior Presenting Officer. The day before the hearing, a late request was made for a hybrid hearing so that the appellant and her daughter could provide evidence but at home. It was stated that the appellant's son in law would attend and give evidence at the tribunal in person. That request was granted. The appellant attended the hearing remotely with her daughter. Steps were taken to ensure that the parties involved were all able to see and hear each other given that this was a hybrid hearing. All participants confirmed that they could see and hear each other during the hearing and no real difficulties were raised during the hearing.

15. Both advocates were given time to consider what special measures would be required for the appellant in accordance with the Presidential Guidance Note No 2 of 2010 and AM (Afghanistan) v SSHD [2017] EWCA Civ 1123.However Mr Read on behalf of the appellant later indicated that did not seek to call her to give oral evidence in light of her medical condition and her vulnerability. The appellant's daughter was assisted in giving her evidence by the court interpreter who had been requested by the appellant's solicitors. There were no problems identified by either the witness or the court interpreter concerning the language or interpretation during the hearing.

16. A summary of the documents relied upon by the appellant as confirmed by the parties are as follows:

    1. The original bundle that was before the FTT.

2. Appellant's supplementary bundle filed 25 July 2023 with updating medical evidence.

17. The respondent relied upon the original bundle before the FTT and Ms Young also relied upon the CPIN Bangladesh: Medical Treatment and health care V2.0 dated July 2022.

18. The oral evidence given was relatively short. There were no additional questions asked in chief of the appellant's daughter Ms Begum. In cross-examination she was asked about the discharge letter from the hospital. She said that it was her brother's address and that from time to time her mother wished to go to see her son and that she would be required to take her. She described the circumstances that she had asked to see her son and 2 days later she was taken to hospital. After the surgery she stayed there for 3 to 4 days then she was discharged. She confirmed that when the appellant went to see her son, she would go with her, and she stayed at the house although she would return back to the family home "to and fro". She confirmed that when she was not there her brother and sister-in-law would look after her. She said the reason why she went back was because her mother was very eager for her return and that she gets "quite frantic".

19. The witness was asked if there was any type of respite care for her mother arranged. She said that there was not, and she looked after her mother. No further questions were asked.

20. In relation to the appellant's son-in-law he was asked by Mr Read about his financial circumstances. He confirmed that the payslips in the bundle (page 168 – 176) showed his earnings at the time and that his income had increased as he was on the minimum wage and was a moderate increase. He confirmed that he was supporting his wife, children and mother-in-law.

21. In cross-examination he confirmed that he was still working. He was also asked about the discharge letter from the hospital. He was asked whose address was on it and he stated that it was his brother-in-law's address. He said that the appellant's condition (Alzheimer's) made a regressive, moody, angry and frustrated and that last September 2022 they had to take her to Ipswich see her son. He said he dropped his wife and mother there and they stay for a period of one to 2 days and then she had emergency treatment at the hospital. When she was in hospital that was when she was at her son's address and his wife stayed for a few days. He referred to the appellant later having cataract surgery. He confirmed in cross-examination that his wife would take the appellant to see her son and that she would go back-and-forth between that place and the family home. When asked why there was no evidence from the appellant's son in support of the appeal, he said that it was his wife who was the main carer. He added that the appellant wish to see her son sometimes but on some days while she wants to go she would ask to return straightaway. In answer to questions from myself, the witness said that she did not have a home in Bangladesh. He was asked if the appellant, since she had been in the UK had stayed in touch with any friends? He said that she had one nephew, but he had moved out of the area. When Mr Read asked how he thought she would cope or react if living away from her close family members, he stated that her condition was such that at times she did not recognise or own daughter and that he did not think her condition would allow her to survive if she had to move from where she was looked after. He confirmed that he had said that his mother-in-law sometimes did not recognise his wife and was asked who might be affected if the appellant was not able to recognise a family as her carers. He stated that he thought this was

the “worst thing” because if she did not recognise her daughter he was concerned how she would end up.

