Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/01396/2020 (V)**

THE IMMIGRATION ACTS

Heard at Cardiff Civil Justice Centre
Remotely by Skype for Business
On 14 January 2021

Decision & Reasons Promulgated
On 02 February 2021

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT
Appellant

and

S C
(ANONYMITY DIRECTION MADE)
Respondent

Representation:
For the Appellant: Mr C Howells, Senior Home Office Presenting Officer
For the Respondent: Mr A Joseph, instructed by NLS Solicitors

DECISION AND REASONS

1. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) I make an anonymity order. Unless the Upper Tribunal or court directs otherwise, no report of these proceedings shall directly or indirectly identify the respondent (SC). This direction applies to both the respondent and to the appellant and a failure to comply with this direction could lead to contempt of court proceedings.

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2. Although this is an appeal by the Secretary of State, for convenience I will refer to the parties as they appeared before the First-tier Tribunal.

Introduction

3. The appellant is a citizen of Bangladesh who was born on 4 January 1985. She arrived in the United Kingdom on 6 January 2010. In 2011, she unsuccessfully applied for leave to remain as a visitor. On 30 May 2012, the appellant was served with notice of intention to remove her (IS151A) as an overstayer. On 10 October 2017, the appellant was refused leave to remain on the basis of her private and family life in the UK.

4. On 18 January 2019, the appellant claimed asylum. On 28 January 2020, the Secretary of State refused the appellant's claims for asylum, humanitarian protection and on human rights grounds under the ECHR.

The Appeal to the First-tier Tribunal

5. The appellant appealed to the First-tier Tribunal. The appeal was heard by Judge Page on 23 September 2020. In his determination sent on 1 October 2020, Judge Page dismissed the appellant's appeal on asylum and humanitarian protection grounds, and under Arts 2 and 3 of the ECHR. In doing so, he rejected the appellant's claim to be at risk on return to Bangladesh as a result of her claimed fear from her ex-husband. However, Judge Page allowed the appellant's appeal under Art 8 on the basis that para 276ADE(1)(vi) of the Immigration Rules (HC 395 as amended) applied because, on return to Bangladesh, there were "very significant obstacles" to her integration.

The Appeal to the Upper Tribunal

6. The Secretary of State sought permission to appeal to the Upper Tribunal against Judge Page's decision in favour of the appellant under Art 8 of the ECHR. In essence, the Secretary of State contended that the judge had erred in law by failing to give adequate reasons for finding that there were "very significant obstacles" to her integration in Bangladesh under para 276ADE(1)(vi).

7. On 21 October 2020, the First-tier Tribunal (Judge Parkes) granted the Secretary of State permission to appeal.

8. The appeal was listed for a remote hearing by Skype for Business on 14 January 2021 at the Cardiff Civil Justice Centre. I was based in court and Mr Howells, who represented the Secretary of State, and Mr Joseph, who represented the appellant, joined the hearing via Skype for Business.

The Issues

9. It was accepted by both representatives that no challenge had been brought to the judge's adverse decision in respect of the appellant's international protection claim

under the Refugee Convention, on humanitarian protection grounds, and under Arts 2 and 3 of the ECHR.

10. It was accepted that the only issue was whether the judge had erred in law in finding in the appellant's favour under Art 8, in particular para 276ADE(1)(vi).

The Judge's Decision

11. In respect of the appellant's Art 8 claim, Judge Page approached her claim on the basis that it was contended that her mental health problems created, "very significant obstacles" to her integration in Bangladesh. The background was, as was accepted by Mr Howells before me, that the appellant had a history of a psychotic illness and had twice been "sectioned" under the Mental Health Act 1983. In support of her claim, before Judge Page the appellant relied upon a bundle of documents running to 31 pages. It was accepted by Mr Joseph before me that the appellant had last been discharged from detention in May 2016 and that she continued to be prescribed antipsychotic medication, namely ten milligrams of Olanzapine daily.

