Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/11345/2019 (V)**

THE IMMIGRATION ACTS

Heard at: Field House
On : 5 March 2021

Decision & Reasons Promulgated
On 17 March 2021

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

BA
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms S Anzani, instructed by City Heights Solicitors
For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This has been a remote hearing to which there has been no objection from the parties. The form of remote hearing was skype for business. A face to face hearing was not held because it was not practicable, and all issues could be determined in a remote hearing.

2. The appellant is a citizen of Bangladesh, born on 24 November 1988. He has been given permission to appeal against the decision of First-tier Tribunal Judge Aldridge dismissing his appeal against the respondent's decision to refuse his asylum and human rights claim.

3. The appellant arrived in the United Kingdom on 4 March 2010 with leave to enter as a Tier 4 student until 31 October 2011. His application for further leave to remain as a Tier 1 (post study work) migrant was refused and his appeal against that decision was dismissed on 11 July 2012. He became appeal rights exhausted on 9 January 2013. On 3 March 2016, the appellant applied for leave to remain on the basis of his family and private life in the UK, but his application was refused and certified as clearly unfounded under section 94 of the Nationality, Immigration and Asylum Act 2002. The appellant then made further submissions which were rejected under paragraph 353 of the immigration rules, but the respondent subsequently agreed to consider the submissions as a fresh asylum and human rights claim.

4. The basis of the appellant's claim was that he was a BNP (Bangladesh Nationalist Party) party activist in the student wing of the party, the Bangladesh Jatiyotabadi Chhatradal (JCD), and acted as the publicity secretary for his local party. He and his family faced numerous threats because of his political involvement and in 2010 an FIR, in a false case, was lodged against him by the police who were influenced by the Awami League, the ruling party of Bangladesh. The threats and intimidation had in particular come from an MP with whom he had had personal difficulties when at college.

5. The respondent, in refusing the appellant's claim on 6 November 2019, noted discrepancies in his evidence and did not accept any of his account and found the documents upon which he relied to be unreliable. The respondent did not accept that the appellant feared the MP and did not accept that a false charge had been brought against him. It was considered that he was at no risk on return to Bangladesh and that his removal from the UK would not breach his human rights.

6. The appellant's appeal against that decision was heard by First-tier Tribunal Judge Aldridge on 19 August 2020. An application was made at the beginning of the hearing for the appellant to be excused from giving live evidence, without any adverse inferences being drawn, due to his mental health issues which affected his memory. Reliance was placed upon a psychological report from Dr Sreenan. The judge declined to give an indication that he would not draw an adverse inference and the appellant then elected to give oral evidence. The judge also heard from the appellant's partner with whom it was claimed that he had lived for 10 years and who had indefinite leave to remain in the UK, having come here in 2005 as a student, as well as from another witness who lived at the same property.

7. The judge identified inconsistencies and discrepancies in the appellant's evidence and accordingly rejected his account of his involvement with the BNP and of receiving threats and he did not accept the reliability of the supporting documentation. He did not accept that the appellant was at any risk on return to Bangladesh. The judge accepted the expert evidence of Dr Sreenan and accepted that the appellant had mental health issues, but did not accept that he was a suicide risk and considered that he would be able to access treatment in Bangladesh. As for the appellant's Article 8 family life claim, the judge did not accept that he had a genuine and subsisting relationship with his claimed partner but considered in any event that there were no insurmountable obstacles to the relationship

being maintained in Bangladesh. The judge considered that there were no very significant obstacles to integration in Bangladesh and that the appellant could not meet the family or private life provisions of the immigration rules. He concluded that the appellant's removal would be proportionate and would not breach his Article 8 human rights and he accordingly dismissed the appeal on all grounds.

8. Permission was sought by the appellant to appeal to the Upper Tribunal on three grounds: that the judge had failed to treat the appellant as a vulnerable witness in accordance with the relevant guidance and that the decision was therefore vitiated by procedural impropriety; that the judge's assessment of Articles 3 and 8 on medical grounds was flawed; and that the judge's assessment of the appellant's family life with his partner was flawed and failed to take account of the evidence of JA in his witness statement.

9. Permission was granted in the First-tier Tribunal on 23 October 2020. The matter then came before me for a hearing, by way of skype for business.

