IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-003028

First-tier Tribunal No:
HU/52194/2021
IA/07578/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 4th March 2024

Before

UPPER TRIBUNAL JUDGE MANDALIA

Between

Sultan Ahmed
(NO ANONYMITY DIRECTION MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

REPRESENTATION

For the Appellant: Mr T Shah, Taj Solicitors
For the Respondent: Ms R Arif, Senior Home Office Presenting Officer

Heard at Birmingham Civil Justice Centre on 17 August 2023

DECISION AND REASONS

INTRODUCTION

1. The appellant is a national of Bangladesh. On 5 July 2010 he was granted indefinite leave to remain in the UK, leading to a grant of British citizenship on 2 February 2021.

2. On 7 December 2018, the appellant was served with a Notice of Decision to deprive him of his British Citizenship. Following investigation, the SSHD decided the appellant had obtained his British citizenship fraudulently. The

appellant's appeal against that decision was dismissed by First-tier Tribunal ("FtT") Judge Ford for reasons set out in a decision promulgated on 9 May 2019. In summary, the judge found the appellant had deliberately and with the intention of deceiving the SSHD, lied about fulfilling the residence requirement for naturalization, and that deception was material to the outcome of his naturalisation application. An order depriving the appellant of British citizenship was served on 14 August 2019.

3. On 15 March 2021 the appellant was invited to provide evidence of his connections to the UK. Representations were made by Taj Solicitors on his behalf on 21 March 2021. They confirmed the appellant has a wife and child in Bangladesh.

4. On 6 May 2021 the respondent made a decision to refuse the appellant leave to remain. The respondent considered whether the appellant meets the requirements of paragraph 276ADE(1) of the Immigration Rules but concluded the appellant has failed to establish that that there are very significant obstacles to his integration into Bangladesh and that the appellant had provided no evidence of a private life built in the UK. The respondent concluded the appellant can reasonably return to Bangladesh and there are no exceptional circumstances that would warrant a grant of leave outside the immigration rules. The appellant's appeal against that decision was dismissed by FtT Judge Jones for reasons set out in a decision dated 7 March 2022.

THE DECISION OF FTT JUDGE JONES

5. Judge Jones referred to the background to the respondent's decision to deprive the appellant of his British citizenship and to the previous decision of Judge Ford promulgated on 9 May 2019. Judge Jones noted, at paragraph [18], the claim made by the appellant that he cannot return to Bangladesh because he has lived in the UK for over 19 years, and he has established close ties and connections to the UK. He claims that having arrived in the UK in 2022 and having spent the formative years of his adult life living and growing up in the UK, he would find it extremely difficult to adjust to life in Bangladesh. He claims he has no continuing social or cultural ties to Bangladesh. He does not wish to lose face-to-face contact with his friends and close connections in the UK.

6. Judge Jones took the previous decision of Judge Ford as her starting point. She noted that although it is now over 19 years since the appellant arrived in the UK, the appellant has spent over four and a half years living in the Republic of Ireland, and that the appellant has also travelled to and from Bangladesh. She found the appellant has failed to establish there are very significant obstacles to his integration in Bangladesh. She rejected his claim that he has lost his social and cultural ties to Bangladesh and found the appellant's ties to Bangladesh continue, given he has a family there, spent the formative years of his life there, and speaks the language.

7. The judge accepted the appellant has established a private life in the UK. She found the appellant cannot satisfy the requirements of paragraph

276ADE(1) of the Immigration Rules. She had regard to the public interest considerations set out in s117B Nationality, Immigration and Asylum Act 2002. She went on to say:

> "35. … The Upper Tribunal in Mahmoud *(sic)* did not decide that in undertaking the balancing exercise under article 8 the decision maker could not consider the appellant's conduct or character. Nor is the article 8 assessment limited to the considerations in section 117B NIAA. They are public interest considerations to which the tribunal must have regard but they are not exclusive. I consider the appellant's character and conduct are relevant to the article 8 assessment and have taken Judge Ford's finding that the appellant had deliberately and knowingly lied in his application for naturalisation into account. I have also taken into account that the respondent did not refuse the appellant's application under the "suitability requirements" of the rules.
>
> 36. Balancing all the public interest considerations I find that the severity of the respondent's decision on the private life of the appellant is outweighed by the strong public interest of immigration control in this case. The impact of the respondent's decision on the appellant's article 8 rights is proportionate to the public interest it seeks to pursue. I therefore find the decision does not breach section 6 of the Human Rights Act 1998 and I dismiss the appellant's appeal."