12. The judge dealt with the appellant's Art 8 claim at paras 19-21 of his determination.

13. At paras 19-20, the judge set out some of the medical evidence relating to the appellant's mental health and concluded that para 276ADE(1)(vi) applied. He said this:

> "19. However, the appeal under Article 8 does not depend on the appellant's credibility or accuracy of recall. It is accepted by the respondent that the appellant has mental health problems that are being treated in the United Kingdom. There are pages and pages of medical notes emanating from the appellant's doctor. I will only refer to the letter dated 16 March 2020 from Dr William Jones in which he informs that the appellant has been registered at the surgery since April 2015 – and that the appellant has a previous history of psychotic illnesses and was under the care of 'the psychiatrists in London'. Dr Jones states: 'there is unfortunately no clear diagnosis from them, except that she has psychotic episodes.' The appellant remains on antipsychotic medication, 10 milligrams daily and has an open appointment with the community mental health team.
>
> 20. I accept the submission made by Mr Joseph on behalf of the appellant that the medical evidence (which records the appellant as being sectioned under the Mental Health Act twice) makes it plain that her illness has had a significant impact on how she is able to function. The appellant has a history of anxiety and of depression and psychotic episodes and still has this illness. I turn to the position under Article 8 and ask if there are very significant obstacles to the appellant's integration into Bangladesh where she would have to go if required to leave the UK to meet paragraph 276ADE(1)(vi) and I conclude that there are. Plainly there are difficulties facing the appellant if she returned to Bangladesh with mental health problems in the present circumstances."

14. Then, in para 21, the judge went on to consider advice from the Foreign and Commonwealth Office ("FCO") concerning travel to Bangladesh and the Covid-19 crisis as follows:

> "21. I have to judge the evidence as at the date of the hearing. I start with the Foreign and Commonwealth Office [FCO] advice on travel to Bangladesh. At the present

> time all but essential travel to Bangladesh is advised against. The FCO note that the government in Bangladesh has asked people to stay at home from 10 p.m. until 5 a.m. Outside these hours the government has instructed that people should only leave their homes if there is an urgent need. There are ongoing restrictions of movement between districts. Anyone not complying with these requests could face legal action. Bangladesh authorities have announced a new traffic light system for lockdown restrictions. Areas across the country with a high number of COVID-19 cases will be designated as red zones. These restrictions may come into force at short notice. A limited public transport service has resumed across Bangladesh but public transport in designated red zones may be restricted. Those seeking medication must carry any medical papers or prescriptions with them and be prepared to answer questions if stopped by law enforcement authorities. Healthcare in Bangladesh is poor. I find that the appellant's current mental health problems, that are not disputed by the respondent, amount to very significant obstacles to return when coupled with the COVID-19 pandemic crisis that is most pertinent in Bangladesh. The appellant meets the requirements of paragraph 276ADE(1)(vi) and consequently her appeal is allowed under Article 8 to this extent."

<u>The Submissions</u>

15. On behalf of the Secretary of State, Mr Howells submitted that the judge had failed in paras 20 and 21 of his determination to give adequate reasons why he was satisfied that there were "very significant obstacles" to the appellant's integration in Bangladesh.

16. Mr Howells accepted that the appellant had mental health problems but that the judge had failed to explain why it was that the appellant's mental health problems meant that there were "very significant obstacles" to her integration. He pointed out that the judge had only relied upon the letter of 16 March 2020 from Dr Jones which referred to the appellant's current treatment. Mr Howells submitted that the judge had failed to engage with any evidence, and to make any finding, in relation to whether the appellant would be able to continue to receive that treatment in Bangladesh. Mr Howells submitted that the only reference to the availability of treatment in Bangladesh was in para 21 where the judge referred to "healthcare" and that its provision was "poor" in Bangladesh.

17. Mr Howells submitted that the judge's reference to the FCO advice, which he did not understand to have been referred by the representatives, was mainly concerned with the feasibility of return, rather than the appellant's circumstances in Bangladesh. In support of that submission, Mr Howells pointed out that in para 21 the judge referred to there being "very significant obstacles *to* return", rather than there being very significant obstacles *on* return.

