Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: HU/07943/2017**

THE IMMIGRATION ACTS

Heard at Field House
On 30 November 2018

Decision & Reasons Promulgated
On 18 December 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE DOYLE

Between

MUHAMMAD ARIFUR RAHMAN
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr J Sarker (counsel) instructed by M-R Solicitors
For the Respondent: Mr N Bramble, Senior Home Office Presenting Officer

DECISION AND REASONS

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.

2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Housego promulgated on 25/06/2018, which dismissed the Appellant's appeal on all grounds.

Background

3. The Appellant was born on 20/12/1981 and is a national of Bangladesh. On 06/06/2017 the Secretary of State refused the Appellant's application for further leave to remain in the UK.

The Judge's Decision

4. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Housego ("the Judge") dismissed the appeal against the Respondent's decision. Grounds of appeal were lodged and on 02/10/2018 Tribunal Judge Hollingworth gave permission to appeal stating

> "It is arguable that the Judge has not set out a sufficient analysis of the available evidence provided on behalf of the appellant in relation to the state of the health care system in Bangladesh set against the medical history of the appellant and the question of the degree of obstacles arising pursuant to the criteria in the immigration rules taking into account the location to which the appellant was to return in Bangladesh. At paragraph 50 of the decision the Judge refers to medication for heart problems being available in Bangladesh. There are hospitals in Dhaka which provided care for those with heart problems. Having made these findings of fact the Judge went on to consider the reasons for the findings of fact and conclusions. In the analysis set out under the heading "reasons for findings of fact and conclusions" the Judge dealt with the article 8 claim shorn of its medical element. The Judge dealt with article 3. At paragraph 54 the Judge went on to refer to the facts not breaching the Secretary of State's policy. The Judge referred to the submissions in the context of the wider article 8 consideration. The Judge stated that the appellant had no present medical needs. His medical needs had been met. The Judge continued by stating that he now needs medication and not to smoke. He lives with ischaemic heart disease. The appellant has no other treatment at present. The Judge then concluded at paragraph 55 that there were not very significant obstacles to the reintegration of the appellant into life in Bangladesh. It is arguable that the Judge has not set out a sufficient analysis under the heading "reasons for findings of fact and conclusions" of the available medical evidence in relation to the issues arising from the appellant living with ischaemic heart disease before reaching the conclusion set out at paragraph 55 of the decision. Further, it is arguable that more weight should have been attached to the period of time spent in the United Kingdom by the appellant in his role as a student. It is arguable that compelling circumstances existed requiring a proportionality exercise to be undertaken in relation to the question of whether there would be a breach of article 8 outside the rules attributing more weight to the period spent in the United Kingdom and the appellant's role as a student."

The Hearing

5. (a) For the appellant, Mr Sarker moved the grounds of appeal. He told me that although there are 12 grounds of appeal, he would group them under two headings

(i) a failure to take account of medical evidence in carrying out the article 8 proportionality exercise, &

(ii) a failure to give the appellant credit for the length of time he was a bona fide student in the UK.

(b) Mr Sarker told me that the was a wealth of medical evidence placed before the Judge which, he says, the Judge ignored. He told me that the Judge's error is that there was neither sufficient analysis of the evidence of the availability of health care in Bangladesh nor of the corrupt state of health care system in Bangladesh. He told me that there is inadequate provision for the appellant's health needs in Bangladesh and that the Judge had failed to take account of clear evidence of failings in the health care system in Bangladesh.

(c) Mr Sarker told me that the appellant suffers from ischaemic heart disease, and is permanently at risk of fatal heart attack. At [52] of the decision the Judge sets consideration of the medical aspects of the appellants case aside before considering article 8. He told me that that is a clear error of law and that the appellant's illness & need for treatment is a crucial part of his overall article 8 claim.

(d) Mr Sarker told me that the appellant entered the UK as a student and pursued studies until 2016. He told me that the Judge failed to take the appellant's activities in the UK into account and placed too much emphasis on section 117B of the 2002 Act. He told me that, overall, the Judge's article 8 assessment is flawed. He asked me to set the decision aside.