Hearing and submissions

10. With regard to the first ground, Ms Anzani submitted that Judge Aldridge had erred in law in his decision by failing to refer to, and follow, the Joint Presidential Guidance Note No 2 of 2010 requiring him to state whether the appellant was a vulnerable witness. He had not stated whether he accepted that the appellant was vulnerable and, if so, what considerations followed from that in terms of the inconsistencies and discrepancies identified as part of his credibility assessment. With regard to the second ground, the challenge to the judge's assessment of the medical evidence under Articles 3 and 8, Ms Anzani submitted that the sole basis for the judge's finding that the risk of suicide was not sufficiently high to meet the relevant threshold was that there was treatment for mental health problems in Bangladesh, namely the 200 bed facility in Dhaka referred to in the Home Office CPIN report, but that finding was unreasonable and irrational given the evidence of the limitations of mental health treatment in Bangladesh and the stigma attached to mental health problems. She submitted that the judge's finding that the appellant could make a full recovery in Bangladesh was speculative and failed to take account of Dr Sreenan's identification of the protective factor of his partner in the UK. As for the third ground, Ms Anzani submitted that the judge failed to take a full account of the evidence of JA when considering the appellant's family life with his partner.

11. Mr Melvin, in response, submitted that it was not incumbent upon the judge to include a paragraph confirming that the appellant was vulnerable, when he had otherwise made it clear that he had considered the matter and, in any event, it had not been shown how the judge's credibility assessment was affected by the omission of such a paragraph. He asked me to note as relevant the fact that it had been confirmed at the previous case management review hearing that the appellant would be giving evidence at the appeal hearing and that Article 3 was not being pursued on medical grounds. There was no witness statement from counsel at the First-tier Tribunal hearing suggesting that the appellant had been prejudiced by the cross-examination or that he was unable to give his evidence. As for the

medical evidence, the judge had considered that and had made appropriate findings. The grounds failed to identify what was lacking in the way the judge assessed the evidence. The appellant had made many previous claims in the UK and only produced medical evidence when advised to seek a psychological report. There was otherwise little in the way of evidence showing that he was in receipt of treatment or taking medication and the judge was entitled to conclude as he did. As for the third ground, the judge made a proper assessment of the appellant's family life. The statement of JA was not material to his findings. The judge's decision should be upheld.

12. In response, Ms Anzani submitted that Mr Melvin was wrong and that there *was* a requirement in the Presidential Guidance for a judge to record whether the appellant was a vulnerable witness.

Discussion and conclusions

13. In the first ground of challenge referring to the judge's duties owing to the appellant's vulnerability, reliance is placed upon the judgment of the Senior President of Tribunals in AM (Afghanistan) v Secretary of State for the Home Department [2017] EWCA Civ 1123, where he considered the Joint Presidential Guidance Note No 2 of 2010. I set out the relevant part of the judgment as follows:

> 30. "To assist parties and tribunals a Practice Direction 'First-tier and Upper Tribunal Child, Vulnerable Adult and Sensitive Witnesses', was issued by the Senior President, Sir Robert Carnwath, with the agreement of the Lord Chancellor on 30 October 2008. In addition, joint Presidential Guidance Note No 2 of 2010 was issued by the then President of UTIAC, Blake J and the acting President of the FtT (IAC), Judge Arfon-Jones. The directions and guidance contained in them are to be followed and for the convenience of practitioners, they are annexed to this judgment. Failure to follow them will most likely be a material error of law. They are to be found in the Annex to this judgment.
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> 31. The PD and the Guidance Note [Guidance] provide detailed guidance on the approach to be adopted by the tribunal to an incapacitated or vulnerable person. I agree with the Lord Chancellor's submission that there are five key features:
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> a. the early identification of issues of vulnerability is encouraged, if at all possible, before any substantive hearing through the use of a CMRH or pre-hearing review (Guidance [4] and [5]);
> b. a person who is incapacitated or vulnerable will only need to attend as a witness to give oral evidence where the tribunal determines that "the evidence is necessary to enable the fair hearing of the case and their welfare would not be prejudiced by doing so" (PD [2] and Guidance [8] and [9]);
> c. where an incapacitated or vulnerable person does give oral evidence, detailed provision is to be made to ensure their welfare is protected before and during the hearing (PD [6] and [7] and Guidance [10]);
> d. it is necessary to give special consideration to all of the personal circumstances of an incapacitated or vulnerable person in assessing their evidence (Guidance [10.2] to [15]); and
> e. relevant additional sources of guidance are identified in the Guidance including from international bodies (Guidance Annex A [22] to [27]).