THE GROUNDS OF APPEAL

8. The appellant claims that although the previous decision of First-tier Tribunal Judge Ford was a starting point, the issue before Judge Ford was whether the appellant should be deprived of British citizenship and Judge Jones should have determined whether the decision to refuse the appellant leave to remain is disproportionate afresh. The appellant claims he had a British passport and at the material time, he was entitled to work in Ireland. He had provided evidence that he frequently visited the UK and owned a property in the UK. He therefore maintained his ties to the UK. He claims his two visits to Bangladesh were of short duration and included a visit to his mother who was at the time suffering from a life-threatening illness. The appellant claims the judge failed to give adequate reasons for her conclusion that there would not be very significant obstacles to the appellant's integration into Bangladesh. The appellant also claims the judge erroneously determined that the decision of the Upper Tribunal in *Mahmood (paras S-LTR1.6 & S-LTR 4.2; Scope) Bangladesh* [2020] UKUT 376 ("*Mahmood")* does not apply with equal force to the appellant. Finally, the appellant claims there was no assessment of s117B of the 2002 Act and the judge erroneously failed considered the appellant's immigration status to have always been precarious. His status was regularised by the respondent in 2010 and issues concerning his nationality did not arise until 2017.

9. Permission to appeal was granted by First-tier Tribunal Judge Brannan on 28 June 2022.

THE HEARING OF THE APPEAL BEFORE ME

10. Mr Shah adopted the written submissions filed on behalf of the appellant in readiness for the hearing before me. He submits the appellant's Article 8 claim fell to be assessed by reference to paragraph 276ADE of the Immigration Rules. He has undisputed residence in the UK since 16 December 2002 when he claimed asylum. Although it is true that he had worked as a Taxi Driver in Ireland, he was not at that time subject to immigration control, and he frequently travelled to and from Ireland to the UK. Mr Shah refers to the guidance issued by the respondent: 'EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members, published 9 August 2023'. He submits that when the appellant was away from the United Kingdom, in Ireland, his British citizenship remained intact. Mr Shah accepts that the appellant had not, as at the date of the respondent's decision or the decision of the FtT, lived continuously in the UK for at least 20 years, but he submits, the appellant had lived in the UK for just over 19 years and established strong connections to the UK.

11. Mr Shah submits the judge erroneously concluded at paragraph [30] of the decision that the appellant has failed to show there are very significant obstacles to his integration in Bangladesh. Mr Shah submits that in *Sanambar -v- SSHD* [2017] EWCA Civ 1284 the Court of Appeal said that consideration of the issue of obstacles to integration requires consideration of all relevant factors. He submits the appellant has lived in the UK for a period of over 19 years and 6 months. In *GM (Sri Lanaka)* [2019] EWCA Civ 1630 and *CL (India)* [2019] EWCA the Court of Appeal again reminded decision makers that all relevant factors must be considered in the balancing exercise. The relevant factors here, Mr Shah submits, include the fact the appellant has supported his wife and children and would be unable to continue to do so in Bangladesh. Furthermore, in reaching her decision, the judge failed to have adequate regard to the private life that has been established by the appellant in the UK and the fact that the appellant has spent the formative years of his adult life in the UK. Finally, Mr Shah refers to the decision of the Upper Tribunal in *Chimi (deprivation appeals: scope and evidence) Cameroon* [UKUT 00115 and submits Judge Jones was not bound by the previous decision of Judge Ford when she was determining whether the decision to refuse leave to remain to the appellant would be in breach of Article 8. He submits the decision of the FtT contains material errors of law and must be set aside.

12. In reply, Ms Arif adopts the respondent's rule 24 response dated 11 July 2022. She submits the appellant was not refused leave to remain on grounds of suitability. The judge considered for herself whether the appellant meets the requirements for leave to remain on the grounds of private life. The judge properly found that the appellant has not lived continuously in the UK for at least 20 years. There has plainly been a break in the appellant's residence in the UK, during the time that he lived and worked in Ireland as a Taxi Driver and when he travelled to Bangladesh. She rejected the appellant's claim that there would be very

significant obstacles to the applicant's integration into Bangladesh. The judge referred to the decision of the Upper Tribunal in *Mahmood* and was right to say that *Mahmood* did not decide that in undertaking the balancing exercise under Article 8, a decision maker cannot consider the appellant's conduct or character. The judge was entitled to note that Judge Ford had previously made a clear finding that the appellant had deliberately and with the intention of deceiving the respondent, lied about fulfilling the residence requirement for naturalisation.

