Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/06610/2019

THE IMMIGRATION ACTS

Heard at Field House, London	**Decision & Reasons Promulgated**
On Tuesday 10 August 2021	**On Thursday 07 October 2021**

Before

UPPER TRIBUNAL JUDGE SMITH

Between

MR ATAUR RAHMAN

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr S Karim, Counsel instructed by Kalam solicitors
For the Respondent: Mr T Lindsay, Senior Home Office Presenting Officer

DECISION

BACKGROUND

Procedural Background

1. By a decision made on the papers pursuant to Rule 34 of the Tribunal Procedure (Upper Tribunal) Rules 2008, I found an error of law in the decision of First-tier Tribunal Judge N M Paul itself promulgated on 11 February 2020 dismissing the Appellant's appeal on asylum and human rights grounds. Although the

Respondent's decision under appeal dated 21 June 2019 was in response to a protection claim, that was abandoned before the First-tier Tribunal and the claim is now limited to a claim based on Article 8 ECHR. That is based in large part on the Appellant's relationship with his British partner, [SB] ("the Sponsor"). As a result of my error of law decision, I set aside Judge Paul's decision.

2. By a judgment handed down on 20 November 2020, in the case of Joint Council for the Welfare of Immigrants v The President of the Upper Tribunal (Immigration and Asylum Chamber) and another ([2020] EWHC 3103 (Admin), Fordham J found the Practice Direction of the President of this Tribunal in relation to the making of error of law decisions on the papers to be unlawful because it involved "an overall paper norm". No issue was taken with the error of law decision in this case for that reason. There was no application to set aside my earlier decision. That is probably unsurprising since the decision was to the benefit of the Appellant.

3. The hearing proceeded as a face-to-face hearing. I had before me the core documents in the appeal, the Respondent's bundle (referred to as [RB/[annex]]), the Appellant's bundle before the First-tier Tribunal (referred to as [AB/[page]]), a first supplementary bundle filed by the Appellant in October 2020 (referred to as [ABS/[page]]) and a second supplementary bundle filed by the Appellant on 8 August 2021 (referred to as [ABS2/[page]]). The second supplementary bundle was filed well beyond the date provided for by my directions. Mr Lindsay did not however object to the admission of that evidence.

4. I heard oral evidence from the Appellant via a Bengali (Sylheti) interpreter. I was satisfied that the Appellant understood the interpreter and vice versa. I was informed by Mr Karim that he did not wish to call oral evidence from the Sponsor given her mental health condition. Mr Lindsay did not seek to cross-examine her for that reason. I have a witness statement from her dated 17 January 2020 ([AB/7-12]) and an updated statement dated 6 August 2021 ([ABS2/2-4]). I have regard to those statements so far as necessary below.

5. I have read and had regard to all the documentary evidence before me but refer below only to that which is relevant to the issues I have to determine.

Factual Background

6. The Appellant is a national of Bangladesh. He came to the UK in 2007 as a working holidaymaker with leave valid to April 2009. In September 2009, he sought to remain based on his Article 8 rights. That application was refused on 22 September 2010 and again following reconsideration on 27 May 2015. He appealed that decision, but his appeal was dismissed. His appeal rights were exhausted on 12 April 2017. He has had no valid leave since April 2009.

7. The Appellant claimed asylum on 21 April 2017. His claim was refused on 18 October 2017 and dismissed on appeal on 20 March 2018. He sought permission to appeal that decision but that was refused. His appeal rights were exhausted on 9 May 2018.

8. The Appellant made further submissions on 12 July 2018 which were refused on 13 August 2018 and rejected as a fresh claim. He made further submissions on 13 May 2019 still relying on his protection claim but also raising for a second time his relationship with the Sponsor. Those claims were refused by the decision under appeal. The further submissions were accepted as amounting to a fresh claim. As I have already noted, the Appellant no longer pursues his protection claim and the appeal therefore focusses only on the Article 8 claim.

9. The Sponsor is originally from Bangladesh. She comes from the same area as the Appellant. She left Bangladesh in 2009 to marry a Mr Ali who was living in the UK. Mr Ali died from organ failure on 9 January 2013. She met the Appellant soon after. They married on 2 April 2014. The Sponsor suffers from various psychological and physical health conditions. I will come to the detail of her medical conditions below.

LEGAL FRAMEWORK AND ISSUES

10. The relevant provisions of the Immigration Rules ("the Rules") relating to leave to remain in the UK as a spouse are to be found in Appendix FM to the Rules ("Appendix FM").

11. On the part of the Respondent, it is accepted that the Appellant meets the suitability requirements in Appendix FM. It is not disputed that the Appellant and the Sponsor are in a genuine and subsisting relationship and therefore meet the eligibility requirements in terms of their relationship.

12. It is accepted by the Appellant that he cannot satisfy the eligibility requirements for leave to remain as a partner unless section EX.1 of Appendix FM ("EX.1") is met. EX.1 reads as follows:

> **Section EX: Exceptions to certain eligibility requirements for leave to remain as a partner or parent**
> EX.1. This paragraph applies if
>
> (a) … ; or
> (b) the applicant has a genuine and subsisting relationship with a partner who is in the UK and is a British Citizen, …, and there are insurmountable obstacles to family life with that partner continuing outside the UK.
>
> EX.2. For the purposes of paragraph EX.1.(b) "insurmountable obstacles" means the very significant difficulties which would be faced by the applicant or their partner in continuing their family life together outside the UK and which could not be overcome or would entail very serious hardship for the applicant or their partner.

13. The Appellant is unable to meet all the eligibility requirements of Appendix FM unless EX.1 is met because he does not meet the immigration status requirements. He is an overstayer and therefore fails under paragraph E-LTRP.2.2(b) unless EX.1 is met. Similarly, the Appellant and Sponsor do not satisfy the financial requirements and cannot succeed for that reason unless EX.1 is met. However, it is I understand common ground that the Sponsor does not have to show that she

meets the minimum income requirement as she is in receipt of personal independence payment ("PIP") (see paragraph E-LTRP.3.3(a)(iv) of Appendix FM). Under that paragraph, the Appellant must show that he and the Sponsor are able to maintain and accommodate themselves without recourse to public funds. However, E-LTRP.3.4 does not require evidence of adequate accommodation for the family without recourse to public funds where EX.1 is met. Nor is there evidence that the Appellant can satisfy the English language requirements of paragraph E-LTRP.4.1 which apply unless EX.1 is met.

14. For those reasons, the essential question within the Rules is whether there are insurmountable obstacles to the Appellant's and Sponsor's family life continuing in Bangladesh. I accept as Mr Karim submitted that "insurmountable obstacles" is not to be read literally. Nevertheless, as EX.2 makes clear, the threshold is a high one, amounting to "very significant difficulties" or "very serious hardship" for the Appellant and/or the Sponsor.

15. Although I accept that, if I find that EX.1 is not met, I still have to consider whether there is a breach of Article 8 ECHR outside the Rules on the basis that removal of the Appellant would have unjustifiably harsh consequences, in practice that is unlikely to make a difference in this case. If the difficulties faced by the couple relocating to Bangladesh would not reach the requisite threshold, it is unlikely that the threshold of unjustifiably harsh consequences could be met. That is because the focus of the Appellant's Article 8 claim is the Sponsor's medical conditions and therefore the central issue is whether family life can be continued in Bangladesh.

16. I accept however that I may need to have regard to the position outside the Rules if I do not accept that EX.1 is met but go on to consider whether it would be nonetheless disproportionate to require the Appellant to return when balancing the interference with the Appellant's and Sponsor's private and family lives against the public interest. Mr Karim submits that, in that situation, I need to be guided by what is said in Chikwamba v Secretary of State for the Home Department [2008] UKHL 40 ("Chikwamba"). He submits that Chikwamba is relevant because even a temporary separation whilst the Appellant sought entry clearance to return would be disproportionate given the Appellant's caring responsibilities for the Sponsor.

17. If I do reach the stage of considering Article 8 outside the Rules, I must have regard to the public interest considerations in Section 117 Nationality, Immigration and Asylum Act 2002 ("Section 117B").

PREVIOUS DECISION

18. In accordance with the "Devaseelan" guidelines, my starting point is the decision of First-tier Tribunal Judge Welsh dated 20 March 2018 ("the 2018 Appeal Decision") which reached certain findings in relation to the Appellant's family life. The 2018 Appeal Decision is at [RB/B]. I have regard to that decision as appropriate below, but I record Mr Lindsay's concession for the Respondent that matters had moved on since that decision in relation, in particular, to the Sponsor's medical condition. I have to consider the issues based on the up-to-date evidence.

