IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case Nos: UI-2022-000378
UI-2022-000377

First-tier Tribunal Nos:
HU/07970/2020
HU/06930/2020

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 02 February 2023

Before

UPPER TRIBUNAL JUDGE RIMINGTON

Between

ZUBAIR ALAM CHY
SUNJIDA ALAM ETU
(NO ANONYMITY ORDER MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellants: Mr A Mackenzie instructed by Duncan Lewis Solicitors
For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

Heard at Field House on 3 November 2022

DECISION AND REASONS

1. The appellants appeal against a decision of First-tier Tribunal Judge Manuell (the judge) promulgated on 23rd December 2021 and it was submitted that the judge materially erred in dismissing the appeals under Article 8 of the European Convention on Human Rights by failing to direct himself properly on the requirements of paragraph 276ADE(1)(vi) (very significant obstacles to

integration) and in misapplying the test in finding there would be no very serious obstacles to reintegration.

2. The grounds submitted the judge materially erred in finding that much of the appellants' evidence was exaggerated and unreliable and inadequate reasons were given for the findings. It was asserted that much of the reasoning was speculative, for example, the judge reasoned the appellant could pursue his personal injury claim from abroad particularly in the light of the letter from his solicitors which in fact states he would have to attend a number of different medical appointments with different medical experts. Secondly, the judge reasoned against the appellant because he stated those from the middle classes or higher or well-off and value education are likely to hold progressive views towards the disabled but failed to refer to any background evidence. Thirdly, the judge reasons that mixing between the sexes amongst young people was controlled but fails to set out any background country information in support of that reasoning. Fourthly, the appellants would have been unable to arrange a secret marriage in Bangladesh. Fifthly, no one knew a child better than the parents.

3. Sixthly, it was hardly likely that the second appellant did not need to show the application form to her parents and they would have almost certainly wished it. Seventhly, there was a large Bangladeshi community in the UK concentrated in East London so there would have been a significant risk of a chance of a social encounter. Eighth, the significant risks of an abortion. Ninth, preparation for the second appellant to join the first appellant in the UK would have taken time and required extended contact.

4. Additionally in evaluating credibility the judge failed to treat the first appellant as vulnerable in view of the medical evidence that he suffered from PTSD, depression and stress and anxiety and suicidal ideation contrary to **SB (vulnerable adult: credibility) Ghana [2019] UKUT 398 (IAC)**.

5. Overall the above materially impugned the judge's finding that the appellants' claims about their respective families' hostility was improbable and there was no reason to fear ostracism. The judge failed to take into account or engage with the documents such as emails from the first appellant to his father and a reply saying "soon I will kick you out from my will property", and secondly an email from the second appellant to her mother in which she refers to the lack of support and the abortion.

6. The judge referred to the possibility of the second appellant finding work in the future but failed to assess the likelihood of the first appellant finding working and did not do so in the light of his physical and mental abilities and in the light of social attitudes towards the disabled. The judge's finding on the economical childcare in relation to the second appellant was speculative without foundation.

7. The judge found that healthcare was available in Bangladesh but failed to properly assess the adequacy of such healthcare including accessibility particularly in the light of the background country material and the CPIN Bangladesh: Medical and Healthcare issues, version 1 May 2019, with which the judge failed to engage. There was a general shortage of healthcare professionals in Bangladesh and private clinics and hospitals were located in urban areas and

government facilities for treating those with mental disabilities were inadequate. There was reference specifically to section 9.1.2.

8. The judge found that the first appellant had all that the NHS could provide to improve his mobility but this was unsupported given the medical evidence confirmed he needed considerable input from a prosthetic point of view. The judge speculates the first appellant has had no or limited right to free NHS treatment particularly given he was here lawfully when the accident occurred and his claim that he is now exempt from payment.

9. The judge erred in dismissing the appeals under Article 8 in concluding there would be no unduly harsh consequences on relocation to Bangladesh. The wording of GEN.3.2. refers to unjustifiably harsh consequences, not unduly harsh consequences (see [41]). The unduly harsh test applied in deportation cases. Secondly, the judge misdirected himself in stating that this "involves a higher test or threshold" whereas the use of exceptional in the context of Article 8 is not to be used as setting a particularly high threshold.