DECISION

13. Judge Jones referred to the previous decision of Judge Ford and at paragraph [23] she stated that she took the decision of Judge Ford as her starting point. She referred to the findings made by Judge Ford both as to whether the condition precedent in s40(3) Nationality Act 1981 was satisfied and the reasonably foreseeable consequences for the appellant. I accept Judge Ford was only concerned with the reasonably foreseeable consequences of the decision to deprive the appellant of British citizenship; *Chimi (deprivation appeals; scope and evidence) Cameroon* [2023] UKUT 00115 (IAC). Judge Jones was not bound by the conclusions reached by Judge Ford since she was considering a different question.

14. However, any findings made by Judge Ford remained relevant and it is clear that Judge Jones treated the findings and conclusions reached by Judge Ford as nothing but a starting point. The findings and conclusions reached were not treated as determinative of the decision of Judge Jones insofar as the appellant's Article 8 claim is concerned. It is clear that Judge Jones carried out her own assessment of the appellant's Article 8 claim and where there was evidence that undermined a previous finding or conclusion, such as whether the appellant owned a property in the UK, Judge Jones reached her own findings.

15. In summary, the appellant relied upon paragraphs 276ADE of the immigration rules. It is useful to set out paragraph 276ADE as it was in force as at the date of the respondent's decision and the decision of the FtT.

> "
>
> "Private life
>
> Requirements to be met by an applicant for leave to remain on the grounds of private life
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> 276ADE (1). The requirements to be met by an applicant for leave to remain on the grounds of private life in the UK are that at the date of application, the applicant:
>
> > (i) does not fall for refusal under any of the grounds in Section S-LTR 1.1 to S-LTR 2.2. and S-LTR.3.1. to S-LTR.4.5. in Appendix FM; and

> (ii) has made a valid application for leave to remain on the grounds of private life in the UK; and
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> (iii) has lived continuously in the UK for at least 20 years (discounting any period of imprisonment); or
>
> (iv) is under the age of 18 years and has lived continuously in the UK for at least 7 years (discounting any period of imprisonment) and it would not be reasonable to expect the applicant to leave the UK; or
>
> (v) is aged 18 years or above and under 25 years and has spent at least half of his life living continuously in the UK (discounting any period of imprisonment); or
>
> (vi) subject to sub-paragraph (2), is aged 18 years or above, has lived continuously in the UK for less than 20 years (discounting any period of imprisonment) but there would be very significant obstacles to the applicant's integration into the country to which he would have to go if required to leave the UK."

16. The relevant immigration history of the appellant is accurately set out at paragraphs [14] to [16] of the decision of the FtT. At paragraph [18] of her decision, the judge summarised the matters now relied upon in support of the appellant's claim that he cannot return to Bangladesh. At paragraph [22] of her decision, Judge Jones noted the appellant spent four years in Ireland from 2014 to 2018 and applied for his family to join them there. She noted Judge Ford had found the appellant travelled to and from Bangladesh using his false passport.

17. At paragraphs [23] and [24] of her decision Judge Jones referred to the findings and conclusions previously reached by Judge Ford. As she recorded at paragraph [24] of her decision, Judge Ford had previously said the appellant claimed to have property, but she was not satisfied on a balance of probabilities that he did. At paragraph [25] Judge Jones accepted there is evidence before her of the appellant owning a property in the UK. Judge Jones said:

> "The appellant has provided evidence that he owns a property in the UK and submits Judge Ford's conclusions on that matter were wrong. While I accept that evidence, Judge Ford made it clear that the ownership of property was not critical to her conclusions because even if he did own property, the appellant could receive an income by renting it out as he had done while he was away in Ireland."

18. Judge Ford had previously considered the reasonably foreseeable consequence of the decision to deprive the appellant of his British citizenship upon the appellant's Article 8 rights. Contrary to what is said by the appellant, it is clear in my judgment that Judge Jones determined the appellant's Article 8 claim afresh on the evidence before the Tribunal. She plainly treated the previous decision of Judge Ford as nothing more than a starting point.