19. Judge Welsh accepted, based on the decision in the previous appeal in 2015, that the relationship between the Appellant and Sponsor was genuine and subsisting even though the marriage was entered into so that the Appellant could stay in the UK. The Judge found, however, that EX.1 was not met. He had regard to the Sponsor's background. As I have already noted, the Sponsor comes from Bangladesh and has been in the UK since 2009. She has family in Bangladesh, living in the same area as the Appellant's home. Judge Welsh was told that the Sponsor "communicate[d] regularly" with her mother and sister in Bangladesh. Judge Welsh found that the Sponsor could obtain treatment for her medical conditions in Bangladesh. At that time, the main issue was that she was seeking fertility treatment. Her mental health conditions are described by the Judge as "anxiety and depression". Her physical health conditions were said to be diabetes and menstrual complications. At the time, the only evidence was a letter from the Sponsor's GP.

20. In relation to the Appellant's own family circumstances in Bangladesh, Judge Welsh recorded that the Appellant ran a stationery shop in Bangladesh which was still operating. His mother and sister at the time of that hearing (February 2018) were living in Bangladesh. His brother was said to be living in Saudi Arabia. The Appellant spoke to his mother every day.

EVIDENCE, FINDINGS AND DISCUSSION

21. The Appellant has provided two witness statements dated 17 January 2020 ([AB/1-6]) and 29 September 2020 ([ABS/1-3]).

22. In his first witness statement, the Appellant says this about the Sponsor's medical conditions:

> "9. My wife, [SB] suffers from severe medical conditions. She suffers from; type 2 diabetes; excessive bleeding; fertility problem; Insomnia; chronic menstrual disorders and she also has a past abortion history which makes these conditions worse. Due to these circumstances, I give my wife majority of my time as she needs help around the house, she cannot cook or clean. She is completely dependent upon me and it does get very difficult at times as I have to look after her all time and I do not have the right to work, which makes us financially unstable and limited. I have been continuously supported my wife care coordinator as well as our bilingual support worker attached to the CMHT. Her care coordinator and the bilingual support worker are engaging with her regularly and giving me the feedback. It was brought to her attention that I am supporting her very well which includes escorting her to all her medical appointments. I would like to confirm that my wife remains depressed because of her current social circumstances of potential deportation of her husband with continuing auditory hallucinations.
>
> 10. My wife intakes a lot of medication throughout the day which makes her feel depressed and isolated. I try my best to keep her happy and entertain her; however it's hard when there's no guarantee for our future. My wife condition would deteriorate further if she continued to suffer with the stress of being potentially separated from me. I also confirm that the opinion the bilingual support worker stated that provided by her husband could contribute as a stabilising factor as well as helping to improve her mental state."

23. The Appellant goes on to say that the Sponsor is "completely reliant upon [him] to take her medications and help her in her daily care routines and activities".

24. In his second witness statement, the Appellant says that the Sponsor suffers from "various complex medical issues including steatosis of liver, conjunctivitis, offer of stain [sic] therapy, severe depressive episode with psychotic symptoms, thyroid, non-organic psychoses, pernicious anaemia, depressive disorder NEC, type 2 diabetes, haemoglobin E trait etc." He says that he has "obtained updated documents in relation to [his] wife's diagnosis".

25. In his second witness statement, the Appellant also deals with the decision of First-tier Tribunal Judge Paul (set aside by my error of law decision) and in particular the finding that the Appellant still has business interests in Bangladesh. He says this about the situation:

> "4. In relation to my business interest in Bangladesh, I would like to confirm that I currently do not have any business interest in Bangladesh whatsoever. While I acknowledge that I used to own a business called Jamal Enterprise jointly with my brother Zilu Miah, I currently do not have any business interest with this as my brother has taken over ownership from me long ago. I attach herewith the following documents to confirm that I do not have any business interest in Bangladesh:
>
> (a) Letter from local Union Parishad Chairman dated 13 September 2020
>
> (b) Ledger of Land Registry No 268 dated 03 October 2005 confirming that I jointly own the business with my brother Zilu Miah
>
> (c) Ledger of Land Registry No 268 dated 17 May 2018 confirming that my brother Zilu Miah solely own the business; and
>
> (d) Dormant bank account statements of my business Jamal Enterprise.
>
> 5. The above documents clearly demonstrate that I do not have any business interest in Bangladesh whatsoever and I will not be able to afford my wife's treatment in Bangladesh."

26. The Appellant was asked about this part of his statement and the documents (which appear at [ABS2/20-28]) in oral evidence. He said that he had received the documents from his mother.

27. Mr Lindsay asked me to treat the documents with some caution applying the principles in Tanveer Ahmed. Although he did not make specific submissions about the content of the documents, I have considered them carefully. I am concerned in particular about the content of the ledger entries relied upon. The document at [ABS/23-24] purports to be a certified translation of a page of a journal number 129 showing that a "House" plot number 177 is owned jointly by the Appellant and Jilu Miah who are described as "S/O Jahir Ullah". The ledger entry is undated, but the translation is certified as a true copy on 3 October 2005. The second entry at [ABS/25-26] is dated 24 April 2017 although certified as translated on 15 September 2020. It shows the sole owner as being Zilu Miah who is described as "C/o late Jahir Ullah" and also describes the land class as a "store". Given the

evidence of the Appellant that the property when owned jointly and solely was always a stationery business, it is unclear why it would be described in the first ledger entry as a house.

28. There also appears to be some minor discrepancy in the description of the relationship between the owners and Zahir Ullah although that might be down to translation, and I do not place weight on it. It is also not clear to me why, if the document is as it appears to be dated April 2017, the Appellant's brother would have taken over the business at that stage as the Appellant told Judge Welsh in 2018 that his brother was still living in Saudi Arabia. The bank document at [ABS/28] also raises more questions than it answers as it appears that the Appellant had access to the business bank account after April 2017 (when his brother is said to have taken over the business) until December 2017 and the Appellant was also able to obtain a statement of the account in September 2020. That suggests that although the bank account is dormant, it remains in being some three years after the Appellant claims to have given up his interest in the business.

29. Be that as it may, and even taking the documents at their highest, they show at most that the Appellant's brother has taken over the sole running of the business. They do not show that the Appellant could not regain an interest on return. In that regard, the Appellant said in his oral evidence that his relationship with his brother has broken down. He implied that his brother had taken sole ownership of the business without his consent. I do not place any weight on these assertions. They are not mentioned in his statements or in his evidence given to Judge Welsh. I do not accept that the Appellant's interest in the business has been lost nor that he does not have a continuing relationship with his brother.

30. The letter from the Syedpur Shaharpara Union Parishad dated 13 September 2020 at [ABS2/20-21] is supportive of that position. It states that "[s]ince Mr Ataur Rahman is currently live in the UK, his brother Mr Jilu Miah has taken over the business in his name…there is no business in the name of Mr Ataur Rahman at present". That suggests that the Appellant's brother has taken over the business whilst the Appellant is in the UK for convenience only. It may well be that the Appellant has also encouraged that position to assist his case. Either way, the letter does not suggest that the Appellant has lost any interest in that business, any breakdown of the relationship between the brothers or that the business was taken without the Appellant's consent but rather that the reason is the Appellant's absence from Bangladesh and that presently therefore the Appellant is not named as having an interest in that business.

31. Mr Lindsay drew attention in his cross-examination to documents at [AB/40-42] which suggest that the Appellant has access to more funds than he is willing to admit. For example, at [AB/41] there is a letter showing that the Appellant had a platinum credit card in January 2020. There is limited evidence about the Appellant's finances but there is a letter from Lloyds Bank showing that he has or had a savings account. Whilst I accept that some financial institutions do not always fully check a person's credit worthiness when offering credit cards, I do not

accept that the Appellant would be offered and given a platinum credit card without evidence of some income beyond the Sponsor's benefits. I do not consider it credible that he would be given such finance without even a current account.

32. Mr Karim suggested that Mr Lindsay's questioning of the Appellant's financial situation in the UK was a "red herring". He submitted that it was irrelevant to the situation the Appellant and Sponsor would face on return to Bangladesh. I disagree. If the Appellant is able to re-establish himself in business with his brother or obtain some form of support from his brother whilst he finds himself employment, then that is relevant to whether the couple are able to return.

33. I accept however that the more crucial question is what treatment will be available for the Sponsor's medical problems in Bangladesh. I turn therefore to the evidence which there is about those problems and the treatment she receives in the UK.

34. I did not understand it to be suggested that the Sponsor is unable to obtain treatment for her physical health issues in Bangladesh. As I have already noted, the main issue at the time of the 2018 Appeal Decision related to the Sponsor's inability to conceive. Judge Welsh noted at [39] of the 2018 Appeal Decision evidence from the Sponsor's GP which stated that "in June 2017 [the GP] diagnosed her as suffering from severe on-going anxiety and depression". That was said to have been triggered by the death of her first husband and her inability to conceive naturally. Judge Welsh noted at [73] of the 2018 Appeal Decision that he was "bound by the previous finding that fertility treatment is available in Bangladesh". He also noted that "the issue no longer has the force it once had, given [SB] is now in her 40s and is no longer at the crucial time in her life identified by the previous immigration judge."