The submissions:

22. At the conclusion of the short evidence, each advocate gave their respective submissions. They were interpreted to ensure that all parties would be able to hear them.

23. Ms Young submitted that she relied upon the refusal letter dated 8 November 2021. Dealing first with paragraph 276ADE, she submitted that the appellant had not resided in the UK for 20 years and that it was submitted that there were no very significant obstacles to her integration to Bangladesh. Ms Young submitted that the 4 bullet points set out in the decision letter gave the reasons for this which she relied upon.

24. She further submitted that her next point related to the appellant’s medical condition. She stated that there was later evidence given in the updated bundle as to her condition. She submitted that the country materials referred to in the respondent’s CPIN: medical care and health care in Bangladesh version 2 July 2022 showed that there was medical treatment available. She referred to the general section, section 2 of the structure of the health system and in particular 2.1.2 that the government of Bangladesh is responsible for providing healthcare to all its citizens.

25. She submitted that in relation to the appellant had not been demonstrated that care would not be available and that the CPIN demonstrated that it would be available.

26. She submitted that it was part of the appellant’s case that the appellant would prefer her family to look after her and that whilst the respondent appreciated this it would not be a very significant obstacle, nor would it be an unjustifiably harsh consequence when looking at the article 8 perspective. Therefore she submitted paragraph 276 ADE (1) (vi) was not met.

27. In terms of article 8 of the ECHR and the proportionality balancing exercise she submitted that if the Immigration Rules were not met it had to be a factor weighing in favour of the respondent. She also made the point that the appellant entered the UK lawfully in 2004 as a visitor but this was not a route the settlement and that her leave expired on 19 April 2005 and the appellant continued to build a private life whilst having a precarious immigration status which her family were fully aware of. The S117B provisions apply a little weight to that private life.

28. She submitted that the evidence referred to the appellant’s relationship with her grandchildren however their best interests could be met by them remaining in the care of their parents and that the relationship with her grandchildren did not go beyond normal emotional ties and did not outweigh the public interest in the appeal.

29. Ms Young submitted that she adopted the earlier submissions that medical treatment would be available on return and thus the decision would not be disproportionate.

30. Mr Read on behalf of the appellant addressed those submissions. He submitted that in relation to emotional ties, that the family provided care for the appellant which went beyond normal emotional ties. As to section 117B, he submitted that even if little weight would be attached to private life that did not mean that little weight would be attached to the family life as this only related to the case of a partner. In this case it was the familial relationship between the appellant and her daughter and son-in-law and grandchildren therefore section 117B did not apply to the family relationship.

31. By reference to the CPIN, he submitted that whilst in general terms Bangladesh takes responsibility for the health care of its citizens, there was no mention in the document of healthcare provision for those suffering from Alzheimer's and dementia and the closest references were those in relation to mental health set out in section 10, where it stated that the government facilities for treating mental health and disabilities were inadequate. He submitted that she may require palliative care which is set out in the CPIN but is independent and private. The costs for the hospice were not disclosed in section 15 and his submission was that private palliative care would not be available as neither the appellant nor her family members had sufficient income to cover such expenditure. The evidence was that the appellant's family survived on minimum wage and the income was insufficient to support any private care for the appellant therefore medical treatment would not be available to her.

32. In respect of the Rules, he submitted that her ability to meet the Rules should weigh in the proportionality assessment, and that she could meet the rules for adult dependent relative ("ADR") in light of the medical evidence and that medical treatment in the country return is not available or not affordable, as care for Alzheimer's would not be available nor would they be able to cover any palliative care which would go with it. Whilst the appellant could not meet the technical eligibility requirement of the ADR rules, she met the substantive parts.

33. When addressing proportionality he submitted that came down to the evidence which demonstrated that it would be disproportionate in the circumstances of the appeal to return the appellant to Bangladesh when she would make an application which would succeed.