19. The appellant claims that as a British citizen, he was entitled to work in Ireland as a Taxi driver. He was not subject to immigration control and in law, living in an EU member state for the purposes of employment / self employment does not break the continuity of residence. Mr Shah refers to the guidance issued by the respondent: 'EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members, published 9 August 2023'. The appellant cannot gain any assistance from that guidance since it relates to applications made under the EU Settlement Scheme and Appendix EU of the immigration rules. It does not relate to applications made on human rights grounds.

20. Paragraph 276ADE(1)(iii) requires the appellant to establish that has lived continuously in the UK for at least 20 years (discounting any period of imprisonment). The rule recognises that an individual will, over a period of time, have developed a private life to a sufficient degree so as to engage Article 8. That private life encompasses multiple aspects of the person's physical and social identity. The words "lived continuously in the UK" are important and cannot simply be glossed over. There must be a continuity of residence in the UK. A British citizen exercising treaty rights in another member state is not living 'continuously in the UK'. They are living in another member state under an entirely separate and distinct legal framework. There is a further difficulty for the appellant. He accepts that he has travelled to Bangladesh on two occasions. The appellant was not living continuously in the UK when he travelled to Bangladesh, even if those visits were of short duration. The combination of the appellant's time in Ireland, and his visits to Bangladesh plainly broke the continuity of his residence in the UK,

21. At paragraph [29] of her decision, Judge Jones said:

> "Although it is over 19 years since the appellant first arrived in the UK, this is not a case of a "near miss" because his residence has not been continuous during that period. He has had over four and a half years' absence in Ireland and he has travelled to and from Bangladesh."

22. That is undoubtedly correct. Having found the appellant cannot satisfy the requirement set out in paragraph 276ADE(1)(iii), Judge Jones also concluded the appellant cannot satisfy the requirement set out in paragraph 276ADE(1)(vi) of the immigration rules. She said, at [30]:

> "The appellant has failed to show there are very significant obstacles to his integration in Bangladesh. I did not accept his evidence that he has lost his social and cultural ties there. On the balance of probabilities those ties have continued, given he has a family there. The appellant spent his formative years in Bangladesh and speaks the language."

23. I accept the reasons are brief, but I do not accept Judge Jones failed to have regard to a relevant factor when reaching that decision. At paragraph [18] of her decision Judge Jones had summarised the matters relied upon by the appellant. The focus of the appellant's claim was the ties that he has established to the UK. The judge noted the appellant's claim that he has no continuing social or cultural tie to Bangladesh. She had noted the

appellant claims he will find it extremely difficult to maintain and support himself in Bangladesh, and that he has no support system and no prospect of finding employment there. In *Sanambar -v- SSHD* [2017] EWCA Civ 1284 the Court of Appeal cited with approval the now oft quoted judgement in *SSHD -v- Kamara* [2016] EWCA Civ 813, where Sales LJ said, albeit in the context of a foreign criminal, at [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."

24. When pressed, Mr Shah was only able to say that the 'very significant to integration' would include the appellant's inability to continue to support his wife and children. That with respect, is insufficient and does not amount to an 'obstacle to integration'. The judge gave adequate reasons for her decision. The requirement to give adequate reasons means no more nor less than that. It is always possible to say that a decision could have been better expressed, but I do not accept that the judge failed to have regard to the evidence before the Tribunal when she considered whether there are very significant obstacles to the appellant's integration into Bangladesh. In fact, a finding to the contrary might well have been irrational or perverse on the evidence that was before the FtT, particularly in relation to the appellant's strong familial ties to Bangladesh.

25. It was therefore plainly open to the judge to find as she did, at [31], that the appellant is unable to satisfy the requirements to be met by an applicant for leave to remain on the grounds of private life.

26. Judge Jones accepted, at [32], that the appellant has friends and has formed a private life in the UK. She went on to consider, as she was required to, the relevant public interest considerations set out in s117B of the 2002 Act. Section 117B(1) makes it clear that the maintenance of effective immigration controls is in the public interest. Section 117B(5) expressly requires that little weight should be given to a private life established by a person at a time when the person's immigration status is precarious. Judge Jones properly noted, at paragraph [32] of her decision that the appellant arrived in the UK illegally and his status was precarious from December 2002 to 2010. It became precarious again after his appeals against deprivation of citizenship were dismissed in 2019. She accepted Judge Ford's finding previously that the appellant's friendships had not

been affected unduly by his absence from the UK when the appellant was living in Ireland.

