



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/00034/2020

THE IMMIGRATION ACTS

Heard at Field House
On 9 June 2021

Decision & Reasons Promulgated
On 24 June 2021

Before

UPPER TRIBUNAL JUDGE SHERIDAN

Between

NUMAN AHMED
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: Mr Khan, instructed by Berlad Graham Solicitors

For the Respondent: Mr Kotas, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This has been a remote hearing to which both parties have consented. The form of remote hearing was video by Microsoft Teams (V). A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. I did not experience any difficulties, and neither party expressed any concern, with the process.
2. The appellant is a citizen of Bangladesh, born on 11 February 1992. He entered the UK as a visitor in 2009, with leave until 2 February 2010. He

applied for leave to remain on 1 February 2010 but this was refused on 5 March 2010. He has remained since then in the UK without leave.

3. On 2 October 2019 the appellant made a human rights claim. It was refused by the respondent on 9 December 2019. The appellant then appealed to the First-tier Tribunal, where his appeal came before Judge of the First-tier Tribunal Robertson ("the judge"). In a decision promulgated on 6 April 2020, the appellant's appeal was dismissed. The appellant is now appealing against this decision.

The appellant's evidence before the First-tier Tribunal

4. Given the grounds that are being argued before me, it is important to set out in detail some of the evidence that was before the judge.
5. The appellant relied on a letter from Mamum Rashid, dated 30 September 2019. Mr Rashid states that he met the appellant through a mutual friend. He states:

"we are very close now and we spend time with each other. I would say he is one of my best friends..."

6. The appellant also relied on a letter from Abu Hasan, dated 27 September 2019. Mr Hasan states:

"I met [the appellant] through a mutual friend around six years ago. Since then we have been close and we spend time with each other and our other friends from the area."

7. The appellant also relied on a letter dated 1 October 2019 from Rumel Miah. Mr Miah states:

"[The appellant] is known to my wife and children and comes around often to spend time with us.... I would like him to stay in the UK where he is safe and surrounded by his friends."

8. The appellant relied on several photographs showing him surrounded by family and friends, including photographs with friends on a beach dated "summer 2019"

9. The appellant relied on two psychiatric reports from a consultant psychiatrist Dr Lawrence. The first report is dated 18 November 2013. The second (addendum) report is dated 10 February 2020. Dr Lawrence seems to have been told, and to have formed the impression, that the appellant does not interact with anyone outside of the home or even leave the home. For example, within the addendum report he stated:

"[The appellant] lives a very restricted life, just staying at home"

"[H]e told me that he cannot mix with the wider community"

"He has no life outside the home and makes no contribution to the home... He has no hobbies; he does not even watch TV"

"It is of great concern that this young man has literally done nothing for the last six years or so. He is not involved to any extent with the local Bangladeshi community. He does not complete chores or errands on behalf of his brother or his sister-in-law. It is very unusual for somebody without a psychotic illness to be so passive and inactive"

10. The appellant needed an interpreter for the consultation with Dr Lawrence. At the outset of the report Dr Lawrence stated that the interpreter was very experienced and he was sure that difficulties in communication were related to the appellant's mental state rather than to language barriers. However, later in the report he stated:

"[W]hich illness, or combination of illnesses, he has specifically, is impossible to say; he needs to be assessed by a Bangladeshi speaking psychiatrist"

Decision of the First-tier Tribunal

11. The appellant's argument before the First-tier Tribunal was that he suffers from depression but has been unable to access health services due to his immigration status. He claimed to be reliant on his brother and extended family in the UK and to lack any support in Bangladesh, where his father is deceased and mother elderly. It was argued on the appellant's behalf that his removal would violate article 8 ECHR as he would face very significant obstacles integrating into Bangladesh and therefore the conditions of paragraph 276ADE(vi) of the Immigration Rules were satisfied. It was not argued that the appellant's removal would breach article 3 ECHR.
12. The judge did not accept that the appellant would lack family support in Bangladesh as there was no evidence that his father was deceased or that his mother would be unable to assist him.
13. The judge noted that the appellant has not accessed any medical treatment in the UK and that no evidence was submitted to show that suitable medical treatment would not be available in Bangladesh.
14. The judge stated that he had considered Dr Lawrence's report. He noted that Dr Lawrence was unable to give a clear diagnosis and that his ability to diagnose the appellant was impacted by requiring an interpreter. The judge stated in paragraph 11(x) that:

“Dr Lawrence noted that the appellant lives a restricted life, staying at home and that he could not mix with the wider community. However, photographs submitted include the appellant not only with extended family but also with friends. I also have letters submitted in support of the appeal from friends who state that they are very close to the appellant and spend time with him.”