18. Mr Howells submitted that there was very little consideration of the appellant's specific circumstances on return to Bangladesh, including the material concerned with the availability of mental health treatment in Bangladesh which was referred to at page 16 of the refusal letter or the limited documents at pages 27, 29 and 30-31 of the appellant's bundle. In particular, Mr Howells pointed out that the second document dated from 1 August 2011 and therefore was of limited assistance in determining the appellant's appeal in 2020.

19. Mr Joseph submitted that the judge had properly considered whether there were very significant obstacles to the appellant's integration in Bangladesh *on* return, rather than focusing on the feasibility of return. In particular, he pointed out that the judge had correctly approached the issue in para 20 when he found that there were "very significant obstacles to the appellant's integration into Bangladesh".

20. Mr Joseph accepted that there was limited material before the judge concerning the availability of mental health provision in Bangladesh. He pointed out that the refusal letter did not take issue with whether treatment would be available to her. He relied on the judge's reference to the evidence supporting her psychotic episodes and the need for antipsychotic medication on a daily basis. However, he accepted that there was no finding on whether that treatment would be available in Bangladesh.

21. As regards the FCO's advice, Mr Joseph (who had represented the appellant at the hearing before Judge Page) did not think that he had provided that information to the judge and neither had the Presenting Officer. His recollection was that Judge Page referred to this material having become aware of it in an earlier case. Mr Joseph submitted that the judge was entitled to take that material into account.

Discussion

22. In allowing the appeal under Art 8, Judge Page relied upon para 276ADE(1)(vi) which provides as follows:

> "(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) … 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."

23. In Parveen v SSHD [2018] EWCA Civ 923 the Court of Appeal considered the test of "very significant obstacles" in the context of s.117C(4)(c) of the Nationality, Immigration and Asylum Act 2002 (as amended). The approach is equally applicable to para 276ADE(1)(vi). The court (at [9]) referred to the decision of the Upper Tribunal in Treebhawon [2017] UKUT 13 (IAC). Underhill LJ said this (at [9]):

> "9. [The meaning of "very significant obstacles"] 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."
>
> 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".

24. In Kamara v SSHD [2016] EWCA Civ 813 the Court of Appeal explained (at [14]) the meaning of "integration" in s.117C(4)(c) which is also applicable to para 276ADE(1)(vi). Sales LJ (as he then was) said this:

> "14. In my view, the concept of a foreign criminal's "integration" into the country to which it is proposed that he be deported, as set out in section 117C(4)(c) and paragraph 399A, 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."

25. Consequently, the test of "very significant obstacles" sets an "elevated threshold" and the task of the judge is to assess what, if any, obstacles there were to the appellant's integration in Bangladesh and whether those obstacles were "very significant". The idea of "integration" requires a broad evaluative judgment to be made and whether the appellant would be a "enough of an insider" in Bangladesh in terms of her understanding of life, with a capacity to participate and be able to operate on a day-to-day basis in society and to build up within a reasonable time human relationships to give substance to her private and family life in Bangladesh.

26. The central issue relied upon before Judge Page to establish that there were "very significant obstacles" to the appellant's integration in Bangladesh was the impact upon her mental health if she returned there. Despite the judge's reference in para 21 to there being "very significant obstacles *to* return" (my emphasis), I am satisfied that this experienced judge was, in substance, concerned with the appellant's circumstances when she had returned to Bangladesh, rather than focusing on the feasibility of her returning there in the Covid-19 crisis. I have reached that conclusion despite the judge's reference to the FCO advice which was, albeit only in part, concerned with issues of return, rather than circumstances on return. But, as can be clearly seen in para 21, the FCO advice did, to some extent, deal with the circumstances in Bangladesh also.