6. For the respondent Mr Bramble told me that the decision does not contain errors, material or otherwise. He told me that the Judge has written a carefully structured decision in which he takes account of each strand of evidence. He told me that the Judge considered the medical evidence, consider the appellant's illness and his need for treatment, and factored those considerations into the overall article 8 assessment. He told me that the Judge correctly directed himself in law before reaching a decision well within the range of reasonable conclusions. He urged me to dismiss the appeal and allow the decision to stand.

Analysis

7. At [7] of the decision, the Judge records that the respondent accepts the appellant has been in the UK for 9½ years and has a serious heart condition. Between [8] and [11] the Judge summarises the appellant's position. Between [12] and [20] the Judge correctly directs himself in law.

8. At [21] and [22] the Judge lists the documentary evidence before him, including a letter from a doctor in Bangladesh about the availability of treatment and the problems within the health care system in Bangladesh. After recording submissions, the Judge summarises the appellant's position between [28] and [32]. The Judge's findings start at [38] (even though he describes [38] to [43] as "*observations on the appellant's case*"). At [45] the Judge finds that the appellant has had two heart

operations and suffered acute myocardial infarction in 2012. At [50] the Judge finds that there are hospitals in Dhaka which provide coronary care.

9. The appellant misreads [52] of the decision. In the first sentence of [52] the Judge declares that he considers aspects of the appellant's article 8 claim over and above the appellant's illness and his need for medication care and treatment. From [53] the Judge carries out an article 3 and 8 assessment taking full account of the appellant's health and his care needs. The Judge takes correct guidance in law. At [60] the Judge finds that the appellant's circumstances do not cross the threshold to engage article 3. That finding is not challenged (and is unassailable on the facts as the Judge found them to be). The Judge goes on to find that, even taking account of the appellant's illness and care needs, the decision is not a disproportionate interference with the right to respect for article 8 private life.

10. This case is only about article 8 private life. The appellant does not have family in the UK.

11. In N v UK Application 26565/05 the Grand Chamber upheld the decision of the House of Lords and said that in medical cases Article 3 only applied in very exceptional circumstances particularly as the suffering was not the result of an intentional act or omission of a State or non-State body. The European court of Human Rights said that Article 3 could not be relied on to address the disparity in medical care between Contracting States and the applicant's state of origin. The fact that the person's circumstances, including his or her life expectancy, would be significantly reduced was not sufficient in itself to give rise to a breach of Article 3. Those same principles had to apply in relation to the expulsion of any person afflicted with any serious, naturally occurring physical or mental illness which might cause suffering pain or reduced life expectancy and required specialist medical treatment that might not be readily available or which might only be available at considerable cost. Notably the court held that no separate issues arose under Article 8(2) in that case and so it was not even necessary to consider the Claimant's submission that would removal would engage her right to respect for private life.

12. In MM (Zimbabwe) v Secretary of State for the Home Department [2012] EWCA Civ 279 the Court of Appeal noted that the courts had declined to say that Article 8 could never by engaged by the health consequences of removal but they had never found such a breach and had not been able to postulate circumstances in which such a breach was likely to be established. The only cases where the absence of adequate medical treatment in the country to which a person is to be deported would be relevant to Article 8 are those where it is an additional factor to be weighed in the balance with other factors that engaged Article 8 (paras 17 – 23). This approach was endorsed by Laws LJ in GS(India) and Others 2015 EWCA Civ 40 (para 86).

13. What is argued for the appellant is a comparison of the quality and availability of health care in the UK against the quality and availability of health care in Bangladesh. An economic argument is also advanced because the appellant says he

cannot afford healthcare in Bangladesh. It is well settled that the "better v worse" prism is the wrong approach in law.