10. Alternatively the judge failed to give adequate reasons for concluding that the refusal was not a disproportionate breach of Article 8 and failed to adequately engage with the detailed arguments in the appellant's skeleton argument. For example, the judge failed to consider and apply a balance sheet approach as per **Hesham Ali** [2016] UKSC 60. There was no consideration of Section 55 or an evaluation of the best interests of the child.

11. Additionally a written skeleton argument was provided which set out that the first appellant was pursuing an undergraduate postgraduate studies with leave to remain between 2014 and 2019, when he was involved in a road accident in April 2019 resulting in a partial amputation of his right leg. It is asserted he needed to be in the UK whilst pursuing his personal injury claim and adequate healthcare would be unavailable and unaffordable in Bangladesh. The couple married in 2017 but it was asserted their marriage was opposed by both their families. The first appellant was unfit to work because of his disabilities, and the second appellant would be unable to work because she would be looking after their young son born in the UK on 9 April 2020.

12. The skeleton argument contended that the decision was "unfair" because it did not appear that either appellant was cross-examined about how they managed to develop their relationship while living with their respective families and how they arranged a marriage ceremony. It was wrong to reject witness evidence without allowing a witness the opportunity to respond to the matters.

13. I am not persuaded that this challenge on the failure of the judge to put issues to the appellants was specifically raised in the grounds of appeal and that it can a key basis for challenge. The skeleton argument simply stated that the judge failed to have regard to significant evidence and speculated in relation to the appeal.

14. In oral submissions Mr Mackenzie submitted that a number of the findings of the judge were unmoored and there was no reference to country evidence. For example, at [28] the judge found the appellant would not be able to continue a relationship after they were married when the second appellant was living with her parents because they would be watching but there was no evidence of the

domestic arrangements and no evidential basis for that finding. At [29] there is a suggestion of an 'elaborate deception' when the second appellant attempted to join her husband in the UK but there was no evidence of that. Similarly, at [30] the finding was speculation. At [31] the judge displayed a misreading of the evidence and I was referred to paragraph 7 of the witness statement of the second appellant. It was not just after the accident that her parents did not like the first appellant. At [32] the judge had no evidential basis for his findings and none of those points arose from cross-examination. The appellant should have been asked about the points raised and it was clear that the appellants may have had an answer to how they developed their relationship and how they had concealed the visa application and indeed how the second appellant was able to leave Bangladesh in 2019.

15. The findings of the judge rested on uncorroborated and contradictory assumptions about Bangladesh.

16. When making findings in the alternative that the appellants would be able to integrate the judge did not take into account the appellant's mental health disability. There was no evidence on the wife being able to find work and childcare. The second appellant had not worked in Bangladesh.

17. Secondly, when considering healthcare the judge had not properly considered the medical facilities and not properly considered the CPIN. The appellant had produced evidence in this regard. The judge was referred to pages 47 and 48 of bundle 3. The appellant needed to be in the UK to conduct his personal injury claim.

18. The judge had not properly considered the rejection of the family or the interests of the child. The judge was wrong to say that there was a higher test in relation to Article 8. Mr Mackenzie submitted that there was either no evidential basis for the judge's findings or he failed to ask for an explanation or if he asked to take that into account when reaching his conclusions.

19. In this case the findings lacked evidential basis and were a result of the judge overlooking evidence. Further, the judge failed to take into account the information in relation to health and cherrypicked from the evidence and [25] and [26] demonstrated clear contradictions. It may be difficult to arrange a marriage and keep that a secret but that was the evidence of the appellants. It was pure supposition on the part of the judge as to behaviour in Bangladesh. There was no record of a question that was put to the appellant. The judge made a series of damaging findings without reference to the background evidence.

20. Mr Clarke submitted that much was made of what was not asked but there were clear references in the record of the decision to the oral evidence. What was clear and what was not challenged was that the father was paying for the second appellant's studies.

21. The issues in this appeal were straightforward and this was a private life claim with the relevant Rule of paragraph 276 in relation to very significant obstacles to integration. Crucially the claim was that the appellants were disowned and the family hostility and the health situation with no adequate treatment prevented the appellants from returning to Bangladesh.