35. Judge Welsh went on in the same paragraph to deal with the Sponsor's anxiety and depression. He concluded that there was "no evidence that she cannot be treated for this condition in Bangladesh". Based on that finding, he concluded that the Appellant had failed to show that there were insurmountable obstacles to family life continuing in Bangladesh.

36. I turn then to evidence arising after the 2018 Appeal Decision focussing as did Mr Karim on the Sponsor's mental health problems.

37. I begin with the Sponsor's own statement dated 17 January 2020 which appears at [AB/7-12]. She lists her medical conditions at [4] of the statement. In relation to her mental health, she says that she suffers from "[d]epressive disorder-worsening symptoms of low mood, feels weak all time" and "[s]evere depressive episode with psychotic symptoms".

38. The Sponsor develops the evidence about the treatment she receives as follows:

> "7. To make the situation worse, my health has not been the best lately. I suffer from ongoing anxiety and depression; this was first triggered by the death of my first husband in January 2013. Due to this I am treated by antidepressants and hypnotics and these medications only make me feel more lazy and drowsy.

Moreover, it is unlikely for me to conceive naturally as my mental state plays a major role.

8. I have been in and out of hospital several times, suffering from severe chronic abdominal pain, gynaecological problems and excessive bleeding for which I've seen the specialist clinic at the Royal London hospital. I have been suffering severe conditions and been trying to conceive for the last few years. I've been investigated by the fertility clinic and they're also been investigating my husband. If such measures need to be taken due to my condition it makes me quiver about the consequences that will need to be taken if I move to Bangladesh as I don't trust the medical system there at all, they're not professionally trained and they wouldn't provide exceptional and quality services.

9. Over this difficult time my husband has been a huge support both emotionally and mentally on a regular basis, on nights when my pain was unbearable he would sit with me all night. Most of the time he was the one that suggested me to go to the hospital, not only that as I was bleeding excessively, I also felt dizzy and weak majority of the time. I couldn't do simple tasks such as taking a shower as I was scared I'd fall down, so my husband would hold me while I showered. Not to forget he did all the household chores like cooking and cleaning, I felt guilty and helpless. I don't think I will get over how much support he has showed me during my time of need. But I guess that is the beauty of marriage, you stand by your partner in sickness and in health so how can I abandon him in this situation. Under my current situation relocating to Bangladesh would be out of question as neither am I mentally or physically fit to embark on that journey to start my life from scratch.

10. The decision of the SSHD is worrying as I will be unable to endure any form of separation from my husband. Even if I wanted to, I would be unable to relocate to Bangladesh with my husband because I have been living in the United Kingdom for more than a decade and I have no connection with Bangladesh whatsoever. I do not have any recourse to provide for myself in Bangladesh except my mother and a sister.

11. Accordingly, I would be unable to survive in Bangladesh and it would be emotionally very distressing for me, thus having a negative impact on my wellbeing. I have had horrible experiences there. I could not cope with the life-style in Bangladesh. I am also on regular medication which I may not be able to obtain in Bangladesh. At the end of the day, any attempt to remove my husband from the UK will be unjustified and undoubtedly will have a negative impact on me as I would be unable to live without him. Moreover, if my husband is removed from the UK then maintaining any meaningful relationship with him through visits to Bangladesh and/or by using modern methods of communication is not a long- or short-term viable solution.

12. The thought of relocating to Bangladesh makes me anxious, I have been there before for a short time so I know the issues in Bangladesh and there is a lot of conflict between the governments. There is not one person that can convince me that it's the place one should settle down and start a family. I have lived here all my life, yes I am Bangladeshi origin but that does not disregard my interests and desires for the UK."

39. I disregard the Sponsor's assertion there and elsewhere in her statement that she has "lived [in the UK] all [her] life" not least because it is patently inconsistent with what she says at [10] of her statement which reflects the position as stated elsewhere. She has lived in the UK since 2009. I appreciate that this is now a period of twelve or so years, but it is not the whole of her life. Nor is it accurate to say that she lived in Bangladesh for "a short time". The Sponsor was born in 1974 and therefore lived in Bangladesh until she was in her mid-thirties.

40. Although the Sponsor says that she lacks ties to Bangladesh, I note that her statement had to be translated for her and so she still speaks Bengali (and presumably little English). Both the Appellant and her first husband were from Bangladesh. She has family ties with Bangladesh in the form of her mother and sister. There is no evidence that either she or the Appellant have family ties in the UK. The Sponsor would therefore have a greater degree of family support in Bangladesh than she has in the UK.

41. The Sponsor mentions having "horrible experiences" in Bangladesh but does not expand. Although she provides evidence at [13] and following of her statement about the safety of Bangladesh, I can place little weight on what she says as by her own admission she has lived in the UK for over ten years and therefore would not have direct experience of the incidents she recounts. I do not doubt that there are incidents of violence towards women in Bangladesh as there recounted but there is no evidence that they are on such a scale to make life for a woman in Bangladesh generally unsafe. Sporadic violent incidents against women are unfortunately not confined to that country.

42. Similarly, I can place little weight on the Sponsor's own evidence about medical problems in Bangladesh nor the treatment available to her as also dealt with in her second statement dated 6 August 2021 at [ABS2/2-4]. I will consider the background evidence below. The Sponsor's general focus in her statement is on her fertility issues. As Judge Welsh pointed out, whilst that is naturally upsetting for the Sponsor and is not unnaturally a concern which she continues to have, it is unrealistic to suggest that she will receive any better treatment for her problems in that regard in the UK than in Bangladesh due to her age.

43. It is notable that, although the Sponsor speaks of her mental health problems in her statement, she says little about the treatment she receives in that regard. She says that her treatment consists of medication. The impression given by her statement is that any other support she receives comes from her husband. She does not mention counselling, care in the community or regular reviews of her condition. There is some limited reference to the support from a care co-ordinator and bilingual support worker in the Appellant's statement at [AB/3] (set out at [22] above). However, he says only that they engage regularly (without saying how frequently) and give him feedback. I note in this regard the similarity of wording between what is there said and what Dr Hajamohideen says in his letters (see below). It is not entirely clear why the Appellant would need feedback on his wife's condition since he lives with her. I do not though place any great weight on that peculiarity

of wording as I accept that the statement was probably drafted by the Appellant's solicitors who may have lifted the wording from what Dr Hajamohideen says. The lack of any detail about the assistance given by the care co-ordinator and bilingual support worker both in the statements and the letters written by professionals is something on which I do place weight.

44. I accept that the Sponsor is in receipt of PIP at the standard rate of £57.30 per week ([AB/25]). She receives no assistance with her mobility needs. The assessment at [AB/28-29] suggests that the Sponsor is able to look after herself so far as personal care is concerned.

45. As I have noted above, the Sponsor updated her statement on 6 August 2021 (ABS2/2-4]. She says that her "physical conditions remain the same but [her] mental health [has] further been deteriorated [sic]".

46. I turn then to consider the professional evidence from those who have been treating the Sponsor.

47. I begin with the letter from Dr AA Hussain dated 14 February 2018 ([AB/21-23]. He is or was the Sponsor's GP. He records that, in June 2017, he assessed her "and found her to be suffering from severe ongoing anxiety and depression". Dr Hussain attributes the onset of the Sponsor's mental health problems to the sudden death of her first husband in 2013. He also says that the Sponsor's inability naturally to conceive is "a major contributory factor in her ongoing mental state". He reports the Sponsor's own assertion that "the uncertainty surrounding [the Appellant's] immigration status is exacerbating her conditions" which Dr Hussain accepts would be the case "if her sole source of support was removed". Attached to Dr Hussain's letter is a record of the Sponsor's past medical history confirming that the Sponsor has suffered from anxiety with depression since December 2016. She has been prescribed mirtazapine since January 2018. The other medications there listed are unconnected with her mental health problems.

48. At [AB/20] there is a letter from Dr Mohamed Hajamohideen dated 19 July 2019. He is a "Speciality Doctor" within the Isle of Dogs & South Poplar CMHT. He records that the Sponsor had been attending the Community Mental Health Team since January 2019 following a review by the Tower Hamlets Early Intervention Psychosis Team who had diagnosed her with severe depression with psychosis. There is an absence of any report connected with that diagnosis in the Appellant's evidence. It is said that the Sponsor's GP records disclosed that she attended him with depression and anxiety in November 2018. As indicated by Dr Hussain's evidence, the Sponsor's problems in fact began before then. Be that as it may, Dr Hajamohideen states that, by this time, the Sponsor was prescribed antipsychotic medication (aripiprazole) as well as mirtazapine. Dr Hajamohideen also states that the Sponsor has "a Care Coordinator" who reviews her periodically and visits her at home. He says that the Sponsor is also supported by a bilingual support worker at the CMHT and is regularly reviewed by himself. There is no evidence from

either the care coordinator or the bilingual support worker in the Appellant's evidence.

