Upper Tribunal
(Immigration and Asylum Chamber) Appeal Numbers: HU/02996/2020
UI-2022-000985

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 1 July 2022	**On 22 August 2022**

Before

UPPER TRIBUNAL JUDGE FRANCES

Between

ASFAR AHMED SUMON
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr J Plowright, instructed by Novells Legal Practice
For the Respondent: Ms A Everett, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Bangladesh born on 13 February 1990. He appeals against the decision of First-tier Tribunal Lucas, promulgated on 14 December 2021, dismissing his appeal against the refusal of leave to remain on human rights grounds.

2. The appellant came to the UK as a student in 2009 and has remained without leave since November 2018. He applied for indefinite leave to remain on grounds of long residence on 10 April 2019 which was refused on 11 February 2020. It was accepted at the appeal before the First-tier

Tribunal that the appellant did not have ten years' continuous lawful residence and he could not satisfy paragraph 276B of the immigration rules.

3. First-tier Tribunal Judge Lucas ('the judge') found there were no 'very significant obstacles to re-integration' in Bangladesh. It was accepted the appellant's mental health condition did not meet the Article 3 threshold. At [47], the judge concluded:

> "In reality there are no very significant obstacles to return in this case. The medical problems are not life threatening and come nowhere near to the high test set out for example in N and more recently in AM (Zimbabwe). There is medical care available in Bangladesh and he will have family support there. He is educated to Masters' degree level and is therefore in a better position than most in the labour market in his country of origin."

4. The appellant applied for permission to appeal on four grounds:

   (i) The judge failed to apply the correct test when determining whether there were 'very significant obstacles to re-integration' for the purposes of paragraph 267ADE(1)(vi) due to the appellant's mental ill health;

   (ii) The judge erred in his assessment of the availability of medical treatment in Bangladesh;

   (iii) The judge failed to consider evidence relating to a material issue, specifically raised by the appellant, regarding his mental ill health;

   (iv) The judge erred in his approach to assessing the extent to which the appellant will be supported by family in Bangladesh.

5. Permission was granted by Upper Tribunal Judge L K Smith on 12 May 2022 on the grounds that, although she was not persuaded the judge had conflated the Article 3 and Article 8 issues, it was arguable the judge had not sufficiently explained the reasons for finding there were no 'very significant obstacles to integration' based on the medical and other evidence.

Submissions

6. Mr Plowright accepted the Article 3 threshold was not met and that the judge had not conflated Article 3 and Article 8. However, he submitted the judge had failed to apply the correct test in assessing very significant obstacles to integration in accordance with SSHD v Kamara [2016] EWCA Civ 813. The appellant's mental health issues affected his ability to integrate and the judge failed to consider the impact the appellant's mental ill health would have on return. In addition, the judge failed to consider the availability of treatment and on-going support.

7. Mr Plowright submitted the matters referred to in grounds (ii) to (iv) were not taken into account and were relevant to the assessment of very significant obstacles in ground (i). The judge failed to consider the change in medication from Citalopram to Fluoxetine. There was no mention in the refusal letter that Fluoxetine was available in Bangladesh. The change in medication and letters from the appellant's GP demonstrated the need for on-going review of the appellant's condition and support to adjust to a change in medication.

8. Mr Plowright submitted that 'nuanced' treatment was required. The background evidence demonstrated that on-going support and review was unlikely to be available in Bangladesh. This factor was not taken into account in considering integration. There was evidence in the appellant's supplementary witness statement of the change in medication. The judge failed to consider the risk of self-harm and deterioration of the appellant's condition without protective support. The judge failed to consider the medical evidence in detail, in particular paragraphs 5.4 and 6.1 of the psychological report.

9. Mr Plowright did not challenge the judge's finding that the appellant would have family support in Bangladesh. However, he submitted the judge erred in law at [47] of the decision in failing to demonstrate he had considered the detailed medical evidence in assessing very significant obstacles to integration.

10. Ms Everett submitted there was no material error of law in the decision. The judge's earlier findings supported his conclusion at [47]. There were no very significant obstacles to integration for the reasons given by the judge. The appellant had family support in Bangladesh to access treatment and he had failed to show that alternative treatment to Fluoxetine was not available. The appellant had failed to show there was an absence of appropriate treatment in Bangladesh. The medical evidence demonstrated the appellant's condition would deteriorate without protective factors in place. However, the appellant would have family support in Bangladesh to enable him to successfully integrate.

11. Ms Everett submitted it was the appellant's evidence that he lost a sense of purpose because he could not complete his studies. His mental ill health was a result of issues in the UK. The judge was entitled to find there were no very significant obstacles to re-integration. There was no material error of law in the decision.

12. In response to a question from me about the lack of evidence about alternative treatment, Mr Plowright submitted, on the evidence before the judge, it was not clear the appellant would be able to access appropriate treatment and receive the necessary support for any future change in medication.

Conclusions and reasons

13. I am not persuaded the judge failed to apply the correct test in assessing very significant obstacles to re-integration. The judge made adequate findings to support his conclusion at [47]. My reasons are as follows:

14. The judge set out the evidence before him at [9] to [25] and recorded the appellant's evidence of a change in medication at [15]. He referred to the letters from the appellant's GP at [12] and [16] and the psychological report at [13]. The judge took into account all relevant matters and considered the evidence in the round.

15. The appellant suffers from depression and is taking anti-depressants. There was insufficient evidence before the judge to show that the appellant could not access appropriate treatment and support in Bangladesh. The appellant had failed to show that alternative treatment to Fluoxetine was not available. The appellant had the support of his family and was well educated. On the facts, the test in Kamara was satisfied.

16. The judge could have set out the medical evidence in more detail, but his failure to do so did not result in an error of law because Mr Plowright took me through that evidence and it did not demonstrate that the appellant's ability to integrate would be impaired in any way. Upper Tribunal Judge Smith was just prepared to grant permission on this basis and Mr Plowright sensibly addressed those concerns. However, in this case there was insufficient evidence to show very significant obstacles to integration.

17. On reading the decision as a whole, the judge's finding that there were no very significant obstacles to re-integration was open to him on the evidence before him. The medical evidence does not support the submission that the appellant's condition would deteriorate because, on the undisputed facts, support was available and protective factors were in place. Taking the appellant's claim at its highest, his return to Bangladesh would not breach Article 8.

18. Accordingly, there was no material error of law in the decision of the First-tier Tribunal promulgated on 14 December 2021 and I dismiss the appellant's appeal.

Notice of decision

Appeal dismissed

J Frances

Signed Date: 1 July 2022

Upper Tribunal Judge Frances

TO THE RESPONDENT
FEE AWARD

As we have dismissed the appeal, we make no fee award.

J Frances

Signed Date: 1 July 2022

Upper Tribunal Judge Frances

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:

2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically).**

3. Where the person making the application is in detention under the Immigration Acts**, the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.

4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically).**

5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.

6. The date when the decision is "sent' is that appearing on the covering letter or covering email.