22. The judge considered and rejected the issue of family hostility and found in the alternative no very significant obstacles even if no family support was forthcoming. He went on to find that relocation would be proportionate. In doing so the judge was mindful the first appellant had entered as a student in 2014 at 21 years of age and the appellants had married in 2014 and the second appellant had entered the UK in 2018. The judge in the light of this scenario found this was a "choice" case and critically at [34] made findings that the appellants could reintegrate; they spoke the language and were educated and brought up in Bangladesh and had made recent visits. They had friends there and possessed superior tertiary qualifications and the first appellant had obtained his MBA five months after his accident and although he had applied for a desk job as a marketing manager he had been invited to reapply later. This was not a rejection out of hand.

23. Whatever the family hostility or healthcare it was impossible to see how the appellants could succeed in relation to SSHD v Kamara [2016] EWCA Civ 813 which required a broad evaluative assessment of possible reintegration.

24. The main substance of the judge's findings related to credibility findings and exaggerated evidence. Mr Clarke referenced Volpi [2016] EWCA Civ 813 which held that the Appellate Tribunal should not interfere with the judge's fact-finding unless it was plainly wrong. This was not a case in which the facts were such that no reasonable judge could have found them. The mere fact that a judge had not mentioned a specific piece of evidence did not mean it was overlooked. The judge needed to consider all of the evidence and the weight attached was a matter for the judge. The decision should only be set aside if it was rationally insupportable. Decisions could always be better expressed but that was not an error of law.

25. Looking through that lens at the relevant facts the judge reasoned against the appellants because the first appellant could pursue his claim abroad. The grounds did not suggest that communication could not take place. The complaint is predicated on the need for further assessments but there is no further evidence on that requirement from a medical expert since a letter dating from two years prior to the claim. What was the judge supposed to make of the evidence which would stop the appellant from pursuing his claim abroad?

26. At [25] it was asserted the judge had erroneously found progressive views and had failed to refer to the background evidence but there was no inconsistency. It was the *appellant's* case that his family was conservative, and a fair reading of the second appellant's witness statement was that she maintained her family was too. But the judge looked at this case in the round. The appellants had married in 2014 and the judge looking at the circumstances overall found their account was not credible. The judge had not made irrational findings and indeed at [25] the judge noted the appellant intended to return to Bangladesh. It was the judge who made the findings on the progressive views at [26]. Both appellants say the families were strict but this was from the appellants' own evidence.

27. Those findings at [27] by the judge should be seen against the context as explained above and were not inadequately reasoned or speculative; it would be difficult to arrange a marriage under the noses of parents when, on the one hand it was said that the first appellant was sent abroad by his father to remove him

from the second appellant and on the other a relationship was being conducted from 2014 onwards. The finding at [28] was also rational. Even in a large house it would be very difficult to hide a relationship when someone was carrying on a secret marriage, there would be no single indication of some sort of communication.

28. However [29] is the real problem for the appellants. As a record of evidence the second appellant claimed she persuaded her father to allow her to come to the UK to study and her father paid for her studies. The father would need to have an understanding of the application and the supporting evidence because he was supplying the funds but it was suggested that despite that, she did not make an application as a dependant but as an application to study. It was difficult to see how the judge's conclusions were irrational and how the second appellant could have hidden that she was going to another country on an entirely different application. It was suggested that the deception was required even after she had arrived because the parents were paying so would wish to keep abreast of her studies.

29. The second appellant then visited in April 2019 and it was difficult to understand why the second appellant would go back in such circumstances. Her evidence is that she was forced to have an abortion. If they were going to force her to have an abortion and they thought she was studying why did they not stop her from returning to the UK when they were paying for studies. This is an incredible story and the judge is merely stating that the story did not add up. It was clear that the first appellant visited in 2017 and saw the wife during that visit. That said, he was supposed to have been sent away so he did not have contact and so the alleged disapproval and the risks of discovery were very high.

30. At [33] the judge pulling all the threads together found the case the families were hostile was improbable and through the lens of **Volpi** and taking into account the appellants' claim and looking at the circumstances overall the judge properly directed himself when he made the findings.

31. Mr Clarke submitted that the remaining points of criticism had no real essence to them and on careful scrutiny the judge did not accept that if there was a controlled mixing of sexes it would be difficult to arrange a secret marriage when the families were trying to separate them.

