



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

Case No: UI-2024-004654

First-tier Tribunal No: HU/63308/2023  
LH/05099/2024

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On 2 January 2025**

**Before**

**UPPER TRIBUNAL JUDGE HIRST**

**Between**

**DULU MIAH**  
**(NO ANONYMITY ORDER MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Rahman of counsel, instructed by public access  
For the Respondent: Mr Ojo, Senior Home Office Presenting Officer

**Heard at Field House on 11 December 2024**

**DECISION AND REASONS**

1. The Appellant appeals from the decision of First-tier Tribunal Judge Thorne dated 6 August 2024 dismissing his appeal on human rights grounds.

**Background to the appeal**

2. The Appellant is a Bangladeshi citizen. He suffers from myelofibrosis, a type of bone marrow cancer. He has also been assessed as having a learning disability.
3. The Appellant claims to have arrived in the UK in November 1995 as a domestic worker in the household of Sheikh Ahmed Al Nahyan, who verbally and physically abused the Appellant, required him to work unreasonable hours and withheld his wages. The Appellant was assisted to escape whilst attending the mosque and subsequently lived with another family.

4. On 31 January 2023 the Appellant made an application for leave to remain on the basis of his Article 8 private life. That application was refused on 29 August 2023 and the Appellant's appeal came before the First-tier Tribunal on 2 August 2024. The Tribunal dismissed the appeal. The judge accepted that the Appellant had myelofibrosis, but found that there was cancer treatment available in Bangladesh and his situation on return would not breach Article 3 ECHR. In relation to Article 8, the judge accepted that the Appellant had established private life in the UK but held that his removal to Bangladesh would be proportionate to the legitimate aim of immigration control.
5. The Appellant sought permission to appeal. Permission to appeal was granted on 8 October 2024 by First-tier Tribunal Judge Monaghan on limited grounds.
6. The appeal came before me at an error of law hearing on 11 December 2024. There were three issues:
  - 6.1. Whether the judge had erred in relation to paragraph 276ADE of the Immigration Rules, by failing to consider (i) the Appellant's very long residence in the UK and consequent loss of contact with Bangladesh, and (ii) the significance of the Appellant's medical condition and mental health, in assessing whether there were 'very significant obstacles' to the Appellant's integration on return;
  - 6.2. Whether the judge had erred in assessing the Appellant's Article 8 rights and the impact of return;
  - 6.3. Whether the judge had failed to consider relevant evidence, including in particular the psychological report which showed that the Appellant had a learning disability.

### **The error of law hearing**

7. At the hearing before me, the Appellant was represented by Mr Muhammad Mujeebur Rahman, who confirmed that he was instructed by public access and had also been instructed by public access at the First-tier Tribunal hearing.
8. The central part of the Appellant's case was that the First-tier Tribunal had failed to consider key parts of the Appellant's evidence, including in particular medical evidence relating to the Appellant's myelofibrosis and a psychological report which demonstrated that the Appellant had a learning disability. The psychological report, which appeared at p86 of the electronic error of law bundle, was a learning disability assessment dated 16 June 2022 by Dr Lemmey, a clinical psychologist, which appeared to have been carried out after referral by the Appellant's GP. The conclusion of this report appeared to be that the Appellant had a learning disability. However, only every other page of the report had been included in the bundle and Mr Rahman confirmed that the same had been true in the First Tier Tribunal hearing. When I queried why the whole report had not been included in the Appellant's bundle Mr Rahman told me that the Appellant had only given him every other page; he himself had not made any efforts to contact Dr Lemmey to obtain the full report.
9. Mr Rahman stated that the Appellant was suffering from mental ill-health and was not mentally stable; the judge should have asked him questions about his condition. The Appellant had not been able to evidence his long residence in the UK because his passport and documents had been taken. When I asked whether

the Appellant's documents had been taken by his previous employer, Mr Rahman said that he had not asked the Appellant. Mr Rahman confirmed that the medical evidence at pages 23-116 of the bundle had been before the First-tier Tribunal. Mr Rahman submitted that the judge should have given more weight to the psychological report and the Appellant's mental condition and should have allowed the appeal.

10. For the Respondent, Mr Ojo submitted that it was for the Appellant to provide evidence. He had been represented by counsel at the hearing and was today. The judge had considered the psychological report, because he had noted that the Appellant had a learning disability; it was not for the judge to ask further questions. The judge had also clearly been aware of the Appellant's long residence but was entitled to take the lack of evidence into account. The judge had referred to relevant authorities and had followed the *Razgar* structure.
11. On the limited evidence before me it appeared that the Appellant's history of being brought to the UK as a domestic servant by an employer who had mistreated him and withheld his wages raised credible indicators that he might have been a victim of trafficking or modern slavery. I asked both representatives whether the Appellant had been referred to the National Referral Mechanism but was told that he had not. After the hearing Mr Ojo informed the Tribunal clerk that he would take steps to progress a referral and I am grateful for his response.
12. At the end of the hearing I gave my decision with reasons to follow.