32. In addition, the Guidance at [4] and [5] makes it clear that one of the purposes of the early identification of issues of vulnerability is to minimise exposure to harm of vulnerable individuals. The Guidance at [5.1] warns representatives that they may fail to recognise vulnerability and they might consider it appropriate to suggest that an appropriate adult attends with the vulnerable witness to give him or her assistance. That said, the primary responsibility for identifying vulnerabilities must rest with the appellant's representatives who are better placed than the Secretary of State's representatives to have access to private medical and personal information. Appellant's representatives should draw the tribunal's attention to the PD and Guidance and should make submissions about the appropriate directions and measures to be considered e.g. whether an appellant should give oral evidence or the special measures that are required to protect his welfare or make effective his access to justice. The SRA practice note of 2 July 2015 entitled 'Meeting the needs of vulnerable clients' sets out how solicitors should identify and communicate with vulnerable clients. It also sets out the professional duty on a solicitor to satisfy him/herself that the client either does or does not have capacity. I shall come back to the guidance to be followed in the most difficult cases where a guardian, intermediary or facilitator may be required.

33. Given the emphasis on the determination of credibility on the facts of this appeal, there is particular force in the Guidance at [13] to [15]:

"13. The weight to be placed upon factors of vulnerability may differ depending on the matter under appeal, the burden and standard of proof and whether the individual is a witness or an appellant.
14. Consider the evidence, allowing for possible different degrees of understanding by witnesses and appellant compared to those [who] are not vulnerable, in the context of evidence from others associated with the appellant and the background evidence before you. Where there were clear discrepancies in the oral evidence, consider the extent to which the age, vulnerability or sensitivity of the witness was an element of that discrepancy or lack of clarity.
15. The decision should record whether the Tribunal has concluded the appellant (or a witness) is a child, vulnerable or sensitive, the effect the Tribunal considered the identified vulnerability had in assessing the evidence before it and this whether the Tribunal was satisfied whether the appellant had established his or her case to the relevant standard of proof. In asylum appeals, weight should be given to objective indications of risk rather than necessarily to a state of mind."

34. In *JL (medical reports – credibility) (China)* (supra), which was binding on the FtT, the UT considered that, where the FtT accepted an appellant as vulnerable, it should apply the Guidance Note. I agree. The UT found the judge erred in failing to do so:

"26. A second error we discern consists in the judge's treatment of the appellant's vulnerability (the appellant's ground 3). It is clear from her determination that despite disbelieving much of the appellant's evidence including the account she gave of her psychological problems (the judge placed particular emphasis on the appellant's ability to perform well in her studies) the judge was prepared to accept she was a vulnerable person. To be specific, she appeared to accept that the appellant had been the victim of physical abuse at the hands of her former boyfriend in the UK [104]; and, although rejecting the reasons given, accepted that "[i]t may well be the appellant has certain mental health issues". Given that the judge described the respondent's reasons (as set out in the preceding paragraph) as "cogent" and that they included reliance on inconsistencies, it was

> of particular importance to see what findings, if any, the judge made about the possible relevance to these of the appellant being a vulnerable person. In the case of a vulnerable person, it is incumbent on a Tribunal judge to apply the guidance given in the Joint Presidential Guidance Note No 2 2010, Child, Vulnerable adult and sensitive appellant guidance…[the UT then set our paras 14 and 15 referred to above].
> 27. Applying this guidance would have entailed the judge asking herself whether any of the inconsistencies in the appellant's account (as given in her asylum interview) identified by the respondent in the reasons for refusal – and described by the judge as being "cogent" – could be explained by her being a vulnerable person. This the judge did not do."

14. Ms Anzani relied in particular upon [15] of the Presidential Guidance as I have highlighted in the judgment above and submitted that the judge materially erred in law by failing to refer to the guidance and by failing to make a specific finding on whether the appellant was a vulnerable witness.

15. It is indeed the case that there is no specific paragraph in the judge's decision explicitly confirming that the appellant was a vulnerable witness. However, I do not accept that anything material arises from this, in this case, given that it is abundantly clear that the judge treated the appellant as a vulnerable person and had full and careful regard to the contents of the psychological report of Dr Sreenan and the other medical evidence in the appeal bundle, and considered the impact of that evidence in assessing the credibility of the appellant's claim.

16. At [35], the judge recorded an application made before him for the appellant to be excused from giving live evidence owing to his mental health issues, and for there to be no adverse inference taken against him as a result. The judge noted that there had been no such indication at the previous case management review hearing (held on 27 May 2020), where it had been confirmed that the appellant would be giving oral evidence, and he accordingly, and reasonably, refused to commit to drawing no adverse inference on that basis. The judge, nevertheless, offered the appellant an opportunity to seek further and specific medical evidence and offered to adjourn the hearing for that to be obtained, but the appellant declined the invitation and chose to continue with the hearing and give live evidence. The judge recorded at [35] the arrangements put in place for the appellant as a vulnerable witness, which included directions for the respondent's cross-examination and adequate breaks for the appellant. It is therefore abundantly clear that the judge followed the tenor of the Presidential Guidance in his treatment of the appellant.