32. Paragraph 3 of the grounds asserted the judge failed to engage with the documentation but the Tribunal must assume that the judge took into account the evidence unless there are reasons to indicate otherwise. It was difficult to see how the appellant's email to his father asking for forgiveness, and the email of the second appellant regarding an abortion, could undermine the findings of the judge. That said, the failure to do so was immaterial given the claimed hostility.

33. Paragraph 4 of the grounds referred to a criticism of [34] of the decision and the likelihood of the appellant finding work in the future and the lack of consideration of childcare but the appellants put in no evidence. From the evidence it would appear that they could work. The second appellant at [18] said that she had not even looked for work and she thought she would not be able to work as she had no qualifications. That did not however mean that she could not work.

34. The whole complaint was predicated on unsustainable findings that the families were not hostile but the judge took into account the support given so far. In relation to health that required evidence of what the needs were and what was available in Bangladesh but the judge had stated that he had taken into account the refusal letter evidence, and therein the CPIN confirmed that whilst there was no equivalent care, there is care available from both private and public sectors. The appellant had the second appellant to help him and family members who had paid for him to date, and further there were the family members of the second appellant who had clearly given the second appellant a lot of money. It was quite clear to the judge that they were from the upper middle classes.

35. It was difficult to see how the judge's findings at [36] and [37] engaging with private healthcare could be impugned, simply that he may have to travel to seek healthcare.

36. Paragraph 6 of the grounds related to the health requirement for the first appellant to have considerable input and that he must undergo further surgery on his leg. The documentation included an NHS letter dated 9th September 2021 but this merely suggested he should contact the limb fitting centre and there was nothing else which went to the issue of the input from a prosthetic point of view.

37. In relation to the assertion of speculation on the NHS fees the road traffic accident occurred in April 2019 and the appellant's leave expired in October 2019.

38. There was a reference to 'unduly harsh' rather than unjustifiably harsh but given the findings in relation to the Rules as rejecting the hostility of the family and the documentation on the care there was nothing to render the decision disproportionate.

39. In terms of the reference to a higher threshold mentioned by the judge at [41], all the judge was saying was that there were no additional factors which would render the refusal disproportionate. In terms of materiality unless the appellant could demonstrate something else it was difficult to see the materiality of the dubious wording. The judge had not failed to give reasons for the decision not being disproportionate. The judge had gone through all the factors.

40. In relation to Section 55 of the Borders, Citizenship and Immigration Act 2009 when considering **EV (Philippines) [2014] EWCA Civ 874** and noting the child was only 2 years old and neither parent had any right to be here, it was difficult to see how any consideration of Section 55 could assist or was material. The second appellant asserted there was a risk to the child but the judge had rejected family hostility.

41. In terms of Section 117B the appellants were supported by social services and their leave was either precarious or unlawful and the factors either militated against the appellants or were neutral factors.

Analysis

42. The judge was clearly aware of the circumstantial background to the appeal such that the first appellant, born in 1993, entered the UK to study in February 2014 and the second appellant, born in 1996, entered the UK with valid leave as

a student dependent spouse on 26th April 2018, [2] -[4]. Thereafter, in April 2019, the first appellant sustained life changing injuries through a motorbike accident whereupon he lost part of his lower leg. The appellants' leave expired in October 2019 and to that date they have lived in the UK precariously. The evidence given was that they were supported by a loan in the UK by a friend [19]. The judge at [16] set out that the appellants had produced a bundle of documents and made reference to the extensive medical evidence, the most recent being a letter dated 27th September 2021. The judge at [14] recorded that the first appellant had indeed paid for his NHS treatment in the United Kingdom but was now exempt from payment. It was also noted at [14] that they had been helped by a charity.

43. Many of the submissions from Mr Clarke were cogently argued and as he stated **Volpi v Volpi** [2022] EWCA Civ 464 confirms at 2(i) that

> '*An appeal court should not interfere with the trial judge's conclusions on primary facts unless it is satisfied that he was plainly wrong'*.

44. The judge had the advantage of considering the oral evidence given before the FtT. Although it was asserted that the judge failed to take into account that the first appellant was a vulnerable witness the judge clearly found that the appellants were "bright, articulate and personable" at [21], and noted at [24] that the first appellant had completed the studies for which he came to the UK which included a Masters at degree level apparently completed post his accident. Again throughout the decision, it was clear that the judge appreciated the vulnerabilities of the appellant having set out the medical evidence as noted above.