49. Dr Hajamohideen says this about the situation if the Appellant were removed:

> "Her husband is the current carer, providing all around support. We are of the opinion her symptoms have recently intensified markedly in light of potential deportation [sic] of her husband which would leave her completely socially isolated in this country."

Dr Hajamohideen also says that the Sponsor is at "high risk of suicide attempt" if the Appellant is removed but I assume that this too is predicated on the Sponsor remaining in the UK if the Appellant is removed. He there provides no detail of any previous suicide attempt, nor does he indicate that the Sponsor has ever expressed any suicidal ideation.

50. Dr Hussain has provided an updated letter dated 10 January 2020 ([AB/16-19]). This largely repeats what is said in his earlier letter. However, he provides an update. In June 2018, it is said that the Sponsor's depression had deteriorated, and the level of her antidepressants had increased. She was seen again by the GP for anxiety and depression and by January 2019, was "under psychiatrist and on medication" (consistent with what is recorded by Dr Hajamohideen). She was seen again in April 2019 for depressive disorder and because she needed a medical certificate. She was seen again for her depression in June 2019 when she is said to have "worsening symptoms of low mood, feels weak all the time, forgetful and poor concentration". In July 2019, the Sponsor was seen for "severe depressive episode with psychotic symptoms". There is no record of any interventions for mental health by the GP in the period thereafter to the date of the letter. The list of medications confirms that the Sponsor was prescribed aripiprazole and mirtazapine for her mental health condition.

51. There is a rather fuller report from Dr Hajamohideen dated 15 January 2020 at [AB/13-15]. That report again refers to the GP attendance in November 2018. Dr Hajamohideen says that at that time, the Sponsor was suffering depression, had expressed a death wish but had no active suicidal thoughts. The GP became concerned in December 2018 when the Sponsor said that she was experiencing auditory hallucinations. She was referred, as indicated in the previous letter, to the Tower Hamlets Early Intervention Team and was seen by Dr Daniel Allen who is said to have conducted "a thorough assessment on 14th January 2019". It is said that "Dr Allen's impression was a psychotic illness with prominent, distressing auditory hallucinations". However, Dr Allen's "thorough assessment" is not in evidence.

52. Dr Hajamohideen then refers to his examination on 14 January 2019. He describes the Sponsor's presentation at that time and records reports that her mental health state had worsened as a result of the threat of the Appellant's removal. Dr Hajamohideen provides more detail of his observations on that occasion. He describes the Sponsor as "tense, anxious, distressed" and that her mood was

"reported as very low, mainly anxious and preoccupied with her husband's deportation". Although Dr Hajamohideen says that the Sponsor expressed suicidal ideations, he says that there was "no evidence of intent or actual planning". It is therefore somewhat difficult to understand how he reaches the view that there is a moderate risk of suicide. Again, the risk is in any event in the context of the Sponsor being left behind in the UK if the Appellant is removed.

53. Dr Hajamohideen says that after this appointment, the Sponsor was followed up by the Early Intervention Psychosis Team and that he reviewed her again on 12 February 2019 with her care coordinator and bilingual support worker. The Sponsor continued to report much the same symptoms as before and is now said to be a "persistent risk of suicide" (although it is not reported that there is any evidence of actual intent or planning). Dr Hajamohideen is said to have seen the Sponsor again on 26 June 2019 and at a "Care Programme Approach review" in August 2019. He reports "no significant improvement in her presentation. She remained depressed with persisting auditory hallucinations. Suicide risk being moderate". Dr Hajamohideen "provisionally diagnosed" a severe depressive episode with psychosis.

54. In terms of the Sponsor's treatment, she is said to be "continuously supported by her care coordinator as well as our bilingual support worker" who are said to engage with her "regularly" and provide Dr Hajamohideen with feedback. He says that the Sponsor attends his clinic "regularly" (although provides no information of any visits between August 2019 and the date of the letter). He says that the Sponsor was, at the date of the letter, waiting to be seen by him "in the near future" and that a "Care Programme Approach Review" would be arranged by her care coordinator every four to five months.

55. There is limited evidence from any of those reviews in the Appellant's evidence. There are two brief reports from Dr Hajamohideen to the Sponsor's GP recording reviews in February and June 2019 ([ABS/16-19] and an even briefer report from the review in August 2019 ([ABS/14]). The latter two reviews suggest some improvement in the Sponsor's condition. There is also a letter dated 19 May 2020 following a review by telephone (during the pandemic) at [ABS/13] which reports little change.

56. In Dr Hajamohideen's report he says that the feedback he has received is that the Sponsor's "current mental state is variable .. because she is putting all the hopes in her husband's stay in the UK". He again opines that separation from her husband would lead to further deterioration in her condition and that the support from the Appellant is a "stabilising factor" which also helps improve her mental state.

57. Dr Hajamohideen reaches the following conclusion in his report:

> "In my opinion separation from her husband and all the psychosocial support provided by him would be detrimental to her mental and physical health as she does not have anybody to support her. It could cause further deterioration in her mental health condition with suicide risk becoming high. This could also make

> adverse impact on her physical conditions leading to poor control of her diabetes with complications."

58. I turn next to the further report of Dr Hajamohideen dated 23 September 2020 at [ABS/4-5]. The report as to the Sponsor's mental health diagnosis is a repetition of the 2019 report. In this report though, Dr Hajamohideen reports suicidal thoughts "on and off". He again notes the impact of the Appellant's potential removal and says that "[t]he prognosis of her psychiatric illness will be better if her husband is allowed to stay with her". He records that the Appellant does not function well on a daily basis and needs help with her medication and personal care. He says that her "psychiatric problems are in a scale of being very severe affecting every aspect of her day to day life". I observe that this is not entirely consistent with what is said about her self-care in the PIP assessment at [AB/24-29]. Although that is dated a year earlier, it is not said that there has been any later assessment.

59. In terms of ongoing treatment, Dr Hajamohideen says that the Sponsor is "care coordinated with a community Psychiatric Nurse and supported by a Bilingual Support worker in the Community". He does not provide detail about the extent or regularity of their intervention. He says only that they provide him with feedback about the Sponsor's mental state. The doctor refers to the extensive support provided by the Appellant. He refers to the Appellant alerting "the Mental Health professionals whenever her mental state escalate beyond his coping [sic]" and that he accompanies the Sponsor to her psychiatric appointments. However, he does not say when if at all it is has been necessary for the Appellant to escalate matters to mental health professionals nor how regular are her appointments. There is no mention in this report of any further examination following that in August 2019 recorded in the previous report. The Appellant does not report occasions when he has had to escalate the Sponsor's case to healthcare professionals because he has been unable to cope.

60. Dr Hajamohideen's conclusions on this occasion based it seems on the same presentation and diagnosis as previously are as follows:

> "If her husband is removed from UK it will affect her well being seriously. Her mental and physical conditions could deteriorate further leading to self neglect, complications of her diabetes exposing her life to the danger of early death. The deprivation of emotional and social support provided by her husband will significantly increase her risk of committing suicide.
>
> [SB] does not have the support of any relatives or friends in the UK. Her husband, Mr Ataur Rahman remains the only person providing emotional and social support for her. I am of the opinion that his support will contribute a lot for her mental and physical wellbeing in the future."

I observe that although the document at [ABS/6-8] is dated also on 23 September 2020, that is simply a repeat of the January 2020 report to which I have already referred.

61. I do not need to refer in any detail to the letter from Dr Lakdawala (the Sponsor's GP) at [ABS/9-12] as this repeats information from the previous letters written by Dr Hussain. It is however notable that, once again, there is no reference to the Sponsor approaching her GP in relation to mental health problems after July 2019.

62. Unfortunately, it does not appear that the Sponsor's GPs or Dr Hajamohideen were asked to comment on the impact on the Sponsor's mental health if she were to return to Bangladesh with the Appellant. If she were to do so, she would have the support of not only the Appellant and his family but also her own mother and sister.

63. In the context of the treatment and care which the Sponsor is receiving, Mr Karim specifically drew my attention to what is said to be regular review of the Sponsor by a dedicated care coordinator/community nurse and bilingual support worker. The difficulty with that submission as it seems to me is that I have no evidence from those persons about the role they play. If they are simply meeting with her periodically, reviewing her current mental state and feeding back updates to the doctor (as appears to be the evidence) that is very different to the Sponsor having regular counselling and therapy sessions with a qualified consultant. Even if the Sponsor has the benefit of some care from a community nurse, that is not the same as ongoing therapy and, again, I have no evidence as to the extent and regularity of the care provided. I have no evidence from those said to be providing that care.