27. Consequently, it was crucial for the judge was to assess the impact on the appellant's mental health on return to Bangladesh and whether any impact gave rise to "very significant obstacles" (applying the "elevated threshold" that contemplates) to her integration. Mr Joseph, rightly, accepts that there was limited evidence before the judge despite what he refers to as there being "pages and pages of medical notes" from the appellant's GP. The letter from Dr Jones, to which the judge made reference, dates from March 2020 and refers to the appellant's "previous history of

psychotic illness". It notes that there has "unfortunately [been] no clear diagnosis" for those psychotic episodes. It notes that the appellant remains prescribed a daily dose of ten milligrams of the antipsychotic drug, Olanzapine. It further notes that she has an "open appointment" with the community mental health team. There was so far as I can tell, and none was pointed out to me, any evidence that the appellant has engaged with any mental health professionals following her last discharge from 'Secondary Mental Health Services' as set out in the letter of 16 May 2017 from Dr A Gibbs-Samfat (at pages 8-9 of the appellant's bundle). The evidence was, as Mr Joseph accepts, that the appellant had been sectioned on two occasions but had been released in May 2016 and had not subsequently been subject to compulsory detention. The appellant's condition appears to be stable with the medication.

28. It was, therefore, highly relevant to determine the appellant's prognosis and implications for her mental health on return to Bangladesh which included an assessment of whether her current medication (which can be assumed to be medically necessary) would be available to her. At page 16 of the refusal decision a quotation is taken from the *CPIN*, "Bangladesh: Medical and Healthcare Issues" (May 2019) which quotes a MedCOI response of 4 September 2015 stating, inter alia, that "[m]ental healthcare is offered by both government and private facilities, the vast majority being concentrated in urban areas". It goes on to say that "[m]ost psychiatrists work in tertiary care in urban areas". It reports that "all or almost all physician-based clinics (81-100%) have assessment and treatment Protocols for key mental health conditions available". The conclusion reached in the refusal letter is that: "treatment is available for your mental health condition in Bangladesh".

29. There were, in addition, two documents in the appellant's bundle at pages 27-29 and 30-31 respectively, in particular the first of which from the World Health Organisation, "Mental Health – Current Mental Health Situation in Bangladesh" (25 September 2019) which deals, sometimes in rather general terms, with the current situation in Bangladesh (at least in 2019) in relation to mental health and its treatment. The other document is, as Mr Howells pointed out, somewhat dated as it relates to 2011.

30. Nevertheless, in order for Judge Page properly to determine whether there were "very significant obstacles" to the appellant's integration in Bangladesh because of her mental health problems, it was incumbent upon him to assess whether the treatment (which for these purposes can be taken as medically necessary) in the form of antipsychotic medication would be available to her. The fact that the appellant had a history of anxiety and depression and psychotic episodes did not indicate, in itself, the implications for her on return. Dr Jones's letter did not assist in this by reflecting on the implications for her on return. It also said nothing about the availability of antipsychotic medication in Bangladesh. The judge's only reference to the position in Bangladesh is in para 21 when he says "healthcare in Bangladesh is poor". Even if that were the case, it does not focus on the provision of mental health treatment which was central to the appellant's claim.

31. For the above reasons, I accept the substance of Mr Howells' submissions. I am satisfied that the judge erred in law because, by failing to grapple with the evidence

and the central issue of the impact upon the appellant's mental health (and availability of treatment) on return to Bangladesh, he failed to give adequate reasons for his finding that the "high threshold" in para 276ADE(1)(vi), that there were "very significant obstacles" to her integration on return to Bangladesh, was met. The judge's decision to allow the appellant's appeal under Art 8 cannot stand and is set aside.

Decision

32. Accordingly, the decision of the First-tier Tribunal to allow the appellant's appeal involved the making of an error of law. That decision cannot stand and is set aside.

33. At the conclusion of the hearing both representatives indicated that if that was my conclusion, then the appeal should be remitted to the First-tier Tribunal for a *de novo* rehearing in relation to Art 8 of the ECHR.

34. I agree. The appropriate disposal of the appeal, having regard to the nature of and extent of fact-finding and paras 7.2 of the Senior President's Practice Statement, is to remit the appeal to the First-tier Tribunal in order to remake the decision *de novo* in relation to Art 8 of the ECHR. That appeal to be heard by a judge other than Judge Page.

35. The decision (and related findings) dismissing the appellant's appeal under the Refugee Convention, on humanitarian protection grounds and under Arts 2 and 3 of the ECHR stand and are preserved.

Signed

Andrew Grubb

Judge of the Upper Tribunal
20 January 2021