27. Judge Jones referred to the decision of the Upper Tribunal un *Mahmood* that was relied upon by the appellant. She noted that the Upper Tribunal was concerned there with the suitability requirements set out in the immigration rules and the Tribunal did not decide that in undertaking the balancing exercise under Article 8 the decision maker could not consider the appellant's conduct or character. In *Mahmood¸* the issue before the Tribunal was the interpretation of the suitability requirements in the immigration rules. The Tribunal held:

> 1. "Paragraph S-LTR.1.6. of Appendix FM does not cover the use of false representations or a failure to disclose material facts in an application for leave to remain or in a previous application for immigration status.
>
> 2. Paragraph S-LTR.4.2. of Appendix FM is disjunctive with two independent clauses. The Home Office is consequently obliged to plead and reason her exercise of discretion to refuse an application for leave to remain based on one or both of those clauses.
>
> 3. The natural meaning of the first clause in paragraph S-LTR.4.2 requires that the false representation or the failure to disclose any material fact must have been made in support of a previous application and not be peripheral to that application.
>
> 4. The use of the words 'required to support' in the second clause in paragraph S-LTR.4.2 confirms a compulsory element to the use of the document(s) within the application or claim process, and the obtaining of the document(s) must be for the purposes of the immigration application or claim."

28. Judge Jones noted at paragraph [34] of her decision that the appellant was not refused leave to remain on grounds of suitability. In *Mahmood*, the respondent ultimately accepted that it was not open to the SSHD to rely upon paragraph S-LTR.1.6 (i.e. the presence of the applicant in the UK is not conducive to the public good because their conduct (including convictions which do not fall within paragraphs S-LTR.1.3. to 1.5.), character, associations, or other reasons, make it undesirable to allow them to remain in the UK) because the provision was not intended to cover the use of deception/dishonesty in a previous application for immigration status. The question however whether leave to remain falls to be refused on grounds of 'suitability' is an altogether different question to whether the decision to refuse leave to remain on Article 8 grounds is disproportionate. In carrying out that proportionality assessment the Tribunal is required to stand back and consider and balance those factors that weigh in favour of the appellant and those factors weighing against him. The appellant's character and conduct remain relevant factors when carrying out that assessment.

29. On any view, it was undoubtedly open to Judge Jones to conclude that the appellant is unable to satisfy the requirements of paragraph 276ADE(1)(vi)

of the immigration rules for the reasons that she gave. As set out by the Court of Appeal in *TZ (Pakistan)* [2018] EWCA Civ 1109, compliance with the immigration rules would usually mean that there is nothing on the respondent's side of the scales to show that the refusal of the claim could be justified. At paragraphs [32] to [34], the Senior President of Tribunals confirmed that where a person meets the rules, the human rights appeal must succeed because 'considerable weight' must be given to the respondent's policy as set out in the rules. The corollary of that is that if the rules are not met, although not determinative, that is a factor which strengthens the weight to be attached to the public interest in maintaining immigration control. The judge had proper regard to the appellant's circumstances. She noted the appellant's familial connections to Bangladesh and concluded there are no very significant obstacles to the appellant's integration into Bangladesh. She had proper regard to the relevant public interest consideration.

30. On appeal, the focus must be on the way the judge performed the essence of her task. The Upper Tribunal should not overturn a judgment at first instance, unless it really cannot understand the original judge's thought process when the judge was making material findings. In my judgement, the judge identified the issues and gave a proper and adequate explanation for her conclusions. The findings made by the judge were findings that were properly open to the judge on the evidence before the FtT. The findings cannot be said to be perverse, irrational or findings that were not supported by the evidence. Having carefully considered the decision of the FtT I am satisfied that the appeal was dismissed after the judge had carefully considered the facts and circumstances of the appellant.

31. In my judgment, the appellant is unable to establish that there was a material error of law in the decision of the FtT, and it follows that the appeal is dismissed.

NOTICE OF DECISION

32. The appeal is dismissed.

33. The decision of First-tier Tribunal Judge Jones stands.

V. Mandalia
Upper Tribunal Judge Mandalia

Judge of the Upper Tribunal
Immigration and Asylum Chamber

23 February 2024