64. The other difficulty with the medical evidence, as I observed in the course of the hearing, is the lack of any evidence after the documents which I have described above. The most recent of those documents is dated in September 2020. I am hearing this appeal in August 2021 nearly a year later. Whilst I appreciate that the pandemic may have made the obtaining of evidence more difficult, I do not accept that something could not have been obtained. At the very least the extent of the current medical treatment could have been dealt with in the Sponsor's supplementary witness statement dated 6 August 2021. However, as I have already set out, that statement says nothing about her current treatment and provides no detail beyond mere assertion about the deterioration in her mental health since January 2020. The only medical evidence about her mental health in that period is the brief letter dated May 2020 recording a review which appears to have been conducted remotely by Dr Hajamohideen mainly with the Appellant and not the Sponsor and where the Appellant is reported to have said that "[o]verall she remained the same as before" and was complying with her medication.

65. Although Dr Hajamohideen does not set out his qualifications or expertise, I am prepared to accept his reports and to give them some weight in relation to the extent of the Sponsor's mental health problems and treatment. I do not give weight to any comments made about the Sponsor's physical health not simply because he is not said to have any expertise in this regard (as he is described as a specialty doctor in mental health) but also because the Sponsor's physical health conditions are not the focus of the Appellant's case.

66. As I identify above, even accepting Dr Hajamohideen's evidence at its highest, though, there are gaps in that evidence particularly as regards treatment. His last report is nearly one year old. In any event he and the Sponsor's GPs have provided a prognosis based on an assumption that the Sponsor would be separated from the Appellant if he were removed. The issue for me is whether there are insurmountable obstacles preventing her accompanying him to Bangladesh.

67. Based on the medical evidence such as it is, therefore, I turn now to consider the background information about what treatment is available to the Sponsor in Bangladesh should she return there.

68. Both parties rely on the Home Office Country Policy and Information Note Bangladesh: Medical and Healthcare Issues Version 1.0 dated May 2019 ("the CPIN"). There is no dispute as to the paragraphs of the CPIN which are relevant which are as follows:

> "9. Mental health
>
> 9.1.1 An Australian DFAT report of February 2018 noted, 'Despite considerable needs, there are few support services available for those suffering from mental health disorders and [there is] no specific mental health authority in Bangladesh.' The US State Department 2018 Report on Human Rights Practices similarly observed, 'Government facilities for treating persons with mental disabilities were inadequate [for the country as a whole].'
>
> 9.1.2 MedCOI commented in a response of 4 September 2015:
>
> 'Based on the information found in several sources, mental illness in Bangladesh is highly stigmatized and mental healthcare is in its nascent stages. Healthcare provision is limited … However, steps for change and improvement are taken. 'Mental healthcare is offered by both government and private facilities, the vast majority being concentrated in urban areas, especially in metropolitan cities […] Most psychiatrists work in tertiary care in urban areas. They also work either in private practice or in a mixture of teaching and private practice in cities. 'Healthcare at primary level is provided by healthcare centres (PHC) where a physician can be found and [at] PHC clinics with no physicians.
>
> 'According to [a WHO report of 2007], all or almost all physician-based clinics (81-100%) have assessment and treatment protocols for key mental health conditions available, in comparison to only a few clinics (1-20%) in non-physician based primary health care centers.
>
> 'Due to the dearth of mental health professionals and poor logistic support, the existing three tier health care delivery system is not functioning well for mental health conditions. Referrals of patient with mental disorders to mental health specialists by the general practitioners or other health care providers are almost non-existent. [Referrals are] also hampered due to superstitious beliefs related to psychiatric disorders.
>
> 'The Bangladesh Health System Review counts 50 outpatient mental health facilities, 31 community-based psychiatric inpatient units and 11 community residential facilities. Schizophrenia is the most common condition treated in outpatient centers.' 9.1.3 The National Institute of Mental Health & Research

> (NIMH), in Dhaka, is a 200-bed teaching hospital which, according to MedCOI, offers free or lowcost psychiatric care on an inpatient or outpatient basis. Professional services include adult and child psychiatry, psychotherapy and clinical psychology, drug addiction and rehabilitation. 9.1.4 The Department of Psychiatry at Bangabandhu Sheikh Mujib Medical University (BSMMU), a public hospital, provides inpatient or outpatient treatment by a psychiatrist and inpatient or outpatient treatment by a psychologist.
>
> 9.1.5 MedCOI found in September 2017 that these treatment options were available for PTSD and a depressive disorder:
>
> - Inpatient or outpatient treatment and follow up by a psychiatrist
>
> - outpatient treatment and follow up by a psychologist
>
> - treatment of PTSD by means of EMDR
>
> - treatment by means of psychotherapy: e.g. cognitive behavioural therapy
>
> - treatment of PTSD by means of narrative exposure therapy.
>
> 9.1.6 …
>
> 10.1.6 A broad range of medicines for psychiatric treatment are obtainable. To check the availability of a particular generic drug, its brand names and the pharmaceutical company which supplies it in Bangladesh, refer to BDdrugs.com: Central nervous system drugs.
>
> 10.1.7 According to an Australian DFAT report of February 2018, 'Considerable social stigma attaches to reporting mental illness.'
>
> See Annex A for list of available medications"

Mirtazapine is on the list at Annex A. Aripiprazole is not but the CPIN indicates that there is a broad range of medicines available for psychiatric treatment and I have no evidence that there is no anti-psychotic medication obtainable in Bangladesh.

69. Mr Karim submitted that the Sponsor needs more than just medication. In the UK she is under the supervision of a care coordinator and support worker (and possibly also a community nurse). That may be so but, as I have already noted, the evidence about the role played by those persons and the Sponsor's need for that assistance (assuming the Appellant is there to offer assistance) is very limited. Even if it remains the case that the Sponsor has the benefit of a community nurse to keep her condition under review and report back to Dr Hajamohideen that is not regular counselling or therapy treatment. The reviews carried out by Dr Hajamohideen himself appear to be at regular but relatively infrequent intervals with several months between each. The evidence in the CPIN suggests that equivalent treatment is likely to be available if the Sponsor needs it. I accept that it may not be of the same standard, but the CPIN does not say that such treatment is not available at all.

70. I have regard to the reasons given by the healthcare professionals about the cause of the Sponsor's mental health issues. Those were initially and understandably triggered by the death of her first husband. They were then exacerbated by her

inability to conceive. I accept that the threat of the Appellant's removal is recently said to be a significant contributory factor and I accept that the Sponsor is very concerned about being left in the UK without the Appellant. However, the evidence does not deal with the issue which I am required to consider which is the impact on her mental health if she accompanies him to Bangladesh.

71. The medical evidence is consistent in relation to the care which is paramount to the Sponsor's well-being and that is the support given to the Sponsor by the Appellant. The medical professionals who have reported on the Sponsor's condition and prognosis have all worked on the assumption that if the Appellant were removed, the Sponsor would remain in the UK and the couple would be separated. There is no consideration of the position if the Sponsor were to return to Bangladesh with the Appellant. The management of her condition there would also include assistance from other family members. She has her own family in Bangladesh and the Appellant also has family. They live in the same area. Although I accept that the evidence does mention societal stigmatisation of those with mental health issues, the Sponsor would have the assistance of the Appellant and family members to help her in that regard. I will consider this element again when looking at what are said to be barriers to the Sponsor's integration in Bangladesh.

72. I accept Mr Karim's submission that I am not considering the health issues of the Sponsor on the same basis as I would if it were the Appellant who was suffering from those problems. This is not a "health case" where I would be considering the mental health problems against the high threshold which would apply if the person suffering from health issues were the person to be removed. I am considering the position in relation to the level of obstacles to the Sponsor and Appellant continuing their family life in Bangladesh. I accept that insurmountable obstacles is not a test to be read literally. Nonetheless, it is a high threshold of significant difficulties or very serious hardship for those affected by the decision.

73. Mr Karim drew my attention in this regard to the Court of Appeal's judgment in Lal v Secretary of State for the Home Department [2019] EWCA Civ 925 ("Lal"). Lal was a case where it is often suggested that the Court accepted that the appellant's husband's intolerance to heat was sufficient to amount to insurmountable obstacles to family life continuing in India. The judgment has however to be read as a whole. In particular, at [34] of the judgment, the Court said this:

> "The FTT judge based that conclusion entirely on her acceptance of Mr Wilmshurst's evidence. It seems to us that the facts which Mr Wilmshurst's evidence, if accepted in its entirety, were capable of proving were (i) that he is a retired man in his 70s who cannot bear hot temperatures and (ii) that for this reason he would feel unable to go, and would therefore not in fact go, to India with his wife if she is required to leave the UK. We think it clear, however, that proof of these facts is not by itself legally sufficient to establish insurmountable obstacles for the purposes of paragraph EX.1.(b) of Appendix FM to the Immigration Rules and that the reasons given by the FTT for reaching that conclusion were therefore inadequate."