34. Dealing with paragraph 276ADE (1) (vi) he submitted that there were very significant obstacles to her integration to Bangladesh. Whilst she had lived there previously until 2004, since that time her medical condition had altered significantly, and she had the onset of Alzheimer's and dementia. Therefore the very significant obstacles are based on that medical evidence alongside the absence of care facilities necessary to support her should she be returned. He has admitted it was common knowledge that a person the circumstances of the appellant and her age with dementia and Alzheimer's and other serious health conditions would not be able to physically leave the country and not being fit to fly and that reflected in the circumstances the appellant and the need for her to remain her family to provide the care she was receiving. He therefore submitted that her removal would be a disproportionate interference with her family life.

Discussion:

35. There has been little factual dispute in this remaking hearing. Dealing with the factual background as summarised earlier there is no dispute concerning the appellant's immigration history. The appellant entered the UK would leave as a visitor on 27 November 2004, valid until 19 April 2005. Since that date she made

various applications to remain, but none were granted. On 17 February 21 a further application for leave to remain under the family and private life rules was made which was refused in a decision taken on 8 November 2021 which led to the proceedings before the FtT. Therefore the appellant has not had leave to remain in the United Kingdom since 2005.

36. In the appeal in 2012, it was found that the appellant was a 75-year-old widow who had come to United Kingdom to visit relatives. The factual findings made by the immigration judge in 2012 are as follows. The IJ accepted that the appellant was a widow, and that the appellant's uncle was deceased and the only relative in the home village was a nephew. The judge accepted that she had a private life in the UK but had failed to show that she would not have somewhere to live and sufficient resources to maintain herself as he was not satisfied about what had happened to her assets. There was not a clear picture of the appellant's present state of health and that the appellant's daughter had exaggerated her incapacity. He did not accept that the appellant had established a family life with her UK relatives within the meaning of article 8, and that there was no dependency between her and her family going beyond normal emotional ties.

37. By reference to the decision in Devaseelan those findings are the starting point of any future consideration. However there has been no dispute between the advocates that since the hearing in 2012 a lengthy time has elapsed, and the appellant's medical circumstances have altered significantly. Since the decision in 2012 a formal diagnosis of Alzheimer's dementia was made in October 2018. The parties therefore do not dispute that the previous circumstances are significantly different to those which pertained in 2012.

38. There are a large number of medical reports in the appellant's bundle and also in the updated bundle served shortly before the hearing. Ms Young on behalf of the respondent has not sought to argue at this hearing that those medical reports do not set out the appellant's medical circumstances and the level of care that she requires. Nor have the conclusions reached by that medical evidence being challenged.

39. When addressing those reports, they demonstrate that the appellant suffers from significant medical conditions which include Alzheimer's disease, dementia, memory loss and confusion, hypertension, osteopenia, low mood and low potassium. There is recent medical evidence of the treating clinician who is her GP (see letter dated 24/7/23) which confirmed his earlier reports and conclusions as to her medical condition, its effect upon her general living and the level of care needs she has. There is also recent evidence from an emergency admission to hospital in September 2022 brought on by left-sided headache with blurring of vision which was thought to be a possible giant cell arteritis which required to be independently diagnosed. She has had cataract surgery and it is recorded that she have chest pains and that her recent ECG was abnormal.

40. Looking at the medical evidence, as long ago as 2011 (medical report of Dr Butler) identified from his medical observations of the appellant that she walked with a shuffling gait and there was a reduction of facial expression. Dr Butler thought they were symptoms which may indicate early Parkinson's disease. Further in June 2017 the Memory Assessment Team ("MAT") recorded difficulties with her walking and reduced facial expressions and poor eye contact. This is consistent with the observations made by Dr Butler and were made prior to her formal diagnosis of Alzheimer's and dementia in October 2018. It indicates that

the appellant was likely to have been suffering from aspects of the condition well before her eventual diagnosis in 2018.