45. The Court of Appel in **Lowe v SSHD** [2021] EWCA 62 referred to and repeated the judgment of Lewison LJ in *Fage UK Ltd. v Chobani UK Ltd.* [2014] EWCA Civ 5 at paragraph 114 as follows:

> *"Appellate courts have been repeatedly warned, by recent cases at the highest level, not to interfere with findings of fact by trial judges, unless compelled to do so. This applies not only to findings of primary fact, but also to the evaluation of those facts and to inferences to be drawn from them. The best known of these cases are: Biogen Inc v Medeva plc [1977] RPC1; Piglowska v Piglowski [1999] 1 WLR 1360; Datec Electronics Holdings Ltd v United Parcels Service Ltd [2007] UKHL 23 [2007] 1 WLR 1325; Re B (A Child) (Care Proceedings: Threshold Criteria) [2013] UKSC 33 [2013] 1 WLR 1911 and most recently and comprehensively McGraddie v McGraddie [2013] UKSC 58 [2013] 1 WLR 2477. These are all decisions either of the House of Lords or of the Supreme Court. The reasons for this approach are many. They include.*
>
> *i) The expertise of a trial judge is in determining what facts are relevant to the legal issues to be decided, and what those facts are if they are disputed.*
>
> *ii) The trial is not a dress rehearsal. It is the first and last night of the show.*

iii) Duplication of the trial judge's role on appeal is a disproportionate use of the limited resources of an appellate court and will seldom lead to a different outcome in an individual case.

iv) In making his decisions the trial judge will have regard to the whole of the sea of evidence presented to him, whereas an appellate court will only be island hopping.

v) The atmosphere of the courtroom cannot, in any event, be recreated by reference to documents (including transcripts of evidence).

vi) Thus even if it were possible to duplicate the role of the trial judge, it cannot in practice be done".

46. I am not persuaded that the various points made in ground (i) even cumulatively materially undermine the overall findings of the judge. The findings made overall and throughout the decision were adequately reasoned for the reasons I shall explain.

47. In relation to the personal injury claim, which is ongoing, it is part of the evidence that the appellant had instructed solicitors [23] and acknowledged that they take years to settle. As the judge rightly pointed out the solicitor and appellant can communicate by "various effective means" and should the appellant need to he "can always return to the United Kingdom for a trial if that becomes necessary". There is no sustainable challenge to that finding. As Mr Clarke pointed out the letter from Ashwood Solicitors dated 30th October 2019 stated it would be guided in terms of what assessments needed to be undertaken by the medical expert but no further letter to that effect had been produced from the original medical expert in line with that 2019 letter and indeed nothing further in relation to any litigation or letter from the solicitor was produced since 30th October 2019. The judge cannot be criticised for his approach and finding that the appellant could conduct litigation from abroad bearing in mind the solicitor's letter was 3 years old and nothing further had been produced. The judge's conclusions were open to him.

48. The judge at [25] addressed the views of the family on education and discrimination compared with the majority of Bangladesh society and indeed it is clear that the first appellant's parents were supportive of education through the funding by the father of his son, and according to the second appellant's evidence that her parents supported education for women abroad. It was the *appellant's'* case that his family was conservative and, as submitted, a fair reading of the second appellant's witness statement says the same about her family. There was no challenge to the judge's key finding at [25] that the first appellant "reiterated" his intention to return to Bangladesh at the end of his studies and this tended to undermine his claimed fear of his and his wife's family. That finding came before the judge who noted the first appellant's written evidence regarding his wife's family was "ambivalent" and it indicated the "wife's family had accepted him in the past".

49. The judge having looked carefully at the case with reference to the background evidence which refers to "Bangladesh society is in general conservative" at [26]

nonetheless found that in the light of the facts as presented, they did not support the view that the family were anything other than more progressive. That was not a speculative finding but based on the facts. The judge concluded that it was difficult to see how the appellants were able to socialise and communicate unless there was a degree of tolerance within the families and that indeed was a rational conclusion open to the judge. Again as a result the judge found the claim of hostility from the families was not credible. Those findings were open to the judge. Indeed at [32] the judge noted that the father had been paying for the first appellant's education [32].

