Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/06101/2017

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 11 January 2019	**On 13 February 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE PEART

Between

AMJAD [H]
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms Fisher, of Counsel
For the Respondent: Mr Walker, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Bangladesh. He was born on 19 November 1994.

2. He appealed against the decision dated 25 April 2017 to refuse him leave to remain in the United Kingdom.

3. The appeal was dismissed by Judge A J Blake (the judge) in a decision promulgated on 16 October 2018.

4. The grounds claim the judge erred in refusing an adjournment in order to get evidence and then making a finding that the appellant was not a suicide risk on the limited evidence available so erring in terms of the overriding principle contained in Rule 2 of the 2008 Procedure Rules.

5. Further, whilst the judge found the appellant to be a credible witness and accepted his account that he had been brought here aged 12, no consideration was given to the length of residence here as a minor albeit without status in the fact-finding exercise in terms of whether paragraph 276ADE(1)(vi) was satisfied and the near miss in respect of (v) as the appellant was under 25 years of age and had spent almost half his life here. **JO (Uganda) [2010] EWCA Civ 10** was of relevance. The judge was obliged to conduct a free-standing Article 8 proportionality assessment and his failure to do so was a material error of law.

6. Judge Lambert granted permission on 13 November 2018. She said inter alia as follows:

> *"2. The appellant was found not to meet the requirements of Appendix FM or paragraph 276ADE. The decision displays adequately reasoned and evidence based findings resulting in the conclusion that there were no very significant obstacles to the appellant's integration to Bangladesh and the taking into account his medical condition the decision to not breach Articles 3 or 8. Paragraph 3 ground 1 takes issue with the judge's findings as to medical evidence and the applicability of Article 3, but in effect amounts to no more than disagreement with those findings and an attempt to re-argue the appellant's case.*
>
> *4. The second ground claims failure by the judge, having found the appellant could not meet the private life requirements of the Rules, to demonstrate engagement with the **Razgar** test and to consider the appellant's "near miss" argument that he had spent almost half his life in the United Kingdom since aged 12 years. Those contentions are arguable on the face of the decision at paragraphs 113-117. Despite the judge's other conclusions as to the appellant's remaining ties to Bangladesh they may on balance be material to the overall outcome."*

7. There was no Rule 24 response.

Submissions on Error of Law

8. Ms Fisher relied upon the grounds. There were two broad grounds claimed to be errors, that the judge had failed to properly deal with the suicide risk and failed to carry out a freestanding Article 8 proportionality assessment.

9. As regards the suicide risk, the judge relied upon the appellant's most recent discharge summary at page 158 of the bundle. Ms Fisher accepted that there was limited evidence of the appellant's mental health before the judge, but nevertheless submitted that the judge erred because he failed to have regard to the fact that the appellant on return would be

unwilling and unable to seek help and that healthcare is limited in Bangladesh. Further, suicide attempts are illegal in Bangladesh.

10. As regards Article 8, Ms Fisher submitted that there was no consideration of the appellant's length of residence here as a minor, albeit without status in terms of the requirements of paragraph 276ADE. Further, that the judge gave insufficient weight to the time spent here by the appellant as a minor. See **JO (Uganda) [2010] EWCA Civ 10**. The appellant had lived in British society for almost half his life such that it could not be said that he had failed to develop a private life. Further, the judge erred by failing to conduct a freestanding Article 8 proportionality assessment applying **Razgar [2004] UKHL 27**.

11. Mr Walker submitted that the judge properly took as his starting point **Devaseelan** and the previous decision of Judge Nightingale. The judge was entitled to come to the conclusions he had made on the evidence before him and the grounds disclosed no arguable error of law.

Conclusion on Error of Law

12. I find that the claim that the judge erred with regard to his approach to the medical evidence and the applicability of Article 3 amounts to nothing more than a disagreement with the judge's findings and an attempt to reargue the case. The most recent information before the judge regarding the appellant's mental health was a discharge summary from Barts Health NHS Trust dated 23 May 2017. It reads inter alia as follows:

> *"Has been reviewed by RAID team, with a view for discharge and IAPTT follow up. States that he is/has no suicidal intention or ideation and regrets the incident. Will be returning to the care of his sister."*

13. The evidence before the judge was that the appellant would not be making further attempts upon his life. In such circumstances, I do not accept that he erred in the manner submitted by Ms Fisher which I have set out above. The judge did not err in finding at [100] that the appellant was in *"reasonably good health"* at the time of the hearing. That was the evidence before the judge at the time.

14. As regards Article 8, the judge considered paragraph 276ADE. See [102]. The judge properly took as his starting point the decision of Judge Nightingale promulgated in 2015. Despite the appellant having come to the United Kingdom at the age of 12, Judge Nightingale found that the appellant had never entered the education system here. The judge found that the appellant had largely lived within the family and the Bangladeshi community. I do accept that the judge did not in terms consider paragraph 276ADE but I do not accept that to be material. It was not claimed that the appellant had spent at least half of his life living here. What the judge did was to consider whether there were any significant obstacles to the appellant's reintegration into Bangladesh which was the appropriate question to consider. The judge found that the appellant had close family in Bangladesh and that if he needed medical attention there,

there would be an adequacy of help and assistance both medically, socially and emotionally.

15. The judge did not err in his analysis. He was clearly entitled to come to the decision he reached on the findings he made.

Notice of Decision

16. The judge's decision discloses no error of law and shall stand.

Signed Date 30 January 2019

Deputy Upper Tribunal Judge Peart