41. There has been no challenge to the evidence of the appellant's GP who has been involved in her care since 2017. In the medical report historically and more recently they record that the appellant suffers from memory loss and confusion as a result of her condition. In 2017 and prior to her formal diagnosis the family had reported to the GP that there had been a gradual onset of deterioration in her memory and that they had reported she had problems recalling recent events for example she had forgotten that her husband had passed away. It was as a result of this that she was referred to the memory assessment centre for further assessment to take place (see report dated 24 March 2017) and 3 months later she was assessed as continuing to forget conversations, but the causation of the memory problems were difficult to ascertain at that stage (see review 27th of June 2017). In October 2017 Dr Ball is recorded as having assessed the appellant and found her memory continued to deteriorate (see report of Dr Hussain in 2018 and his letter dated August 2020). There was therefore evidence that the appellant was suffering from confusion historically and that supports the evidence given by the family members. The medical evidence viewed holistically demonstrate other aspects of the condition are not consistent. Some of the medical records refer to her being able to use stairs, going on a walk and other reports refer to her being irritable and angry. That is consistent with the evidence as to how she presented when she wished to see her son. This is further supported by the most recent report dated 24 July 2023 which recorded that the family situation was stressful and emotional for them and that she needed a lot of support.

42. There is a report from Dr Roche dated 24 March 2022 which states that in his opinion the appellant requires help with all activities of daily living including washing, walking, dressing, feeding and toileting and needs 24-hour care in constant supervision. She does not recognise people. He referred to her having complex requirements including constant monitoring and if not provided, her dementia and mental state will be greatly affected. He said that her physical and mental conditions "are slowly deteriorating, and this is increasing her dependence levels". Reference is made to her confusion and distress and that she is unfit to fly as it would increase her anxiety levels and exacerbate confusion and disorientation. Finally he states Alzheimer's disease is a progressive neurodegenerative disease which progresses slowly and there is no cure or prevention. It affects both mental and physical states and will lead to a greater burden on family and carers if the disease worsens. Patients will need 24 hour care with all activities of daily living.

43. The most recent medical report dated 24/7/23, sets out the historical medical conditions was diagnosed previously, and the conclusions reached by the memory assessment team. He concludes that in his professional opinion the appellant is unfit to travel or look after herself independently that she strongly needed her family around her for her medical conditions.

44. The present circumstances set out in the medical evidence and that of her family members indicate that her care needs, which are presently carried out by her daughter are such that the appellant cannot care for herself independently. There was no challenge at the hearing to the evidence of the daughter and her son-in-law the descriptions of the level of care she required as a result of her medical conditions of Alzheimer's and dementia.

45. Before the previous FtTJ there was a suggestion that the appellant's care may have been carried out by relatives as she had stayed at the home of her son. Whilst Ms Young asked questions about her visits to Ipswich it was not suggested in any submissions that the evidence reflected other family members caring for the appellant. The oral evidence was consistent that she had visited her son. She was accompanied by the appellant's daughter who travelled and stayed with her although going back and forth to see her children. The evidence does not demonstrate that the appellant has any other carer other than her daughter and the visits to Ipswich I find are more likely than not, were provided to the appellant to give her the opportunity to see other family members and also to give the appellant's daughter some respite. It has not been suggested in cross-examination or in any closing submissions of the appellant's family members were exaggerating her condition and it is set out in the medical reports.

46. As to the circumstances in Bangladesh, it is common ground that she has not been living there since 2014 which is a significant period of 18 years. It has not been suggested that she has any remaining assets or place to live. In 2012 the only relative was a nephew and it is said that he is no longer in that area. However even if he were available in the light of the appellant's medical condition and her long standing reliance upon her family members in the UK, it is not demonstrated that he would be able to provide the level of care that the appellant requires nor that such care would be commensurate with her needs.

Assessment under the Rules:

47. Turning to the under the Rules, I remind myself that the burden of proof is on the appellant to demonstrate that she meets the requirements of Paragraph 276ADE(1) (vi) of the Immigration Rules and that the decision of the respondent interferes with Article 8 of the ECHR. Once the appellant has shown interference it is for the respondent to demonstrate that the decision is proportionate. The standard of proof is the balance of probabilities. I also have regard to the best interests of the appellant's grandchildren pursuant to Section 55 of the Borders, Citizenship and Immigration Act 2009.