15. The judge found that although the appellant would face difficulties returning to Bangladesh he would not face serious hardship and would be able to adapt. The judge stated in paragraph 12:

“The appellant has adapted in the past to a new life in the UK and could settle back to life in Bangladesh, a country with which he is familiar”

Grounds of Appeal

16. The grounds of appeal argue that it was “completely contradictory to the evidence” for the judge to find that the appellant had adapted to life in the UK when, according to Dr Lawrence, he “effectively lives the life of a recluse within the home”. It is stated that the appellant has never worked, has no means to support himself, and the evidence does not support that he would settle back into life in Bangladesh.
17. The grounds state that the judge failed to properly consider the seriousness of the appellant’s mental illness and that it was wrong for the judge to find that the use of an interpreter affected the ability of Dr Lawrence to diagnose the appellant.
18. The grounds also argue that the judge failed to take into consideration the evidence about the inadequacy of mental health treatment in Bangladesh.
19. It is also argued that the judge failed to take into account, and properly analyse, the relationship between the appellant and his brother.
20. The grounds also argue that the judge erred by not taking into account that the appellant applied for leave on 1 February 2010 and by giving weight to the appellant’s inability to speak English, given “his serious mental health problems and his cloistered life”.

Analysis

21. Before addressing the individual grounds, I pause to highlight two troubling aspects of Dr Lawrence’s report, which I raised with Mr Khan at the hearing.
22. Firstly, the appellant’s solicitor provided Dr Lawrence with a letter from Mr Rashid saying that he and the appellant are close friends who spend a lot of time with each other, a letter from Mr Hasan saying that he and the appellant are close and spend time with each other and their mutual friends from the

area, a letter from Mr Miah who says that the appellant visits him often to spend time with him, his wife and children, and photographs of the appellant at family events and on holiday with friends in 2019. Yet, Dr Lawrence took as his starting point, and appears to have assumed, when assessing the appellant's mental health, that the appellant hardly ever leaves the house and does not interact with anyone outside of it. It is nothing short of remarkable that Dr Lawrence makes no reference to these letters and photographs in his report (other than to say he read them) and does not address the obvious incongruity between them and his assumption that the appellant does not interact with anyone.

23. I put this to Mr Khan whose response was that most of the photographs are from over five years ago and show the appellant with family - although he acknowledged that there are photographs of the appellant on a beach in 2019 with friends. Mr Khan argued that there is a difference between the appellant associating with people with whom he feels comfortable and not being comfortable going out and undertaking activities such as shopping. He submitted that the psychiatric report paints a more accurate picture of the appellant's life than the letters from friends. Mr Khan did his best to reconcile the irreconcilable but there is nothing he said that explains the incongruity between the clear evidence of the appellant having an active social life and Dr Lawrence's assessment where it is said he lives effectively as a recluse. Nor was Mr Khan able to shed any light on why Dr Lawrence did not address in his report the letters and photographs which, on their face, paint a picture of the appellant that is entirely at odds with what he states in his report.

24. Secondly, Dr Lawrence appears to have sought, and relied upon, the opinion of the interpreter as an aid to forming his own view about the appellant. On pages 10 and 11 of the addendum report Dr Lawrence stated the following:

"I then spoke to the interpreter who told me "he seems lost"" (page 10)

"I asked the interpreter what level of work this man could do - would he be responsible to stack shelves in Sainsbury's. The answer was negative but perhaps he could be a kitchen porter, just washing up. That was the opinion of the interpreter." (page 11).

25. Mr Khan acknowledged that it was not appropriate for Dr Lawrence to ask the interpreter his opinion about the appellant but maintained that the opinion of the interpreter could be ignored without the rest of the report being undermined.