The Court accepted that the appellant's husband's age and intolerance to heat were relevant factors but required consideration of what would occur if the couple did move to India and, in those circumstances, the relevance of those factors. The Court therefore found that the First-tier Tribunal Judge had failed to give adequate reasons.

74. The Court went on to consider the Upper Tribunal Judge's decision and found that decision (dismissing the appeal) also to be flawed. That was not based on the Judge's reasoning as to the appellant's husband's health condition but because the Judge had failed to consider all factors cumulatively. The Court said that if the factors of the husband's age and sensitivity to heat had been considered in that way alongside the fact that he had lived all his life in the UK and had extensive family ties here, the Court did "not think that the answer to the question whether moving to India would entail very serious hardship for him is a foregone conclusion". The Court of Appeal did not remit the appeal for redetermination by this Tribunal but allowed the appeal only because the Respondent had agreed to reconsider the case.

75. Mr Karim also drew my attention to the case of Secretary of State for the Home Department v Kamara [2016] EWCA Civ 813. That case relates to whether there would be very significant obstacles to an individual's integration on return to home country (in the deportation context). It is therefore not directly relevant to the Sponsor's situation. Nonetheless, it is instructive to consider what was said by the Court of Appeal in relation to the ability to integrate as follows:

> "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."

76. It goes without saying that the Sponsor is neither foreign nor a criminal. I accept that she is a British citizen and that this is a relevant although not a weighty factor (see in that regard what is said by the Supreme Court in Agyarko and Ikuga v Secretaary of State for the Home Department [2017] UKSC 11 – "Agyarko" at §33-36). Prior to naturalising as a British citizen, however, the Sponsor was a Bangladeshi citizen. She grew up in that country. She came to the UK only in 2009 and was already in her mid-thirties by then. She still speaks her native language. She has family members remaining in that country. I cannot accept that she could not be described as "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 be able to conduct her private life there.

77. The only specific issue which requires to be considered in this context is whether the Sponsor's mental health problems would lead to societal stigmatisation which would impact on her ability to integrate. Mr Karim relied on this factor. There is however limited evidential support for that submission. There is reference in the CPIN to mental illness being "highly stigmatized" and mental healthcare being "in its nascent stages". There is also reference to "superstitious beliefs related to psychiatric disorders". Those references emanate however from a 2015 report. The indication is that there is treatment available albeit it may not be as good as is offered in the UK. There may not be the general acceptance of mental health issues in Bangladesh as exists nowadays in the UK but there is no evidence that the Sponsor would be ostracised or mistreated as a result of her mental health problems. As I have already pointed out, she would have the Appellant and his and her family members to help her reintegrate.

78. I deal finally with other potential obstacles to the Appellant's family life being continued in Bangladesh.

79. The Appellant says in his statement dated 17 January 2020 at [AB/5] (paragraph [16]) that he would be sent to prison if returned to Bangladesh because there is a judgment against him. That is repeated by the Sponsor in her statement of the same date at [AB/11] (paragraph 18). That latter assertion must be based on what the Appellant has told her as she did not know the Appellant when he lived in Bangladesh. There are documents relating to this part of the Appellant's original case at [AB/44-66]. I was not referred to those. This claim was rejected as not credible by First-tier Tribunal Judge Welsh in the 2018 Appeal Decision. In any event, the Appellant abandoned this part of his case before First-tier Tribunal Judge Paul in this appeal (see [10] of the First-tier Tribunal decision). I do not therefore need to deal with this aspect.

80. The Appellant and Sponsor have included in the bundle various reports concerning the Covid-19 pandemic situation in Bangladesh ([AB/29-54] and [ABS2/5-48]). These reports show that Bangladesh has problems arising from the pandemic as do most countries in the world with both the treatment and containment of the virus and the resource pressures arising from the virus in healthcare and economic terms. There is no evidence that the pandemic has hit Bangladesh more severely than other countries in the region nor even than the UK. The Appellant and Sponsor could obviously not be expected to return to Bangladesh until any travel restrictions allow but I was not provided with evidence that Bangladesh does not allow its own or British nationals to travel there whether with or without quarantine requirements.

81. The Appellant's evidence is that he no longer has friends in Bangladesh. I accept that the Appellant has been in the UK for fourteen years and may have lost any contacts he had with friends in Bangladesh. However, there is little if any evidence

that the Appellant and Sponsor have any friends in the UK either. The impression given from both their evidence and the letters written by the professionals is that they are a self-contained unit and depend only on each other for support and social interaction. As I have already observed, they might in fact be in a better situation on return to Bangladesh as both have family members there.

82. Even assuming that the Appellant's brother will not allow him to become involved again in their stationery business, there is no evidence that the Appellant could not work in Bangladesh. He was brought up in that country and can speak the language. There is no evidence that he has any physical or mental disabilities preventing him from working. He came to the UK initially to work although has not been permitted to do so now for many years. However, there is no evidence that he could not find work on return.

83. Considering all of the above factors cumulatively and in the round, and, having regard to the threshold which applies in relation to a finding of insurmountable obstacles, I am unable to accept that the evidence shows that there would be insurmountable obstacles to the Appellant and Sponsor continuing their family life in Bangladesh. I accept that returning to her native Bangladesh may involve some hardship for the Sponsor and to a lesser extent the Appellant, but the evidence does not show that such hardship would be very serious. Relocation would not give rise to very significant difficulties such as to meet the threshold in EX.1. Accordingly, that paragraph is not met. The Appellant cannot therefore succeed within the Rules.

84. I am nonetheless required to go on to consider whether Article 8 ECHR is breached when considered outside the Rules. The issue is whether the refusal of the human rights claim is a disproportionate interference with the private and family lives of the Appellant and the Sponsor. Would removal have unjustifiably harsh consequences for the Appellant and Sponsor? This assessment involves a balancing of the interference against the public interest. When considering the public interest, I am required to have regard to Section 117B.

85. I begin with Mr Karim's submission that Chikwamba is in play when considering the appeal outside the Rules. I struggle to see how that case can apply to the facts here. I refer again to the Supreme Court's judgment in Agyarko where a similar argument to that made by Mr Karim was rejected. It is difficult to see how, if the couple could be expected to relocate permanently to Bangladesh to continue their family life, a temporary interference could be disproportionate. Obviously, the Sponsor cannot be obliged to go to Bangladesh but the situation here is very far from that arising in Chikwamba where the sponsor could not be expected to return to his home country as he was a refugee from that country. It is a matter of choice for the Sponsor whether she accompanies the Appellant on return whether permanently or for a short period to allow him to apply for entry clearance to come back to the UK. It is however reasonable to expect her to do so.

86. Going on to balance the factors for and against the Appellant, I do not repeat what I have already said about the obstacles to the Appellant and Sponsor moving to Bangladesh. I take those into account. I have accepted that those obstacles involve some hardship and difficulty but not such as to meet the threshold within the Rules. I do not however seek to minimise those difficulties particularly for the treatment of the Sponsor's health. I recognise that she receives some support from healthcare professionals in the UK which may well not be replicated to the same standard in Bangladesh although I have found that she is likely to have greater family support. I also recognise that she may encounter some societal discrimination or stigmatisation due to her mental health. Again, though, she can be assisted in this regard by the Appellant and his and her family members.

87. Looking at the issues through the lens of Section 117B, the Appellant was here unlawfully when he entered into his relationship with the Sponsor. For that reason, I am able to give only little weight to the Appellant's and Sponsor's family life (Section 117B (4)). I accept that little weight does not mean no weight. There is however good reason for this provision. The Appellant and Sponsor must have known from the start of their relationship that the Appellant may well not be entitled to remain in the UK. They built up their relationship in full knowledge of the possible risk that he would be removed at some point.

88. Similarly, I can give only little weight to the Appellant's private life applying Section 117B (4) and Section 117B (5). Whilst that provision does not apply to the private life of the Sponsor, there is limited evidence of a private life of either the Sponsor or Appellant when it comes to relationships with others. I give some weight to the fact that the Appellant has been in the UK for about fourteen years. However, neither he nor the Sponsor have family members in the UK and there is little if any evidence of friendships. I have already noted the Sponsor's support from the authorities in relation to her healthcare and also that she receives some benefits which I accept she will lose if she moves to Bangladesh. I accept that this is relevant to her private life and amounts to interference with it. However, as I have found, whilst healthcare is unlikely to be of the same quality as in the UK, the Sponsor is likely to have additional support from family members and of course the Appellant. I have already found that the Appellant will be able to work on return to Bangladesh and will therefore be able to provide the financial support to the Sponsor to replace her benefit income.