48. Paragraph 276ADE(1)(vi) of the Immigration Rules states;

(1). The requirements to be met by an applicant for leave to remain on the grounds of private life in the UK are that at the date of application, the applicant:

(vi) subject to sub-paragraph (2), is aged 18 years or above, has lived continuously in the UK for less than 20 years (discounting any period of imprisonment) but there would be very significant obstacles to the applicant's integration into the country to which he would have to go if required to leave the UK.

49. In Parveen v SSHD [2018] EWCA Civ 932, the Court of Appeal considered the relevant provision, paragraph 276ADE(1)(vi) which applies where an applicant has lived continuously in the UK for less than 20 years and "*there would be very significant obstacles to their integration in the country of return*". Underhill LJ said:

"8. Since the grant of permission this Court has had occasion to consider the meaning of the phrase "very significant obstacles to integration", not in fact in paragraph 276ADE(1)(vi) but as it appears in paragraph 399A of the Immigration Rules and in section 117C (4) of the Nationality Immigration

and Asylum Act 2002, which relate to the deportation of foreign criminals. In *Kamara v Secretary of State for the Home Department* [2016] EWCA Civ 813, [2016] 4 WLR 152 , Sales LJ said, at para. 14 of his judgment:

"In my view, the concept of a foreign criminal's 'integration' into the country to which it is proposed that he be deported ... is a broad one. It is not confined to the mere ability to find a job or to sustain life while living in the other country. It is not appropriate to treat the statutory language as subject to some gloss and it will usually be sufficient for a court or tribunal simply to direct itself in the terms that Parliament has chosen to use. The idea of 'integration' calls for a broad evaluative judgment to be made as to whether the individual will be enough of an insider in terms of understanding how life in the society in that other country 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 the individual's private or family life."

9 That passage focuses more on the concept of integration than on what is meant by "very significant obstacles". The latter point was recently addressed by the Upper Tribunal (McCloskey J and UTJ Francis) in *Treebhawon v Secretary of State for the Home Department* [2017] UKUT 13 (IAC). At para. 37 of its judgment the UT said:

"The other limb of the test, 'very significant obstacles', erects a self-evidently elevated threshold, such that mere hardship, mere difficulty, mere hurdles and mere upheaval or inconvenience, even where multiplied, will generally be insufficient in this context."

10. I have to say that I do not find that a very useful gloss on the words of the rule. It is fair enough to observe that the words "very significant" connote an "elevated" threshold, and I have no difficulty with the observation that the test will not be met by "mere inconvenience or upheaval". But I am not sure that saying that "mere" hardship or difficulty or hurdles, even if multiplied, will not "generally" suffice adds anything of substance. The task of the Secretary of State, or the Tribunal, in any given case is simply to assess the obstacles to integration relied on, whether characterised as hardship or difficulty or anything else, and to decide whether they regard them as "very significant"."

50. As Underhill LJ noted in Parveen v SSHD, the test will not be met by "mere inconvenience or upheaval". In the end, the task of the Secretary of State, or the Tribunal, in any given case is simply to assess the obstacles to integration relied on, whether characterised as hardship or difficulty or anything else, and to decide whether they regard them as "very significant".

51. Ms Young confirmed that she relied upon the four bullet points set out in the decision letter dated 8 November 2021. They are replicated below:

(1)You resided in Bangladesh up to the age of 67, which includes your childhood, formative years and a significant portion of your adult life. It is accepted that you will have retained knowledge of the life, language and culture, and would not face significant obstacles to re-integrating into life in Bangladesh once more.

(2) You have stated in your application that you speak Sylheti, which is widely spoken in Bangladesh, and this will help you to adapt back to life in Bangladesh socially and culturally.

(3)Any private life or ties you have developed in the UK have been done with your full knowledge, when you knew you did not have permission to remain here permanently, and you have never been given any legitimate expectation of stay. As such, you should have prepared yourself for the possibility of return to Bangladesh. You may have made ties during your stay in the United Kingdom but failed to demonstrate that these ties currently go beyond normal emotional ties.