26. In my view, the confidence that can reasonably be placed on Dr Lawrence's report is reduced because Dr Lawrence has - or at least has given the impression that he has - relied on the interpreter's opinion about the appellant without explaining why he felt it was appropriate to take this unusual step and without providing any information about the interpreter's background

and expertise that might explain why he was qualified to provide an opinion about the appellant.

27. The only evidence to support the appellant's claim that he suffers from a serious mental health disorder are the reports of Dr Lawrence. No medical records have been submitted. The appellant and his brother say that this is because the appellant is unable to register with a GP. Whether or not that is the case, given the shortcomings identified in respect of Dr Lawrence's report, there is, at most, only a very weak basis for finding that the appellant has a mental health problem of any kind.
28. I now turn to consider the grounds of appeal.
29. The grounds submit that it was contradictory to the evidence for the judge to find that the appellant had adapted to life in the UK when he lives the life of a recluse. This ground plainly has no merit because there was a substantial body of undisputed evidence before the judge showing that the appellant has an active social life in the UK. This evidence, as discussed above, includes three letters from close friends of the appellant, who he sees regularly, and photographs of the appellant at social events and on holiday.
30. The grounds submits that the judge failed to properly consider the seriousness of the appellant's mental illness and that it was wrong for the judge to find that the use of an interpreter impacted upon the ability of Dr Lawrence to diagnose the appellant. This is plainly lacking in merit because Dr Lawrence explicitly stated in the addendum report that the appellant needed to see a Bangladeshi speaking psychiatrist in order to be diagnosed. As to the weight the judge attached to Dr Lawrence's assessment, for the reasons given above, it was open to the judge to attach only limited weight to it. Indeed, it is difficult to see how any judge could legitimately have given the report more than little weight.
31. The grounds submit that the judge failed to take into consideration the evidence about the inadequacy of mental health treatment in Bangladesh. This ground has no merit because, for the reasons explained above, there was no reliable evidence before the judge that the appellant suffers from a serious mental health condition that requires treatment. In any event, as pointed out by Mr Kotas, the judge considered the position the appellant would face in Bangladesh in paragraphs 11 (i)-(iv) and gave adequate reasons for finding the appellant would not be without support.
32. The grounds submit that the judge failed to take into account, and properly analyse, the relationship between the appellant and his brother. I disagree. There was very little evidence before the judge about the relationship. The witness statement of the appellant's brother is extremely short (just over one page) and contains hardly any detail. The judge, at paragraph 11(x), stated

that the appellant's brother was "rather vague and somewhat inconsistent". The fact that adult siblings live together does not, without more, establish a family life within the meaning of article 8 ECHR. On the basis of the evidence before him, the judge was entitled to find that the relationship did not engage article 8 ECHR. In any event, even if (which I do not accept) the judge fell into error, the error was not material because the judge was entitled to find, for the reasons given, that the appellant's removal from the UK would be proportionate under article 8 ECHR.

33. The grounds submit that the judge erred by not taking into account that the appellant applied for leave on 1 February 2010. The judge stated at paragraph 14 that the appellant became an overstayer in 2009. This is incorrect as he became an overstayer in 2010. This mistake is immaterial because it has no impact on the assessment of whether the appellant's removal from the UK would be disproportionate.
34. The grounds submit that the judge should not have given weight to the appellant's inability to speak English due to his mental health condition. This argument has no merit because, for the reasons explained above, there was not, before the judge, reliable evidence to support a finding that the appellant has a serious mental health condition.
35. Mr Khan argued that consideration should be given to article 3 ECHR, even though it was not raised in the First-tier Tribunal, because of the change in the applicable test following *AM (Zimbabwe) v Secretary of State for the Home Department* [2020] UKSC 17. The contention that the appellant's removal from the UK would violate article 3 is entirely lacking in merit given the absence of reliable evidence to show that he suffers from a serious health condition.

Notice of Decision

36. The appeal is dismissed.
37. The decision of the First-tier Tribunal did not involve the making of a material error of law and stands.

Signed

D. Sheridan

Upper Tribunal Judge Sheridan

Dated: 16 June 2021