89. There is no evidence that the Appellant or Sponsor speak English. The Appellant gave his evidence via an interpreter. I understood that if the Sponsor was to give evidence, she would need to do so via an interpreter. Her witness statements had to be translated for her. Although I would have expected that she would have needed to show some ability to speak English in order to naturalise, that may not have been the case at that time or her ability may have lapsed as she has to use a bilingual support worker to engage with healthcare professionals. It is in any event the Appellant's language abilities which are at issue. There is no evidence that he speaks English and that is a factor which weighs against him (Section 117B (2)).

90. I am prepared to accept that the Appellant would be able to support himself without recourse to public funds (Section 117B (3)). Although the couple presently live on the benefits to which the Sponsor is entitled, there is no evidence that they have obtained any other benefits to support the Appellant. I have found it likely that the Appellant continues to receive some financial support from his family in Bangladesh. I have found that the Appellant could find work if he returned to Bangladesh. I have no reason to think that the situation would be any different if he remained in the UK. However, that is a neutral factor (see Rhuppiah v Secretary of State for the Home Department [2018] UKSC 58 at §57).

91. Section 117B (1) is however a weighty factor in this case in favour of the public interest. The Appellant has been in the UK for about fourteen years. However, he had the right to remain only until 2009. He has remained ever since without permission. He is unable to satisfy the Rules based on his relationship with the Sponsor. The maintenance of effective immigration control is in the public interest and requires that those without permission to be in the UK and who are unable to satisfy the Rules permitting them the right to remain should be removed.

92. Balancing the factors for and against the Appellant, I conclude that the public interest outweighs the interference with his family and private life and that of the Sponsor. It is not disproportionate to expect them to continue their family and private lives in Bangladesh.

CONCLUSION

93. For the foregoing reasons, the refusal of the Appellant's human rights claim is not a breach of Section 6 Human Rights Act 1998 applying Article 8 of the Convention. He cannot meet Appendix FM to the Rules because EX.1 is not satisfied. Outside the Rules, the public interest outweighs the interference with the private and family lives of the Appellant and Sponsor. The refusal of the human rights claim is therefore not disproportionate. I therefore dismiss the appeal.

DECISION

The Appellant's appeal is dismissed.

Signed: *L K Smith* Dated: 31 August 2021
Upper Tribunal Judge Smith

APPENDIX: ERROR OF LAW DECISION

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/06610/2019 (P)

THE IMMIGRATION ACTS

Decided under Rule 34 without a hearing
On Wednesday 26 August 2020

Determination promulgated
…….4 September 2020……..

Before

UPPER TRIBUNAL JUDGE SMITH

Between

MR ATAUR RAHMAN

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND DIRECTIONS

BACKGROUND

1. The Appellant is a national of Bangladesh. He is the spouse of a British citizen. She originates from Bangladesh and came to the UK in 2009. The Appellant appeals against the decision of First-tier Tribunal Judge N M Paul promulgated on 11 February 2020 ("the Decision"). Although the Appellant was appealing against the Respondent's decision refusing a claim on protection grounds, that claim was abandoned and the appeal concerned only the Appellant's Article 8 ECHR claim based on his wife's medical conditions and the need for him to remain in the UK to care for her.

2. By the Decision, the Judge dismissed the Appellant's appeal, finding that the Appellant and his wife could relocate to Bangladesh and continue their family life there.

3. The Appellant appeals the Decision on three grounds as follows:

Ground 1: it was irrational for the Judge to conclude that there were no insurmountable obstacles to family life continuing in Bangladesh (applying paragraph EX.1 of Appendix FM – "EX.1" – to the Immigration Rules – "the Rules).

Ground 2: the Judge has impermissibly speculated when reaching certain findings about the situation which the couple would face on relocation to Bangladesh.

Ground 3: the Judge has filed to consider the guidance concerning the proportionality of requiring return where an application to re-enter would be likely to succeed (applying Chikwamba v Secretary of State for the Home Department [2008] UKHL 40 – "Chikwamba" – and R (oao Agyarko and Ikuga) v Secretary of State for the Home Department [2017] UKSC 11).

4. Permission to appeal was refused by First-tier Tribunal Judge Grant-Hutchison on 13 March 2020 for the following reasons so far as relevant:

> "… 3. The Judge has considered the evidence including the oral evidence given on the day of the hearing. The Judge has made appropriate findings which he was entitled to make in order to come to his decision. It was open for the Judge to consider what weight he felt it appropriate to place on all the evidence before him. The Judge has given adequate reasons for his decision.
>
> 4. The grounds disclose no arguable error of law."

5. Permission to appeal was granted by Upper Tribunal Judge Kamara on 28 May 2020 in the following terms so far as relevant:

> "… 2. It was accepted by the judge [23] that the appellant cares full-time for his wife who suffers from poor mental ill-health. She is a British citizen in receipt of Personal Independence Payment (PIP) and thus exempt from the financial requirements in Appendix FM. It is arguable, that in those circumstances, the judge erred in failing to consider the relevance of *Chikwamba* [2008] UKHL 40. The recent decision *Younas (section 117B(6)(b); Chikwamba; Zambrano)* [2020] UKUT 129 (IAC) does not necessarily alter the position as this case [sic], as it could be argued that there is no clear breach of immigration control which would require an application for entry clearance to be made where the Rules would be met.
>
> 3. Permission is granted on all grounds."

6. By a Note and Directions sent on 30 June 2020, having reviewed the file, Upper Tribunal Judge Perkins reached the provisional view that it would be appropriate

to determine without a hearing (pursuant to Rule 34 of the Tribunal Procedure (Upper Tribunal) Rules 2008 – "the Procedure Rules") the following questions:

(a) whether the making of the First-tier Tribunal's decision involved the making of an error of law and, if so

(b) whether that decision should be set aside.

Directions were given for the parties to make submissions in writing on the appropriateness of that course and further submissions in relation to the error of law. The reasons for the Note and Directions was the "present need to take precautions against the spread of Covid-19, and the overriding objective expressed in the Procedure Rules".

7. On 7 July 2020, the Respondent made written submissions in reply to the Directions also to be treated as her Rule 24 Reply. The Respondent points to the previous appeal where it was determined that it would not be disproportionate for the Appellant's spouse to relocate to Bangladesh. Taking that as a starting point, the Respondent submits that the Judge was entitled to reach the conclusion he did. In relation to the second ground, the Respondent asserts that the Judge has given sufficient reasons for his finding and that there is no impermissible speculation. On the "Chikwamba" point, the Respondent points out that it is unclear whether this issue was raised before Judge Paul. In any event, the Respondent submits that the case is distinguishable from Chikwamba because the Judge has found that there is no reason why the Appellant's spouse cannot go to Bangladesh. The Respondent also points out that the Appellant has an adverse immigration history and would therefore need to show that there are exceptional circumstances in order to succeed outside the Rules. Finally, the Respondent asks for an oral hearing but makes no submissions giving reasons for that view.

8. On 9 July 2020, the Appellant provided written submissions. As to the forum for determining the error of law issue, the Appellant asks that, if the Respondent does not concede the appeal, then the Appellant also wishes to have an oral hearing. Again, no reasons are given as to why the error of law issue cannot be determined on the papers. The Appellant's submissions as to the substance of the grounds do not differ substantially from the earlier submissions and I deal with those submissions so far as necessary below.

9. In spite of the requests for an oral hearing, for reasons which follow, I have concluded that I can fairly determine the error of law issue on the papers based on the Decision itself, the grounds as pleaded and the documents before me (which documents were also before Judge Paul).

10. At this stage, the issue for me is whether the Decision contains an error of law. If I conclude it does, I need to consider whether I should set aside the Decision based on that error. If I decide to do so, I would either re-make the decision or remit the appeal to the First-tier Tribunal to do so.

DISCUSSION AND CONCLUSIONS

11. I take the Appellant's grounds in order, particularly since I have concluded that there is an error disclosed in relation to the first ground although not necessarily for the reasons relied upon by the Appellant.

