IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-003335
First-tier Tribunal No: EA/06584/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

25th October 2023

Before

UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

RIDOY SIMOL
(NO ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr L Youssefian, Counsel, instructed by DJ Webb & Co Solicitors
For the Respondent: Mr N Wain, Senior Presenting Officer

Heard at Field House on 9 October 2023

DECISION AND REASONS

Introduction

1. The Appellant appeals with permission against the decision of First-tier Tribunal Judge Norris ("the judge"), promulgated on 4 July 2023 following a hearing on 13 June of that year. By that decision, the judge dismissed the Appellant's appeal

against the Respondent's decision to deport him pursuant to the Immigration Act 1971 and the UK Borders Act 2007. The decision to deport was an appealable decision under the Immigration (Citizens' Rights Appeals) (EU Exit) Regulations 2020 because the applicant, a dual citizen of Bangladesh and Italy, had pre-existing leave under the EUSS.

2. The Appellant was born in 1997 in Bangladesh. He then moved to Italy in 2004 with his mother in order to join his father in that country. The Appellant's two younger brothers were born in Italy in 2006 and 2016 respectively. The Appellant's father moved to the United Kingdom with the rest of the family following shortly thereafter. The Appellant was 18 when he came to this country. He studied and eventually completed an apprenticeship with a well-known high street opticians with a view to progressing up the career ladder. In 2017 he began a relationship with Ms S. There were difficulties within the relationship over the course of time. In late 2021 the Appellant assaulted Ms S and then sent intimate videos of himself and Ms S to members of her family. As a result of these offences the Appellant was convicted on a plea of guilty and then sentenced to 32 months' imprisonment.

The judge's decision

3. The judge's decision is a conscientious piece of work. It is both well written and well structured. Without intending any disrespect, I will only summarise her central conclusions here. Firstly, she considered the issue of social and cultural integration, concluding that the Appellant was effectively integrated in Italy, but was either not integrated in the United Kingdom, or that any such integration was greatly reduced: [19]–[22]. Secondly, the judge concluded that there were no very significant obstacles to the Appellant's reintegration into either Italy or Bangladesh: [23]–[28]. Thirdly, having regard to a variety of considerations, the judge concluded that there were no very compelling circumstances in the Appellant's case: [29]–[54]. In light of the length of the Appellant's sentence, section 117C(6) of the 2002 Act was the core statutory provision in play.

4. In light of her overall conclusions, the judge dismissed the Appellant's appeal.

The grounds of appeal and grant of permission

5. Five grounds of appeal were put forward. The first three of these asserted that the judge had erred in her consideration of the social and cultural integration issue. Specifically, it was said that the judge had impermissibly conducted a form of balancing exercise as between integration in Italy and integration in the United Kingdom, using a finding on the former scenario to effectively count against the Appellant in respect of the latter. The judge had approached the issue of social and cultural integration contrary to the guidance set out in CI (Nigeria) v SSHD [2029] EWCA Civ 2027, particularly in her reliance on the very narrow issue of whether the Appellant would be able to have his old job back at the opticians. Further, the judge had failed to in fact make a clear finding on whether the Appellant was indeed socially and culturally integrated in this country and, if so, to what extent. Ground 4 asserted that the judge had erred in her application of the threshold on the very compelling circumstances issue. Ground 5 related to the same issue, but presented the challenge on the basis that the judge had effectively adopted a "notional comparator" test when looking at the Appellant's case, in other words it was said that the judge had wrongly assessed the Appellant's circumstances against those of other unidentified individuals and/or families.

6. The First-tier Tribunal granted permission on grounds 1 to 3 and 5, but expressly refused permission in respect of ground 4. There was no renewal of that single ground to the Upper Tribunal, thus I am only concerned with grounds 1–3 and 5.

The hearing

7. Mr Youssefian relied on the grounds of appeal and assisted me with clear and concise submissions, none of which strayed beyond the boundaries of the written arguments. The submissions are a matter of record and I will not set them out here in any detail. In essence, he submitted that the error in respect of grounds 1–2–and/or 3 were material to the judge's assessment of very compelling circumstances and that any errors on this issue were sufficient for the judge's decision to be set aside. Further or alternatively, Mr Youssefian submitted that the "notional

comparator" error was sufficiently clear from the face of the decision with reference to at least three passages in the judge's reasoning. Whilst not all of the judge's consideration of very compelling circumstances have been challenged, the errors identified were enough for the decision to be set aside.

8. Mr Wain provided helpful submissions and again these are a matter of record. He submitted that the inference I should draw was that the judge had found there not to be any social or cultural integration in the United Kingdom. If there was any error in the judge's approach, it was not material to the very compelling circumstances assessment. The alleged errors in respect of the "notional comparator" were really just general comments and when the judge's decision was read holistically they did not disclose any material errors.

9. At the end of the hearing I reserved my decision.

Discussion and conclusions

10. I remind myself of the need to exercise appropriate judicial restraint before interfering with a decision of the First-tier Tribunal. In the present case the judge read and heard evidence from a variety of sources, made findings, and conducted evaluative assessments. The need for the appropriate caution is justified here.

11. Following careful consideration, I am satisfied that the judge erred in law in respect of the social and cultural integration issue, as alleged in grounds 1–3.

