



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: HU/06655/2016

THE IMMIGRATION ACTS

Heard at Field House

On 4 December 2017

**Decision & Reasons
Promulgated
On 16 January 2018**

Before

**DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL**

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MR MD DALIM BOKSH PIR
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Ms K Pal, Home Office Presenting Officer

For the Respondent: Mr A Miah, Counsel instructed by Jalalabad Law Associates

DECISION AND REASONS

1. The respondent (hereafter the claimant) is a citizen of Bangladesh and is aged 40. In a decision sent on 5 July 2017 Judge Sweet of the First-tier Tribunal allowed his appeal against a decision of the appellant (hereafter the Secretary of State or SSHD) refusing to grant him leave to remain in the United Kingdom under para 276ADE of the Immigration Rules. The decision of Judge Sweet was appealed by the SSHD. On 23 October 2017 Deputy Upper Tribunal Judge (DUTJ) Chapman set aside the FtT decision

on the footing that there had been a failure to give clear or adequate reasons for allowing the appeal with reference to para 276ADE(vi).

2. I heard submissions from Ms Pal and Mr Miah.
3. The claimant's appeal can only succeed on the basis of Article 8 outside the Immigration Rules. The FtT judge considered he met the requirements of para 276ADE because in the judge's view there would be very significant obstacles to his integration into Bangladesh. Having considered the evidence accepted by the judge, I am unable to come to the same conclusion. The claimant had spent the majority of his life there and there was no evidence to show that he did not retain cultural, social and linguistic ties in that country. In addition, on the basis of the claimant's own evidence, he still had family ties in Bangladesh, albeit his father had died and all his three siblings are in the UK. The claimant still has a mother living there and the fact that she lives elsewhere in Bangladesh with maternal uncles is not a sufficient basis to conclude the claimant could not get some degree of support from family members in a country where extended family ties are the norm. The claimant has suffered from TB and has undergone five operations on his leg, and the medical evidence does not indicate that he is in danger of losing a leg even if he is not getting better.
4. It is not in dispute that the claimant has extensive inter-medullary osteomyelitis with sequestration and sinus to skin and that he had relapses. Mr Miah seeks to rely on the medical evidence that is before the Tribunal to establish that the claimant's TB would cause him serious difficulties on return. He submits that this evidence establishes that there would be no available treatment for his type of TB. In this context he refers to the letter dated 5 October 2017 from Professor Bari of the Bio Centre in Dhaka. He states that "[I]n Bangladesh, TB treatment is widely available throughout the country but not for the one in which [the claimant] has been suffering". In the previous paragraph he refers to being shown medical papers from the UK showing "he has been suffering from disseminated tuberculosis since September 2010", and "... anti-TB failed to work". There is also a letter dated 15 November 2011 from a Dr Kabir, a Consultant Physician and Orthopaedic Surgeon of Samorita Hospital Ltd stating that doctors in the UK "opined that only 10% of his illness was cured in the last 7 years. With this scenario, treatment options available in Bangladesh may not help him at all."
5. I do not consider I can attach significant weight to that letter. THE COI evidence on the subject does not identify any inability on the part of Bangladesh medical services to treat all aspects of TB; and the Home Office response to a COI request (response dated 11 May 2016) identifies a wide spectrum of available treatments. Neither doctor explains the extent of their knowledge of available treatment in Bangladesh countrywide. Further, the letter sent by Dr Sabet, Consultant Neurosurgeon at Samorita Hospital Ltd, whilst describing the claimant's as

a “difficult” case does not say that he cannot be treated in Bangladesh, only that it can “better be treated” in the UK.

6. The balance of the medical evidence suggests that neither in the UK nor in Bangladesh is it likely there will be a complete cure for the claimant; it is rather a matter of managing his condition. Whilst the inferior quality of treatment available in Bangladesh may present some difficulty for the claimant, I do not consider it would be a very significant one.
7. The claimant has also stated in a recent statement that a further difficulty he would face on return is that he has been involved in a long-standing land dispute. However, given that he does not see fit to mention this in his application, I do not consider this can present him with any significant difficulty on return. I, of course, have to consider whether the difficulties facing the claimant on return, taken cumulatively, would be very significant. Even so I do not consider that the evidence, properly assessed, establishes that.
8. The claimant’s failure to satisfy me he meets the requirements of the Immigration Rules means that I must commence assessment of his Article 8 circumstances on the basis that the Rules reflect the Secretary of State’s view of the public interest, to which some weight should be attached. When I turn to consider the considerations to which I must have regards under s.117B of the 2002 Act, the public interest considerations in his case are considerable. He is a long-term overstayer (since August 2005). He is not financially independent and has also been a burden on the public purse for a considerable period. He speaks little English. In addition, for reasons I have set out earlier when dealing with his circumstances under paragraph 276ADE, the claimant still has family, cultural, social and linguistic ties in Bangladesh. On the other side of the balance, it would appear that he has a family life with his sister, Julfa Begum. He lives with her and is supported by her, giving him food, shelter and expenses. His sister looks after him several hours a day and takes him to hospital. He has been in the UK since 2005. He has had TB for a lengthy period of time, necessitating five operations. He is still having medical treatment in the UK. As regards his conduct and character and involvement with the wider community, a letter from Sue Wilders of the Tuberculosis Outreach Team Lead dated 21 November 2017 states, inter alia, that “he has successfully made a life for himself in the UK”, that he “has been law abiding and respectful to all he meets and would be an asset to the UK”. In an earlier letter of 4 March 2016, she describes him as “well-integrated into the community he lives in here”.
9. The point was not advanced before me by Mr Miah but Ms Wilders in her early letters refers to the claimant’s concern that the community in the claimant’s village have reacted with “great hostility” towards him. The claimant has not produced any evidence to substantiate that claim and in any event, there are clearly a range of places in Bangladesh, most notably

Dhaka, where the claimant could access treatment for his TB, including as an inpatient away from any village hostility.

10. In weighing up the factors for and against the claimant when concluding the proportionality assessment, I remind myself that when it comes to health cases brought on Article 8 grounds the threshold of harm that has to be shown is a high one both in respect of Article 3 and Article 8 ECHR: see **GS (India)** [2015] EWCA Civ 40. In my judgment the claimant's health circumstances, even when taken together with other circumstances particular to him, do not suffice to cross the threshold so as to show they are compelling or otherwise entitle him to succeed on Article 8 grounds.

Notice of Decision

The decision of the FtT judge has already been set aside for material error of law.

The decision I re-make is to allow the claimant's appeal.

No anonymity direction is made.

Signed:

Date: 15 January 2018



Dr H H Storey
Judge of the Upper Tribunal