12. I begin by setting out the "Conclusions & Reasons" section of the Decision. I do so in full because it is not lengthy, and it is necessary to consider the findings there made in context in order to address the grounds:

> "19. Both parties addressed me on the family life aspects of the case. Mr Hasan relied on the CPIN Note for Bangladesh dealing with medical and healthcare issues. He also submitted a World Health Organisation Report on the mental health system in Bangladesh dated 2007, and various other media extracts highlighting the relatively poor conditions for the treatment of people with mental health problems in Bangladesh.
>
> 20. The respondent relied on the reasons for refusal letter, and the fact that the medical evidence tended to show that the real issue here related to having separated from her husband. Thus, if she was to return to Bangladesh with her husband, she would have the benefit of not only his support, but that of her immediate family. There was nothing in the report to suggest that a return to Bangladesh as a fact in itself would be an exacerbating factor in her condition.
>
> 21. This is a protection/human rights appeal, and the burden is on the appellant to show that his human rights are engaged by the SSHD's decision, and it is for the SSHD to show that it is proportionate. The central issue in this case relates to the appellant's wife.
>
> 22. The appellant's position, taken by itself (in my view) would not engage his human rights. His private life is contingent upon having been in this country for a number of years with a precarious immigration status.
>
> 23. The burning issue is whether or not – if the appellant was to return to Bangladesh with his wife – that would so exacerbate her condition that it would amount to an interference with their human rights as a family. He acts as a full-time Carer for her, and would benefit from additional family support such as is available in Bangladesh. So far as medication is concerned, whilst there may be a cost element, there was no evidence adduced to say that he would not be able to afford it, and I have a strong suspicion that he still has business interests in Bangladesh (based on the contradictory evidence he gave about his stationary [sic] business). In my view, it clearly would be in the best interests of husband and wife to stay together, and given that although she is a British citizen, she only came to the UK in 2009. Clearly the major part of her family life and family support networks are based on Bangladesh.
>
> 24. I strongly suspect that her current condition has been exacerbated firstly by the death of her first husband, which is recorded in the medical evidence, and secondly by the dependency that she has on her second husband with the consequential fear that she might lose him. However, those

> matters would be significantly ameliorated if they returned to Bangladesh as a couple.
>
> 25. No evidence was advanced before me to suggest that she would, in those circumstances, choose to stay in the UK. In my view, therefore, the SSHD's decision is a proportionate one, because it seems abundantly clear to me that they would return to Bangladesh as a couple without obvious difficult medical consequences. For those reasons, the human rights appeal must fail."

13. I begin by pointing out that, although the Judge was right to say that the central issue was whether removal of the Appellant would be disproportionate based on the effect on his wife, that issue needed to be considered first in the context of the Rules. Although the Judge referred at [5] of the Decision to the Respondent's contention that paragraph EX.1 was not met and also that in the previous appeal that issue had been decided against the Appellant, the Judge's first port of call should have been to determine whether the high threshold in paragraph EX.1 was met. Although the grounds of appeal in this regard assert that the Decision is irrational in the finding that paragraph EX.1 is not met, in fact there is no finding at all in that regard.

14. That is an error of law in the approach taken. I have though carefully considered whether it can be said to be a material one. After all, if the Judge has found, as he appears to have done, that it would not be unreasonable to expect the Appellant's wife to accompany him to Bangladesh, then a failure to consider whether a higher threshold is met could not be material.

15. I consider however that there is a further error made at [23] of the Decision as the focus of that paragraph is the impact on the Appellant and not on his wife. The issue is whether there are insurmountable obstacles to her relocating back to Bangladesh not simply whether it is reasonable for the couple to live there. It is in that context that the Appellant's first ground becomes relevant. Although the Judge refers at [19] of the Decision to evidence adduced by the Appellant as to medical treatment for mental health problems in Bangladesh, there is no finding made by the Judge about the impact on the Appellant's wife of the loss of the treatment she is currently receiving and the loss of benefits to which she is entitled by reason of her disability.

16. The Judge has accepted that the Appellant acts as his wife's full-time carer, which position would continue if both returned to Bangladesh. The Appellant's wife also has other family in Bangladesh who could also assist in her care. However, the Judge still needed to consider the impact on the Appellant's wife's treatment and not simply her care. The closest one comes is the consideration whether the Appellant and his wife would be able to afford care but that says nothing about the level of care available. There was evidence before the Judge set out at [19] of the Decision about which no finding has been made. Although the case specific medical evidence is limited, the Judge also needed to make findings about what that showed about the impact on the Appellant's wife's treatment if she were to go to Bangladesh.

17. For those reasons, the first ground is made out.

18. I would not have found any error in relation to the second ground taken alone. I can deal with that shortly, particularly given my conclusion in relation to the first ground. The Judge records at [14] of the Decision the unsatisfactory evidence of the Appellant about what had happened to his business. The Appellant had told the Tribunal about that business in his previous appeal. He claimed when asked about it on this occasion that he "was unclear about that and that he was unable to recollect what he said at the previous appeal". The Judge was entitled to find that evidence to be "contradictory" and therefore not to accept it. Similarly, given what is said about what the medical evidence shows at [20] of the Decision, the Judge was entitled to conclude that the Appellant's wife's condition was exacerbated by the two events of the loss of her first husband and concern about separation from the Appellant. Reasons are there given for the finding made.

19. The only possible error in relation to those matters is not that the Judge has impermissibly speculated but that the Judge has made findings based on a strong suspicion which is not of course the correct standard. He needed to make findings on those matters. As I have already noted, though, I would not have found an error on this point alone as it is quite evident what the Judge meant for the reasons he gave. Nonetheless, since I found an error in relation to the first ground, I do not need to say more.

20. Turning finally to the third ground which is the focus of the permission grant, I agree with the Respondent that there is nothing to suggest that this issue was raised with Judge Paul. There is no record of any submission being made in this regard in the Decision. There is no skeleton argument for the hearing but there is nothing in the Judge's record of the proceedings referring to this argument. Counsel who pleaded the grounds of appeal did not appear before Judge Paul.

21. It cannot be an error of law for a Judge to fail to consider an argument which was not put to him unless it is abundantly clear from the evidence that the issue arises. There is a further reason why the third ground as pleaded would fail and that is because it is far from clear that the Appellant's case falls within the Chikwamba scenario. As the Respondent points out, the Appellant has been in the UK for about thirteen years now but has had no leave to remain for most of that time. He has made application after application to seek to remain all of which have failed. Even if he is able to meet the criteria under the Rules save as to immigration status, that (adverse) immigration history would or might be taken into account in any further application for entry clearance under the general grounds. I note that there is no finding made by the Judge about the balance to be struck outside the Rules which would of course include the public interest factors at play in this case. However, for the foregoing reasons, I conclude that the third ground is not made out. Again, however, in light of my conclusion on the first ground, that has little impact as it will be open to the Appellant to argue his case on this basis if he contends that it applies when the decision is re-made.

22. For the above reasons, an error of law is disclosed by the first of the Appellant's grounds. I have concluded that the error is material and there are further findings which will need to be made. For those reasons, I set aside the Decision for re-making.

NEXT STEPS

23. It is suggested in the Appellant's written submissions that, if I were to find an error, I could go on to re-make the decision without a further hearing and that the Appellant would succeed on any one of a number of bases. It is also suggested that this is a case which the Respondent may wish to concede.

24. There is nothing to suggest that the Respondent intends to concede this case. As will also be apparent from what I have said about the case more generally above that I do not consider this case to be so clear-cut that a determination in the Appellant's favour would necessarily follow on the evidence. For that reason, the appeal needs to be re-heard.

25. There is no need for this appeal to be remitted. Although there will need to be fresh findings of fact made, the issues are quite narrow. I agree however that it is not appropriate to re-make the decision without hearing submissions orally. Although there are no significant credibility issues raised, Judge Paul found some of the evidence to be overstated or did not accept that evidence for other reasons. For that reason, it is appropriate to hear oral evidence from the Appellant (and his wife if she wishes and is able to do so). I note from the record of proceedings that the Appellant gave evidence via an interpreter and it would therefore be difficult to hear the appeal remotely. For that reason, I have listed the appeal for an oral hearing on a face to face basis. Although none of the evidence is particularly dated in this case and although there is no application to adduce further evidence, I have given the Appellant the opportunity to adduce further evidence prior to a further hearing should he so wish.

DECISION

I am satisfied that the decision of First-tier Tribunal Judge N M Paul promulgated on 11 February 2020 discloses an error of law. I set aside that decision. I make the following directions for a resumed hearing:

DIRECTIONS

1. Within 28 days from the date when this decision is sent, the Appellant is to file with the Tribunal and serve on the Respondent any further evidence on which he relies.

2. The appeal is to be relisted for a hearing at Field House on a face to face basis with a time estimate of ½ day. If the Appellant requires an interpreter for himself or any

of his witnesses, he is to notify the Tribunal within 14 days from the sending of this decision.

3. The parties are at liberty to apply to amend these directions, giving reasons, if they face significant practical difficulties in complying.

Signed: *L K Smith* Dated: 26 August 2020
Upper Tribunal Judge Smith