17. As for his approach to the appellant's evidence, the judge made clear at [57] and [59] that he had taken the appellant's mental health issues and his ability to give oral testimony into account when assessing the credibility of his evidence and he referred to Dr Sreenan's expert opinion in that regard. The judge went on to note inconsistencies and discrepancies in the overall evidence, including contradictory evidence from the witnesses and inconsistencies in the documentation. It is plain that there were significant aspects of the evidence aside from the appellant's own recollection of events which undermined the credibility of his claim and from which the judge was fully and properly entitled to draw adverse conclusions, but in any event the judge clearly assessed the evidence as a whole with the appropriate regard to the medical evidence.

18. Accordingly, I find there to be no merit in the first ground which seeks, but fails, to show that there was any procedural impropriety in the judge's assessment of the appellant's evidence. I agree with the observation in Mr Melvin's written submissions, that there is no indication that the appellant was treated with anything other than respect given his mental health issues and that the judge clearly had the appellant's mental health issues in mind when deciding the appeal. There is nothing inconsistent, or materially inconsistent, with the Presidential Guidance and the judgment in AM in the judge's decision.

19. As for the second ground, and contrary to the assertion made therein, it is clearly not the case that the judge's sole basis for finding that the appellant would not be at risk of suicide on being returned to Bangladesh was the availability of mental health treatment in that country. It is clear from the judge's findings at [75], and his use of the word "also", that the mental health treatment available in Bangladesh was an additional factor for concluding that the appellant's return would not meet the required threshold of risk. At [71] to [73] the judge confirmed that he had had regard to all the medical evidence before him and he directed himself appropriately on the approach to such evidence in line with relevant authorities. At [74] to [76] he went on to give his reasons for concluding that the threshold for an Article 3 claim was not met and at [99] to [104] he made similar findings in the context of Article 8.

20. Although the judge's findings and conclusions, in particular at [74] to [76], could perhaps have been better expressed, it is clear that, whilst accepting that Dr Sreenan was properly qualified to make the assessment that he did, he found there to be limits to the weight he was able to accord to the medical reports, given that Dr Sreenan's opinion was largely based upon the information provided by the appellant. The judge also noted Dr Sreenan's opinion that the appellant did not meet the diagnostic criteria for the disorder previously diagnosed and he noted that his symptoms of mental illness had developed recently, after making his asylum claim and being interviewed. Indeed, it is relevant to note from Dr Sreenan's reports that he considered the appellant's mental health problems to have started in September 2019 and to have been triggered by intense stress from pressures at work and in moving house (paragraph 2.3.1 of the second report).

21. The appellant's grounds assert that the judge failed to consider Dr Sreenan's concerns about the loss of the protective factor provided by his partner if he was returned to Bangladesh and the impact of that on his mental health and the risk of suicide. However, the judge clearly did consider protective factors at [75] and [76] and at [85], and in any event had concerns as to whether there was a genuine and subsisting relationship. It seems to me that, contrary to the assertions made in the grounds, the judge's assessment of the risk of suicide and the impact on the appellant of removal to Bangladesh was a detailed and careful one which took full account of all the evidence and included cogently reasoned findings.

22. With regard to the last ground, I am entirely in agreement with Mr Melvin, that the evidence of JA did not add materially to the appellant's claim in regard to his relationship

with his partner, in particular as JA was not present at the hearing and was not available for cross-examination on his evidence. The judge clearly had regard to JA's statement, as he mentioned at [77], as well as all the other evidence relating to the Article 8 family life claim, and he was not required to make specific findings on each and every piece of evidence. The judge provided full and proper reasons for reaching the conclusions that he did about the appellant's relationship and was entitled to reject the claim on the basis that he did.

23. For all of these reasons I find that the grounds disclose no errors of law in the judge's decision. The judge's decision is a detailed and comprehensive one taking into account all of the evidence, approaching the evidence appropriately in the context of the medical opinion and reports, and providing cogent reasons for the conclusions reached on all grounds.

DECISION

24. The making of the decision of the First-tier Tribunal did not involve an error on a point of law. I do not set aside the decision. The decision to dismiss the appeal stands.

Anonymity

The anonymity direction made by the First-tier Tribunal is maintained.

Signed: *S Kebede*
Upper Tribunal Judge Kebede Dated: 8 March 2021