### **Error of law decision**

13. An appeal before the First-tier Tribunal is an adversarial hearing. The role of the First-tier Tribunal judge is to decide the case on the evidence before him, and where an appellant is represented, it is not the judge's role to engage in lengthy questioning in order to elucidate the Appellant's case or to obtain evidence which has not been provided. It is the role of the legal representative to ensure that the Appellant's case is prepared and presented properly.
14. I have serious concerns in this case that the Appellant's case was not properly prepared or presented by Mr Rahman before the Upper Tribunal or below, and have accordingly made a *Hamid* direction as outlined below.
15. I recognise that the First-tier Tribunal judge had a difficult task given the deficiencies in the evidence, and I do not accept Mr Rahman's assertion that the judge should have taken an inquisitorial approach to make good the gaps in the Appellant's evidence.
16. I do however consider that the judge erred in his approach to the issue of the Appellant's learning disability, and that that error was material to his conclusions on the appeal. The judge noted at paragraph 14, and appeared to accept, that the psychology report recorded that the Appellant had a learning disability. That was obviously a factor which was relevant and potentially significant to the Appellant's Article 8 case. However, the judge did not make any further reference to the report in his decision, nor did he note that the report was incomplete. I am driven to conclude that the judge did not consider the report adequately or at all; alternatively, if he did consider it, he did not reach findings on its relevance to the issues before him.

17. The psychology report, and the fact of the Appellant's learning disability, was also obviously potentially relevant to the conduct of the hearing. The judge was not asked to treat the Appellant as a vulnerable witness, nor to make reasonable adjustments to the hearing, but I consider that the judge, faced with evidence which suggested obvious vulnerability, should have considered the issue of his own accord and erred by failing to do so.
18. The judge's failure to give adequate consideration to the Appellant's learning disability was an error of law which was material to the outcome of the appeal. Because I consider that the hearing may have involved procedural unfairness, the appropriate course is to remit the appeal to the First-tier Tribunal for a *de novo* hearing before a judge other than First-tier Tribunal Judge Thorne with no findings preserved.

### **Notice of decision**

19. The decision of the First-tier Tribunal involved the making of an error of law and is set aside. The appeal is remitted to the First-tier Tribunal for a *de novo* hearing before a judge other than First-tier Tribunal Judge Thorne with no findings preserved.

### **Hamid direction**

20. The Upper Tribunal has the power to regulate its own procedures and to enforce the overriding duties owed to the Tribunal by legal professionals: *R (Hamid) v SSHD* [2012] EWHC 3070 (Admin) and *R (DVP & Ors) v SSHD* [2021] EWHC 606 (Admin). The *Hamid* jurisdiction includes holding to account legal representatives whose conduct of proceedings before the Tribunal appears to fall below minimum professional and ethical standards.
21. I have serious concerns in this case, which I raised with Mr Rahman at the hearing, that the Appellant's case was not competently prepared or presented by him before the Upper Tribunal or below. I am also concerned that, given the Appellant's learning disability and the complexity of the case, Mr Rahman did not give proper consideration to his professional obligations as counsel when accepting instructions on a public access basis.
22. I therefore make the following direction:

By **4pm on 13 January 2025**, Mr Muhammad Mujeebur Rahman is to provide, by email to [FieldHouseCorrespondence@Justice.gov.uk](mailto:FieldHouseCorrespondence@Justice.gov.uk) and marked for the attention of Upper Tribunal Judge Hirst, a detailed written response addressing the following matters:

- a) Whether he is authorised by the Bar Standards Board to conduct litigation;
- b) If he is not licensed to conduct litigation, the arrangements which were made with a person suitably authorised to do so in issuing the Appellant's appeal to the First-tier Tribunal and further appeal to the Upper Tribunal;
- c) Confirmation of when he became aware of the Appellant's learning disability;
- d) An explanation as to what consideration was given by him to the suitability of the Appellant's case for representation by counsel acting on a public access basis;

- e) Details of what if any reasonable adjustments were made by Mr Rahman as counsel in respect of the Appellant's learning disability in preparing the appeal and during the appeal proceedings;
- f) An explanation as to why no steps were taken to obtain, and/or to provide to the Tribunal, the full version of the learning disability assessment report dated 16 June 2022 by Dr Lemmey.

Upon receipt of the response to those matters the Upper Tribunal will consider whether to refer the case to the Bar Standards Board.

**L Hirst**  
**Judge of the Upper Tribunal**  
**Immigration and Asylum Chamber**

**19 December 2024**