



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-001461
First Tier No: HU/54880/2022
IA/07117/2022

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 15th March 2024**

Before

DEPUTY UPPER TRIBUNAL JUDGE FARRELLY

Between

Abul Hussain

(anonymity order not made)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr D Clarke, Home Office Presenting Officer.
For the Respondent: Mr Taj Uddin Shah, Taj Solicitors Limited

Heard at Field House on 6th September 2023

DECISION AND REASONS

Introduction

1. An anonymity order was in place in the First-tier Tribunal. At the end of the determination the judge stated no anonymity order was made but the anonymity has been carried forward. The reason behind this is not apparent and I raised the matter at hearing. The parties did not feel it necessary and bearing in mind openness in the administration of justice is desirable I now name the appellant and remove the anonymity order.
2. He is a national of Bangladesh born in May 1976. He came to the United Kingdom in December 2005 on a one-year work permit valid until November 2006. He overstayed since its expiry.
3. On 22 October 2021 he applied for leave to remain on the basis of his private life. This was refused on 30 July 2022. His appeal was heard by First-tier Tribunal Judge Hena at Birmingham on 14 March 2023. Both parties were represented.

4. His appeal was dismissed. The judge considered paragraph 276 ADE of the immigration rules and whether there would be very significant obstacles to his integration into life in Bangladesh. The appellant had mentioned various illnesses, including hypertension, cardiac issues, diabetes and depression. He claimed to have no contact with family in Bangladesh.
5. The judge did not find the appellant to be credible. There was a lack of medical evidence to support his claims. The appellant told the judge he had no family in the United Kingdom but the judge noted an entry in the medical records where a doctor recorded he wanted his daughter in Rochdale contacted. The medical evidence also referred to two brothers in Bangladesh whereas the appellant in oral evidence said his family were deceased. The judge did not see any significant obstacles preventing his return to Bangladesh. There were no complications recorded from his diabetes.
6. The judge went on to consider exceptionality and article 8 on a freestanding basis. The judge found he had not established any exceptional circumstances or unjustifiably harsh consequences if removed. Medical treatment would be available in Bangladesh. The private life established here was when his situation was precarious and it was in the public interest to have effective immigration control. No breach of article 8 was seen .

The Upper Tribunal

7. Permission to appeal to the Upper Tribunal was granted by First-tier Judge Monaghan. It was arguable there was procedural unfairness if matters considered to be significant were not put to the appellant for comment. It was also arguable inadequate reasons were given in relation to the section 117 B assessment.
8. The application for permission referred to paragraph 18 of the determination and states he was never asked any questions about his medical records. It is also suggested that at hearing he confirmed he had brothers but they were deceased. It was suggested the medical records were not up to date. It is also submitted that the reference to a daughter Nessa is incorrect.
9. The application also submits that the judge gave inadequate reasons in relation to the very significant obstacles test in rule 276 ADE(vi).
10. It was also suggested that the section 117 B assessment was flawed. The grounds set out how he had maintained himself without recourse to public funds and that he had a working knowledge of English.
11. Mr Taj Uddin Shah indicated that he appeared in the First-tier Tribunal and had reviewed his notes. He said the appellant was asked about his family and he said he had a brother who died in 1990. He suggested the medical evidence referred to was outdated. He said the appellant became unwell and could not supply his family with money. As a consequence of this he became estranged from his wife and children. He said there was no finding made by the judge in respect of this.
12. Mr Clarke forcefully sought to support the judge's decision. It has been accepted there were inconsistencies in the appellant's evidence. The judge's findings

were based upon the appellant's own evidence. He referred to the reference to a daughter in the United Kingdom and accepted this was not put to him but the judge made no finding on this. He said the judge was aware of the appellant's medical conditions and that the case law called for a broad evaluation of his ability to reintegrate into Bangladesh. In terms of freestanding article 8 rights he submitted the decision was sustainable on the reasons advanced by the judge. He suggested that if an error were found the matter could be retained in the Upper Tribunal as the issues were relatively narrow.

13. In reply, Mr Taj Uddin Shah submitted that there were factual matters which would have to be determined again in the First-tier Tribunal.

Consideration.

14. An issue for the judge to determine in relation to paragraph 276 ADE (1)(vi) related to the appellant's ability to reintegrate to life in Bangladesh. He is now 47 years of age. Relevant to this issue was whether there would be any family support in Bangladesh. The appellant was suggesting there would not be.

15. There was no dispute he had been away from Bangladesh since he arrived in the United Kingdom in 2005: 18 years having now passed in that time. The refusal letter does not refer to family details. There is no reference in the review. The appellant's case is that his parents are deceased and he has no willing or able family members who could help him. This reflects the detailed letter from his representatives dated 12 November 2021.

16. The judge at paragraph 8 stated she was not recording the hearing in full and refers to the electronic recording. However, it would have been helpful in considering the challenges had the judge set out some basic framework. The judge does not set out in summary the documents presented but indicates at paragraph 16 that the medical evidence was very limited and mainly consisted of appointment letters. The judge records that the appellant had not produced his GP notes and records.

17. The judge refers to page 115 of the bundle and a reference to a daughter in the United Kingdom. He lived for an extended period in Northern Ireland. Clearly, the judge attached weight to information in the medical evidence produced in relation to family and concluded this adversely reflected on his credibility. Significantly, the judge indicates he has brothers in Bangladesh. This information influenced the judge.

18. I cannot see anything to indicate the appellant or his representative was given an opportunity to comment on this. The judge indicates at paragraph 19 that this material was in the appellant's bundle and it was for him to explain it. However, fairness required that he be directed to the specific areas of concern. Where there are inconsistencies between documentation and oral evidence it is best if a judge waits until after cross examination to raise their own questions. The questioning then should be in a neutral manner indicating the judge remains independent.

19. The decision suggests it was the judge who identified matters in the medical material. However, I cannot see evidence in the determination that the appellant or his representative had a chance to respond. Fairness would require that the appellant be given an opportunity to comment on apparent material

inconsistencies not raised elsewhere. They could be innocent explanations and unless the matter is put this will not be known. I cannot see anywhere in the papers these concerns were raised .It is my conclusion this renders the determination unsafe. I appreciate that the judge has considered other matters. Nevertheless, I have a concern that either consciously or subconsciously judge was influenced by the content of the medical evidence and the appellant did not have the chance to respond.

20.I find less weight in the point raised in relation to section 117 B. The judge was clearly aware of the provision. In AM (S 117 B) Malawi[2015] UKUT 260 it was held that the statutory duty to consider the matters set out in section 117 B are satisfied if the tribunal's decision shows it has had regard to such matters as are relevant .

Decision.

A material error in the decision of First-tier Tribunal Judge Hena has been established. That decision, dismissing the appellant's appeal is set aside. The appeal is remitted for a de novo hearing in the First-tier Tribunal.

Francis J Farrelly
Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber