IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-004931

First-tier Tribunal No: HU/55610/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

22nd February 2024

Before

UPPER TRIBUNAL JUDGE HANSON

Between

TAJUL ISLAM
(NO ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: In person.
For the Respondent: Ms Young, a Senior Home Office Presenting Officer.

Heard at Phoenix House (Bradford) on 16 February 2024

DECISION AND REASONS

1. The appellant appeals with permission a decision of First-tier Tribunal Judge Curtis ('the Judge'), promulgated on 11 October 2023, in which the Judge dismissed his appeal against the refusal of his further application for leave to remain made on 22 November 2022, which was refused on 13 April 2023.
2. The appellant is a citizen of Bangladesh born on 10 October 1978. He attended the hearing with his wife ('the sponsor').
3. The Judge noted an earlier determination by First-tier Tribunal Judge Hatton dated 23 April 2021.
4. The Judge notes at [19] the principal issues to be determined between the parties were:

   i. Whether the appellant satisfied paragraph EX.1 of Appendix FM.
   ii. Whether the decision was a proportionate interference with the protected family/private life right because of unjustifiably harsh consequences will be caused to the appellant and/or sponsor.
   iii. Whether the appellant satisfied paragraph 276ADE on the basis of there being very significant obstacles to his integration into Bangladesh.

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5. The Judge took as his starting point the earlier determination in accordance with the Devaseelan principles. The Judge notes that Judge Hatton's decision took into account an earlier decision of Judge Walters promulgated on 26 October 2015, and a decision of Judge Mensah promulgated on 23 August 2017, which considered the appellant's protection and human rights claims. The Judge sets out findings arising from Judge Hatton's decision at [22 (i)-(xv)] of the decision under challenge.
6. The Judge took into account submissions made in relation to issues said to be different from the earlier decision, including those relating to the sponsor's health needs.
7. At [31] the Judge notes Judge Mensah found, which Judge Hatton was unwilling to depart from, that the nature and extent of the sponsor's care needs had been embellished. The Judge finds the outcome of the PIP appeal is evidence that points in a similar direction for the reasons given from [32] of the decision under challenge.
8. The Judge considers paragraph EX.1 from [43] but did not find, for the reasons stated from there to [49], that any difficulties that may be encountered by the appellant or sponsor are sufficient to reach the very significant threshold, and/or that any difficulties that did arise could be overcome with the assistance of family members of the appellant and sponsor in Bangladesh.
9. At [50] the Judge noted no submissions were made in relation to paragraph 276ADE. The Judge analyses the factual basis but concludes the appellant did not meet the requirements of this provision of the Immigration Rules in any event.
10. The Judge's analysis of Article 8 outside the Rules commenced from [51]. The Judge finds the decision amounts to an interference with the appellant and sponsor's right to respect for their family and private life, meaning the issue is the fifth of the Razgar questions.
11. In relation to the proportionality assessment the Judge writes:

> 52. Turning to necessity and proportionality, I adopt the balance sheet approach. On the Respondent's side of the scales is the fact that the maintenance of effective immigration controls is in the public interest (s.117B(1) of the 2002 Act). In my view the public interest in this case is significant. The Appellant overstayed his work permit in 2005 and made no efforts to regularise his immigration status for five years. He has been found, on more than one occasion, to have been working when he did not have leave to do so. He has been adjudged in previous appeal proceedings to have embellished the sponsor's care needs and to have fabricated an asylum claim. He has therefore approached some immigration applications/proceedings with an element of dishonesty (by any reasonable, objective standard). He has enjoyed no lawful leave to remain in the UK since 24 March 2005, a significant period. He has a terrible immigration history.
> 53. It is in the public interest that persons who seek to remain in the UK are able to speak English (s.117B(2)). The Appellant first entered the UK in March 2004. In November 2022 he achieved an entry level certificate in spoken English (AB:283). He gave evidence using a Bengali interpreter and it is difficult to know precisely what that certificate means with respect to his ability to speak English. However, for the purposes of this assessment I am willing to treat this as a neutral factor because it is at least apparent from the certificate that he speaks some English.
> 54. It is also in the public interest that persons who seek to remain in the UK are financially independent (s.117B(3)) (in the sense of dependence from the state, cf Rhuppiah v SSHD [2018] UKSC 59). As was held in that case, "if claimants under article 8 do not speak English and/or are not financially independent, there is, for the two reasons given in almost identical terms in the subsections, a public interest which may help to justify the interference with their right to respect for their private or family life in the UK" [57]. Albeit the sponsor is reliant on benefits (PIP, ESA,

housing benefit, etc), there is evidence to suggest that the Appellant, when given the right to work (and even when not) will secure employment which is relevant to the risk of his becoming financially dependent on the State. I am prepared to treat this as a neutral factor.

55. On the Appellant's side of the scales is the fact that his relationship with the sponsor has subsisted since 2014. However, I am satisfied, as Judge Hatton was, that the sponsor was fully aware of the Appellant's immigration status (i.e. that he was in the UK unlawfully) when that relationship was established. I attach little weight to that relationship (cf. s.117B(4)).
56. No doubt the Appellant has established a private life in the UK since 2004, but his immigration status has either been precarious or, since 2005, unlawful. I attach little weight to such a private life (cf. s.117B(4) and (5)).
57. It is submitted that the Appellant would "certainly be able" to secure entry clearance if he applied from Bangladesh (para. 20 ASA). The case of Chikwamba v SSHD [2008] UKHL 40 was referred to but, as confirmed by the Court of Appeal in Alam & Rahman v SSHD [2023] EWCA Civ 30, the court in Chikwamba did not state any general rule of law which binds a Tribunal in relation to an article 8 ECHR assessment. The Court of Appeal confirmed the Upper Tribunal's approach in Younas (s.117B(6)(b); Chikwamba; Zambrano [2020] UKUT 00129 (IAC) and held that Chikwamba is only relevant where the Respondent has refused an application on the narrow procedural ground that the applicant should leave the UK and apply for entry clearance. The Appellant's application was not refused on that narrow procedural ground.
58. In the circumstances of this appeal, the strength of the public interest in maintaining effective immigration controls is greater than the strength of the Appellant and the sponsor's family life, and the Appellant's private life. The interference by the Respondent with their right to respect for the family life and the private life is both necessary and proportionate to the legitimate aim of promoting the economic wellbeing of the UK through the maintenance of effective immigration controls.
59. The Appellant's application was not refused on the narrow procedural ground identified above, but mention was made in the decision letter of that being an option to him. If the Appellant and sponsor decided that the Appellant ought to temporarily return to Bangladesh on his own to seek entry clearance, I do not consider that to be a disproportionate step to expect him to take. In light of the embellishment of the sponsor's care needs, I find that she can care for herself. There is no reason to expect that significant hardship would be caused to her during the period of separation.
60. Put another way, I am not satisfied that unjustifiably harsh consequences would be caused to any person by the decision. The Appellant and sponsor could continue their relationship in Bangladesh. Having entered into an Islamic marriage with the Appellant when he was in the UK unlawfully she must have contemplated the possibility that the relationship could not be maintained in the UK and would have to be continued in Bangladesh. For all the reasons I have set out above, no unjustifiably harsh consequences would result from that happening.
61. Accordingly, the appeal must be dismissed because the Respondent's decision is not unlawful under section 6 of the Human Rights Act 1998.

12. The appellant sought permission to appeal asserting the Judge made a material misdirection of law/committed a procedural impropriety by utilising his own knowledge as a former judge of the Social Entitlement Chamber to read into and, to an extent, go behind the decision of that Chamber in the appellant's partner's case. The grounds assert the Judges use of his own knowledge and recollection is unlawful and unfair which impacted the decision under paragraph EX.1(b) and Article 8 outside the rules.
13. Ground 2 asserts the Judges made a material misdirection of law in assuming the Social Entitlement Chamber rejected the evidence of Dr Basu when this is not stated in the decision which is silent on that evidence. The grounds argue

this led to him not giving proper weight to letters from Dr Basu and concluding that the Sponsor's care needs have been embellished.

14. Ground 3 asserts material misdirection of law/failure to consider material matters. The appellant's partner was not cross-examined meaning her evidence stood unchallenged which the grounds assert the Judge failed to take into account in reaching findings on EX.1(b).
15. Ground 4 asserts the making of an irrational finding at [47] in failure to consider how stigmatisation of those with mental health needs in Bangladesh will impact upon the sponsor and whether it would prevent her accessing the care she requires in Bangladesh.
16. Permission to appeal was granted by another judge of the First-tier Tribunal, the operative part of the grant being in the following terms:

> 2. The grounds argue that the Judge erred in going behind the SEC decision in the Appellant's partner's case and did not raise the point in the hearing to be addressed. It is also argued that the Judge speculated on the SEC panel's approach to the evidence of a Dr, the Judge did not properly consider the unchallenged evidence of the Appellant's partner and it was not clear why family support would minimise the stigma attached to mental health in Bangladesh.
> 3. The Judge expressly stated that having sat in the SEC he took judicial notice of the legal framework that applied but does not appear to have shared that with counsel or give counsel an opportunity to address the points he considered relevant. It is arguable that the Judge's approach was procedurally flawed, all the grounds may be argued.
> 4. The grounds disclose arguable errors of law and permission to appeal is granted.

Discussion and analysis

17. The appellant attended in person assisted by a Bengali (Sylheti interpreter. His wife was also in attendance with him.
18. The appellant was invited to make any further comments or submissions he wished to make in which he repeated his claim that he could not return to Bangladesh, based upon his arguments concerning the period of time he has been in the UK, lack of opportunity or connection, his wife's medical condition, and raising the question of how he would cope if he was returned.
19. Dealing with the grounds as pleaded, I find no unfairness made out at [24 – 37] of the determination on the basis the Judge used his experience and knowledge as a former judge of the Social Entitlement Chamber ('SEC') when considering the decision of that Chamber in relation to the sponsor.
20. The Judge notes at [24] that he can take notice of the legal framework underpinning appeals to the SEC having previously sat as a judge in that jurisdiction. The parties to the appeal were being advised that he possesses a particular knowledge, having been trained in and having sat in the jurisdiction, rather than assessing the weight to be given to the determination from the SEC without advising the parties of his previous judicial experience.
21. At [25] the Judge sets out in summary the findings of the SEC which found the appellant's partner, his sponsor, is entitled to PIP and Employment and Support Allowance at the standard rate of the daily living component for PIP, as she had scored eight points the required minimum for entitlement to the standard rate of daily living. That comment is supported by a reading of the decision of the SEC as that is what they decided.
22. The Judge notes at [26] the sponsor, although she scored 'nil' points in relation to the mobility component of PIP, it was decided by reason of depression and deafness she is significantly limited, resulting in the earlier decision to refuse assistance on this basis being set aside and replaced by an entitlement to the

standard rate of the daily living component. That finding is reflected in the body of the SEC's decision.

23. At [28] the Judge refers to the phrase "significantly limited" but also notes the basis on which a person is entitled to benefits which is governed by the Welfare Reform Act 2012. The Judge's finding at [29] as that the finding of the SEC indicates the sponsor's ability to carry out daily living activities is limited by her medical condition as opposed to significantly limited or severely limited This is a finding within a range of those reasonably opens the Judge on the evidence. There is nothing to show that the Judge's assessment set out in that paragraph is irrational or that a different interpretation is warranted, especially in light of the minimum level of scoring demonstrated in the SEC's findings.
24. I find no merit in Ground 1 which fails to identify legal error material to the decision to dismiss the appeal.
25. Ground 2 asserts the Judge erred in assuming the SEC panel rejected the evidence of Dr Basu claiming this is factually wrong as the SEC is silent on the evidence of Dr Basu.
26. The Judge clearly considered the evidence of Dr Basu along with the other evidence made available. The Judge does not assume the SEC ignored the medical evidence but properly reflects on the fact that the claims made by Dr Basu were not supported by the other evidence the SEC panel were able to consider. The Judge properly notes that in relation to those matters for which the sponsor was awarded zero points the Panel must have been satisfied that she could undertake such tasks without the need for assistance and without needing prompting as suggested by Dr Basu.
27. Having undertaken the required assessment of the evidence the Judge accepted at [34] an aspect of the report of Dr Basu the SEC panel agreed with, namely that relating to communication difficulties, both physical and mental, and the existence of bilateral hearing aids and depression. The fact the SEC decision does not specifically reject the report of Dr Basu does not mean they accepted his evidence. As it is silent the Judge was required to consider the relationship between the findings actually made and how they related to the medical report. No procedural unfairness or procedural error is made out in the Judge proceeding in this way. The conclusions the Judge arrived at are within the range of these reasonably open to the Judge on the evidence.
28. The Judge also refers to a more recent letter from Dr Basu, dated 21 March 2023, showing the sponsor's medical conditions have developed, and making claims as noted by the Judge at [37] in ignorance of the SEC panel decision. The Judge was entitled to place the weight he thought appropriate in all the circumstances upon that evidence when considering it together with all the other material relied upon by the appellant.
29. I find no legal error material to the decision to dismiss the appeal made out in relation to Ground 2.
30. Ground 3 asserts that as the sponsor gave oral evidence and was not cross-examined her testament stood unchallenged before the Judge.
31. It is a matter for a Presenting Officer whether they wish to cross examine a witness. Even though there was no cross examination that evidence did not stand as the determinative factor. The Judge clearly took into account the sponsor's medical condition and what she and others were claiming in relation to her abilities as part of the overall assessment of the evidence. It is not made out the Judge failed to consider the sponsor's statement. The Judge did not find, when taken together with the other evidence, that it warranted anything other than the decision under challenge being made. The Judge was not required to accept that evidence as being determinative and, as Miss Young noted in her submissions, there was little evidence in support of what was being claimed in

relation to the appellant and his partner's needs, sufficient to warrant a different finding.

32. I find no legal error made out material to the decision to dismiss the appeal in Ground 3.
33. Ground 4 asserts the Judge's finding at [47] did not make sense and is irrational as the Judge had failed to consider how stigmatisation would impact the sponsor and whether it would prevent her accessing the care she required in Bangladesh.
34. In [47] the Judge writes:

> 47. The point is, the Appellant's extensive family network is situated within a relatively small area south of one of Bangladesh's main cities, Sylhet. The sponsor's mother lives nearby too. I am satisfied that they will be able to call on this family network for support upon their return together. I have taken into account the CPIN's suggestion of societal stigma towards those with mental health difficulties but I see no reason why the existence of that family network would minimise the affect of such stigma.

35. Ms Young accepted, as had been suggested in the Ground, that the Judge may have made a typographical error by omitting a word from the above paragraph, in that the word "not" should appear between "would" and "minimise", so as to read that the Judge could see no reason why the existence of that family network would not minimise the effect of such stigma. That finding is in accordance with the other conclusions reached by the Judge.
36. The Judge has produced a clear detailed decision having considered all relevant factors. Findings are made that, with the exception of the missing word in [47], are adequately reasoned and can be understood. The point being made at [47] is that although there is evidence of social stigma towards those with mental health difficulties it was not established that the family would not be able to minimise the effect of such stigma or prevent the sponsor from accessing the care she required in Bangladesh. There was insufficient evidence to warrant an alternative finding.
37. I find the appellant has failed to establish legal error material to the decision to dismiss the appeal. His disagreement with the Judge's findings and repeating points relied upon before the First-tier Tribunal does not establish legal error material to the decision to dismiss the appeal. It has not been made out the Judge's finding are outside the range of those reasonably open to the Judge on the evidence.

Notice of Decision

38. No legal error material to the decision the First-tier Tribunal Judge has been made out. The determination shall stand.

C J Hanson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

20 February 2024