12. In the context of deportation cases, the focus must be on the individual's integrative links in the United Kingdom, based on the evidence as at the date of hearing. That is derived from the authoritative guidance set out by the Court of Appeal in CI (Nigeria) at, for example, [57]. Reading the judge's decision sensibly and holistically I am satisfied that she impermissibly undertook a form of balancing exercise as between integrative links formed in Italy and those which might have been formed in the United Kingdom: see [19]–[22]. There are express references to the Appellant's experiences whilst in Italy and it is sufficiently clear to me that these have been weighed against any links in the United Kingdom, or that there

was an implicit risk of double-counting in the equation. In the context of this case, I agree with Mr Youssefian's submission that ties in Italy were irrelevant when considering the question of social and cultural integration. In this way, the judge erred in law.

13. In respect of ground 2, I agree with Mr Youssefian's submission that the judge's clear reliance on the unanswered question of whether the Appellant would be able to get his old job back at the opticians was not a legally adequate basis on which to materially reduce any social and cultural integration which may have existed in this country. If the immediate prospects of future employment were of such particular importance in the judge's analysis, she failed to adequately explain this at [22]. There is a further error here.

14. In respect of ground 3, in my judgment the judge failed to make a clear finding as to whether there were in fact social and cultural integration at all and, if there was, the level of this. [22] alludes to the possibility that there had been such integration, although it is unclear whether this had been entirely broken by the offending. Mr Wain's submission that I should infer that there were no such links would take me back to what I have already said about grounds 1 and 2. Overall, there are errors on the issue of social and cultural integration.

15. Mr Youssefian has submitted that these errors would of themselves be sufficient for the judge's decision to be set aside. I do not propose to state my conclusion on that at this stage. Instead it is appropriate for me to go and deal with the challenge to the judge's approach to very compelling circumstances with reference to ground 5.

16. There are a number of features related to this issue which the judge has dealt with perfectly properly and in respect of which there is no challenge. The focus of the Appellant's challenge is really on what is said in [45], [48] and [49]. This relates to the allegation that the judge has, perhaps unconsciously, applied a "notional comparator" to the Appellant's circumstances. As a matter of principle I would agree with Mr Youssefian's contention at [15] of his grounds of appeal that such a comparator would not be appropriate in considering whether very compelling

circumstances exist, much as it should not be done when looking at the unduly harsh test: see HA (Iraq) v SSHD [2022] UKSC 22.

17. The real question here is whether the judge has actually applied such a comparator. At the beginning of [45] the judge states that "In common with many other people in the UK and elsewhere: the Appellant's parents are struggling to meet rising living costs ...". That may appear to be a very general observation and perhaps unobjectionable, all other things being equal. It is right also that in the rest of that paragraph the judge deals with the particular circumstances of the Appellant's family and their reliance on his income to help with their "needs". By itself I would not regard the passage I have quoted as constituting an erroneous approach.

18. I do have more concerns with [48] and [49]. In respect of the former, the judge stated that she did not accept evidence from the Appellant's brother as to his difficulties at college when the Appellant had not been around (due to imprisonment) and this could cause a problem if the Appellant were deported. Following this, the judge stated that "That is a situation encountered quite normally in families with siblings who are quite spread in age terms and should not cause a middle sibling, in their late teens, to 'go off the rails'". This does to my mind read as the application of a "notional comparator". Whether such a situation may or may not be "encountered quite normally" in similar families, the question to be addressed was whether there would be a material impact in respect of the Appellant's family and in particular one of his younger brothers. The final sentence of that paragraph, which Mr Wain asked me to take into account, still appears to relate to the general proposition that any concerns about studies could be generally dealt with by any family in a similar situation which in turn suggests the application of a "notional comparator".

19. The content of [49] was addressing the position of the Appellant's financial support. This was an issue which was, I accept, properly raised before the judge and in respect of which she seems to have accepted that there was genuine reliance on him for the family unit to meet their needs. The final line states that "The Appellant's family are not in a worse position than many others in the UK". In one sense that

might have been correct, however, once again the task for the judge was to consider the particular circumstances of the Appellant's family, not as set against others.

20. Bringing all of the above together and applying the appropriate judicial restraint, I have concluded that the judge has committed errors in her approach to the very compelling circumstances issue.

21. Stepping even further back and bringing my conclusions on all four of the grounds of appeal together, I conclude that the errors identified are material. The test for materiality is relatively low: whether the errors could have made a difference to the outcome, not whether they would have. Certainly, there was much to say against the Appellant's case and it is by no means certain that the judge would have come to a different conclusion but for the errors. However, in my judgment the relatively low materiality threshold has been met in this case. Therefore I set the judge's decision aside.

Disposal

22. My starting point has been that the case should be retained in the Upper Tribunal. However, I have had regard to the Upper Tribunal decision in Begum (Remaking or remittal) Bangladesh [2023] UKUT 46 (IAC) and the fact that the errors I have identified will necessitate further findings of fact and a complete reassessment of the very compelling circumstances issue. On balance it is appropriate to remit this appeal to the First-tier Tribunal. In light of the errors of law I have identified, the remitted hearing will need to address all issues in the case. There will be no preserved findings.

Anonymity

23. There is no basis for making an anonymity direction in this case.

Notice of Decision

The decision of the First-tier Tribunal involved the making of errors of law. That decision is set aside.

The appeal is remitted to the First-tier Tribunal (Taylor House Hearing Centre). The remitted hearing shall not be conducted by First-tier Tribunal Judge Norris.

H Norton-Taylor

Judge of the Upper Tribunal
Immigration and Asylum Chamber

Dated: 16 October 2023