(4) You have already demonstrated your ability to adapt to life in another country, which on your arrival to the UK, was a completely new environment to you. Given your ability to integrate into life in the UK, a country you had no knowledge or experience of it is considered you would be able to re-integrate into the culture and way of life in your country of origin, a country in which you have previously lived.

52. When addressing point three, the first part is more relevant to the article 8 assessment and the submission that she failed to demonstrate that her ties go beyond normal emotional ties, ignores the preserved finding of the previous FtTJ that she has a dependency upon her family members as a result of her care needs that goes beyond normal emotional ties.

53. When applying those legal principles to the factual matrix of this appeal, the test to be applied is what would happen on return and whether she would be able to integrate and whether she would be " an insider" in terms of participating in society. It is not suggested that the appellant has lost her language ties and that she is able to speak Bengali. Equally, given her length of previous residence in Bangladesh including her childhood and formative years, she would retain some knowledge of her life and culture notwithstanding the length of residence in the UK of 18 years. However, it is more likely than not that her previous language and cultural ties will have weakened during those 18 years. I am satisfied that the appellant has no meaningful ties such as family ties in the sense that she has been in the UK for 18 years and that family ties that are stronger are those she shares with her main carers. Even if her nephew resided in Bangladesh, in the light of the complex medical needs including the monitoring, and care for her activities of daily living such as washing and dressing, on the balance of probabilities and having had no experience of such care, he would not be in a position to carry out the type of needs that the appellant has and the evidence appears to demonstrate the level of dependency is increasing rather than decreasing. .

54. At paragraphs 58 and 59 of AS Moylan J rejected a submission that so called " generic" factors, such as intelligence, health, employability and general robustness of character, were irrelevant when assessing a person's ability to integrate and held that such factors can be relevant to whether there are very significant obstacles to integration as they form part of the "broad evaluative judgment". The Court of Appeal rejected a submission that whether someone is " enough of an insider" is to be determined by reference to their ties to the country of removal.

55. What is of more relevance is that when considering the issue of integration, it is likely that the appellant's ability to "integrate" or "re-integrate" would be affected by her medical condition. In this context the appellant's health needs, medical conditions and vulnerability are relevant factors. As someone who has dementia and Alzheimer's her ability to leave the house without support would

be a real possibility and this would impact on her ability to participate in society and her condition would be likely to negatively affect her ability to form any new relationships particularly with an alternative carer. Further, there is evidence of a level of confusion and distress and I find that it is more likely than not that a change to what has been a stable care arrangement would have a detrimental effect upon her.

56. As to the availability of medical care in Bangladesh Ms Young relies upon the CPIN version 2 dated July 2022 to demonstrate that at 2.1.2 the government of Bangladesh is responsible for providing healthcare to all citizens and therefore medical care is available. While Ms Young is correct to submit that the appellant would prefer to be looked after by her family and this is not a very significant obstacle, the submission does not take account of the length of time she has been cared for by her family in the UK and the effect of change of carer for her in light of the condition. In any event as Mr Read submits nowhere in the CPIN is there any reference to care provided for Alzheimer's or dementia. The closest references that relating to mental health at section 10 that the evidence set out the demonstrate to government facilities are inadequate. The cost of private and independent treatment for palliative care expensive and it appears to be common ground that the appellant's relatives in the UK would not have the ability to fund such care.

57. In addition and in the context of the appellant's skeleton argument it refers to the reasonableness of someone else caring for the appellant other than her family members. In R (Britcits) v SSHD [2017] EWCA Civ 368; [2017] 1 WLR 3345, a court comprising the Master of the Rolls, Davis LJ and Sales LJ (as he then was) held that the ADR Rules were not ultra vires, unreasonable or contrary to Article 8 ECHR. In so holding, however, the Master of the Rolls (with whom Davis and Sales LJJ agRead) emphasised the correctness of a point which had been made by counsel for the SSHD, which was that 'the provision of care in the home country must be reasonable both from the perspective of the provider and the perspective of the applicant, and the standard of such care must be what is required for that particular applicant': [59]. The Master of the Rolls expressed some concern that insufficient attention might have been paid to such considerations in the past. In the context of the factual circumstances of the appellant, even if there was care available, on the balance of probabilities it would not be of a type that would reasonably meet her present care needs.