14. In GS (India); EO (Ghana); GM (India); PL (Jamaica); BA (Ghana) and KK (DRC) v SSHD [2015] EWCA Civ 40 it was held that if the Article 3 claim failed, Article 8 could not prosper without some separate or additional factual element which brought the case within the Article 8 paradigm: the core value protected being the quality of life, not its continuance. That meant that a specific case must be made under Article 8. At paragraph 111, Underhill LJ said

> "First, the absence or inadequacy of medical treatment, even life-preserving treatment, in the country of return, cannot be relied on at all as a factor engaging Article 8: if that is all there is, the claim must fail. Secondly, where Article 8 is engaged by other factors, the fact that the claimant is receiving medical treatment in this country which may not be available in the country of return may be a factor in the proportionality exercise; but that factor cannot be treated as by itself giving rise to a breach since that would contravene the 'no obligation to treat' principle."

15. The Judge considers the appellant's article 8 case taking account of a combination of the appellant's medical condition and the other components of article 8 private life. He is correct to do so. The caselaw rehearsed above indicates that if there was only a medical aspect to this appeal, the appellant could not succeed on article 8 private life grounds.

16. The Judge considers paragraph 276ADE of the rules. In SSHD v Kamara [2016] EWCA Civ 813 it was held that the concept of integration into a country was a broad one. It was not confined to the mere ability to find a job or sustain life whilst living in the other country. It would usually be sufficient for a court or tribunal to direct itself in the terms Parliament had chosen to use. The idea of "integration" called for a broad evaluative judgment to be made as to whether the individual would be enough of an insider in terms of understanding how life in the society in that other country was 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 and family life.

17. In the case of 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 some of which might be described as generic. Factors such as intelligence, employability and general robustness of character could clearly be relevant to that issue. The broad evaluation required could also include the extent to which a parent's ties might assist with integration.

18. On the facts as the Judge found them to be there are not very significant obstacles to the appellant's integration in Bangladesh. The Judge found that there is health care and medication available to the appellant in Bangladesh. The quality of medication care and treatment may not be to the standard found in the UK; It may

not be as easy to access medication care and treatment in Bangladesh, but medication care and treatment exist in Bangladesh. The appellant is an intelligent, resourceful, educated man who has spent most of his life in Bangladesh. Those findings, made by the Judge, fully support the Judge's conclusions.

19. The appellant cannot meet the requirements of the immigration rules. The appellant is not a father, he does not have a partner, he is an independent adult. The appellant cannot meet the requirements of appendix FM. Because of the length of time that the appellant has been in the UK and his age he does not meet the requirements of paragraph 276 ADE of the rules.

20. The Judge clearly carries out an article 8 proportionality assessment outside the rules. The Judge correctly directs himself in law. The Judge's findings of fact and his conclusions are well within the range of reasonable conclusions available to the judge.

21. In Shizad (sufficiency of reasons: set aside) [2013] UKUT 85 (IAC) the Tribunal held that (i) Although there is a legal duty to give a brief explanation of the conclusions on the central issue on which an appeal is determined, those reasons need not be extensive if the decision as a whole makes sense, having regard to the material accepted by the judge; (ii) Although a decision may contain an error of law where the requirements to give adequate reasons are not met, the Upper Tribunal would not normally set aside a decision of the First-tier Tribunal where there has been no misdirection of law, the fact-finding process cannot be criticised and the relevant Country Guidance has been taken into account, unless the conclusions the judge draws from the primary data were not reasonably open to him or her.

22. A fair reading of the decision demonstrates that the Judge applied the correct test in law. The Judge carried out a holistic assessment of all of the evidence. There is nothing wrong with the Judge's fact-finding exercise. In reality the appellant's appeal amounts to little more than a disagreement with the way the Judge has applied the facts as he found them to be. The appellant might not like the conclusion that the Judge arrived at, but that conclusion is the result of the correctly applied legal equation. The correct test in law has been applied. The decision does not contain a material error of law.

23. The decision does not contain a material error of law. The Judge's decision stands.

DECISION

The appeal is dismissed. The decision of the First-tier Tribunal, promulgated on 25 June 2018, stands.

Signed 7 December 2018

Deputy Upper Tribunal Judge Doyle