58. Having assessed all of those factors and in the light of the medical evidence and the level of care required, the obstacles to integration identified are not mere difficulties or mere upheaval but are properly described as "very significant obstacles", and therefore the appellant has satisfied the requirements of Paragraph 276ADE (1) (vi). That being the case no public interest considerations arise.

59. In the alternative, and as both parties have addressed the issue of article 8 outside of the rules I have also given consideration to that. As both advocates agree the factual assessment already made applies to this consideration.

60. Article 8 of the ECHR provides as follows:

" **Article 8 - Right to respect for private and family life.**

> 1. Everyone has the right to respect for his private and family life, his home, and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and fReadoms of others."

In determining the claim under Art 8, I apply the five-stage test in R (Razgar) v SSHD [2004] UKHL 27. In R (Razgar) at [17], Lord Bingham set out the 5-stage approach when applying Art 8:

> (1) Will the proposed removal be an interference by a public authority with the exercise of the applicant's right to respect for his private or (as the case may be) family life?
>
> (2) If so, will such interference have consequences of such gravity as potentially to engage the operation of article 8?
>
> (3) If so, is such interference in accordance with the law?
>
> (4) If so, is such interference necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and fReadoms of others?
>
> (5) If so, is such interference proportionate to the legitimate public end sought to be achieved?"

61. In addition to the Art 8 right of an appellant, the Art 8 rights of others with whom they share family life are also relevant (see, Beoku-Betts v SSHD [2018] UKHL 39). In carrying out the 'fair balancing' exercise required by Art 8.2, the best interests of any child are a primary, though not paramount, consideration (see ZH(Tanzania) v SSHD [2010] UKSC 4 and Zoumbas v SSHD [2013] UKSC 74 at [10]).

62. In terms of her private life, there is no dispute that she has established a private life as has lived in the United Kingdom since her arrival in 2004 and thus has 18 years residence.

63. The previous FtTJ made a finding that the appellant had also established a family life with her family members in the UK and that this was a preserved finding for this hearing. There is no factual dispute that the appellant lives with her daughter, son-in-law and her grandchildren in the United Kingdom and her grandchildren. There is also no dispute that the appellant's family life is based on her dependency on her daughter and son-in-law in the light of her medical conditions, the level of care that her daughter provides and her reliance on them for her physical care needs and emotional needs.

64. Whilst Ms Young submitted that the best interests of the children would be served by them being cared for by their parents, their best interests can also be considered in the context of their relationship with their grandmother. In short a

child's best interests may be taken into account in more than one way and it would equally be in the best interests of the children to be able to continue to see their grandmother. However, their best interests whilst important are not paramount or determinative.

65. It is therefore accepted that there will be an interference with her family and private life sufficient to engage article 8 and that this is in accordance with the law and necessary in a democratic society.

66. The issue in this appeal is whether or not that interference is a "proportionate" interference based upon a legitimate aim, namely the economic well-being of the country, including effective immigration control. That requires a 'fair balance' to be struck between individual interests and the public interest.

67. In determining the issue of proportionality, a court of tribunal must have regard to the factors set out in s.117B of the Nationality, Immigration and Asylum Act 2002 (as amended) (see s.117A(2)). Sections 117B(1)-(3) are relevant in this appeal. In assessing article 8, and required by section 117A of the Nationality, Immigration and Asylum Act 2002 (as amended by section 19 of the Immigration Act 2014) when assessing proportionality the Tribunal is to have regard to those factors set out in section 117 B. Section 117A (3)I sets out that the tribunal is required to carry out a balancing exercise setting the gravity of the interference against the requirements of the public aims sought to be achieved. In this respect the starting point is that the secretary of state is entitled to control the entry or residence of foreign nationals and the maintenance of effective immigration control is in the public interest.

68. In order to succeed in a claim outside the Rules, it must be established that the public interest is outweighed by the individual circumstances of the appellant and her family such that there would be "unjustifiably harsh consequences" if she is refused leave to remain (see Agyarko at [48] and [60] per Lord Read).

69. I adopt a balance sheet approach to Article 8 ECHR in accordance with Hesham Ali [2016] UKSC 60. I must strike a fair balance between the competing public and private interests in accordance with the principles in Agyarko.

70. In striking a 'fair balance' between the competing public and individual interests, when determining proportionality, in Agyarko, Lord Read recognised at [47] the courts have:

> "to take the Secretary of State's policy into account and to attach considerable weight to it at a general level, as well as considering all the factors which are relevant to the particular case."

71. In this context the fact that the appellant cannot meet the Immigration Rules is relevant to the assessment of proportionality (if the appellant cannot meet Paragraph 27an6ADE (see s.117B(1) of the NIA Act 2002). As to the ADR Rules Mr Read submits that she meets the substantive requirements and that if she made an application out of country she would succeed. That may be correct on the factual analysis, but it remains the position that the appellant cannot meet the Rules for ADR as she cannot meet the eligibility requirements given her presence in the UK. However I would accept that as the ADR provisions were designed to apply to those in a similar position to the appellant, albeit that such an application could only be made outside the UK, and if the substantive requirements were met it is still a relevant factor when determining the issue of

proportionality. The assessment set out in the preceding paragraphs apply and they need not be repeated. In this appeal the medical evidence was provided from a health professional (both from her treating GP and other reports), and it set out her care needs. Furthermore and as Mr Read submits the country evidence does not show that the level of care that is reasonably required could be obtained in Bangladesh. That weighs heavily in the appellant's favour.

72. When considering her immigration status, I take into consideration that despite the fact that the appellant entered the United Kingdom lawfully as a visitor she has remained in the United Kingdom with a precarious immigration status, initially having leave as a visitor, later remaining in the UK without leave. In these circumstances, I can therefore give little weight to the private life built up during this period.

73. Mr Read sought to contrast that with the family life established. In this context the appellant's family life with her daughter and son in law was in existence prior to her arrival in the United Kingdom and was strengthened at a time when her immigration status was precarious and unlawful. However as Mr Read submits when applying s 117(4) I am not required to give little weight to family life (other than with a qualifying partner) which was built up while an applicant had a precarious immigration status. I take into account that she has become dependent on her family members for her care in the United Kingdom and that on the evidence before the tribunal the likely impact of removal which is that she would suffer distress at being parted from her carers and with whom she has established her dependency is a matter that should weigh in the balance in favour of the appellant.

74. In respect of her knowledge of the English language, it is relevant to section 117B(2) that the appellant at the date of the hearing was over 65 years and therefore would be exempt from the English language in categories set out in the Immigration Rules due to her age. The Immigration Rules do contain exceptions for those over 65 from meeting the English language requirements (where such immigration rules include an English language requirement) and therefore it is arguable that section 117B (2) should be considered in this context.

75. However by reference to the financial independence in the sense it appears that her family members are supporting her financially however it appears that the appellant has had access to NHS care, and it has not been said that that had been paid for from private means and the likelihood is that in light of the medical condition she will require ongoing treatment. I therefore add weight to that factor in the balance in favour of the respondent.

76. Having taken into account all the relevant factors set out above in the light of the particular factual matrix of this appellant, when undertaking the proportionality balance, it has been demonstrated that the factors in favour of the appellant outweigh those of the respondent and thus the decision to refuse leave is so as to be in breach of article 8 and that the refusal of leave to remain results in unjustifiably harsh consequences so as to outweigh the public interest.

Notice of Decision:

The decision of the First-tier Tribunal involved the making of an error on a point of law; the decision shall be set aside and remade as follows: the appeal is allowed on Article 8 grounds ((the decision is in breach of section 6 of the Human Rights Act 1998).

Upper Tribunal Judge Reads

Upper Tribunal Judge Reads

27 July 2023