50. What is clear from the evidence as recorded by the judge is that the appellants married in Bangladesh in 2014 well before the accident. The judge's conclusion that it was difficult to see how the appellants could have arranged a secret marriage at the time "under their parents' noses" especially as the "first appellant stated that two of his close friends attended the ceremony" and there was "an official record of the marriage" is not contradictory or speculative. There was nothing irrational or illogical in those findings. They were based on the evidence of the appellants. The judge was aware the appellants had married some years before the accident in 2014 in Bangladesh and the second appellant did not come to the United Kingdom until much later and thus would have had to maintain the deception as to her marriage for sometime; further the documentation for marriage shows the appellants gave their parents' names and home addresses.

51. The judge referred to these findings nonetheless as "peripheral" and, crucially made findings in the alternative from [28] onwards. The judge assessed the evidence before him and simply did not accept that families did not know of the marriage until after the accident in April 2019 and therefore did not accept that because the father continued to pay for the first appellant's education that he was hostile (see the finding at [32]). Those findings therefore when analysed in context of the friends attending a marriage in Bangladesh some years beforehand and an official record of the marriage are not speculative but logical. The judge identified the relevant material and it is clear he considered the evidence overall; the judge does not have to reference every single piece of evidence to justify the reasons given such as the email communication between the father and son. The case made by the appellant was clear.

52. Although the judge's findings as to whether the parents knew what communication their daughter was making when living with them until 2018 and, that parents knew their children better than anyone, were criticised, the critical finding at [29] is in my view sustainable. Crucially the second appellant's claim was that she persuaded her father to let her study in the UK and that he paid for those studies. It was entirely open to the judge to conclude that supporting evidence would be required by the application including evidence of how the second appellant would be maintained within the UK. The second appellant submitted a Tier 4 (General) Student Dependant form and not a Tier 4 Student application in her own right. That the judge did not accept her evidence on that basis was clear from his description of the application as an "elaborate deception". Although there was criticism of the judge not exploring the matter further it was clear from the evidence of the second appellant that she had told her parents that she was making an application to study. That was clearly contrary to the visa that she was granted and not speculation on the part of the judge in relation to facts. Similarly at [30] the judge concluded that she would

have to keep her parents informed of her studies whilst in the UK. The judge merely stated that there was a significant risk of news reaching Bangladesh [of the marriage] because the appellants lived in the East End. That was a fair observation but in any event not critical to the findings of the judge overall and not material and, even if speculation, not a material error.

53. Again the judge having noted that the appellants both maintained their parents were conservative (although the judge found in the alternative) it was open to him at [31] to find that the abortion was improbable, not least because the family allowed her to return to the UK having disclosed to her sister that she had married who in turn had disclosed it to her parents.

54. Although I find that the findings in relation to the said ostracism by the parents based on the judge's various and alternative findings from [23] to [33] were open to the judge and sustainable and those findings included the risks of discovery the claimed secret marriage were high [32], the judge nevertheless made further findings in the alternative on the basis that he might have been mistaken. The judge at [34] said this:

> *"If for any reason the tribunal were mistaken to reach those primary findings, the tribunal finds in the alternative that both the Appellants would be able to reintegrate in Bangladesh without any serious obstacles. They speak the language, were educated and brought up in Bangladesh, and have made recent visits. Both Appellants have friends in Bangladesh. Both have useful work experience gained in the United Kingdom. The First Appellant has superior tertiary qualifications. The only job application from Bangladesh he chose to produce was for a desk job, a marketing manager for a clothing manufacturer. The reply did not reject him out of hand, but invited him to reapply when he had recovered from his accident. Read fairly the letter indicates the possibility of a employment".*

55. Nothing in this overlooked the test relevant that is in **Kamara** which held that

> *"'Integration' calls for a broad evaluative judgment of whether the individual will be enough of an insider in terms of understanding how life in that other country is conducted and a capacity to participate in it, have a reasonable opportunity to be accepted, operate on a day-to-day basis and build up within a reasonable time a variety of human relationships".*

56. The judge added at [35[that

> *"While as noted above social attitudes towards the disabled in Bangladesh may tend towards the discriminatory, the country background evidence also shows that there are many disabled persons in Bangladesh. Bangladesh has adopted the UN Convention on Disability and its parliament has enacted the Persons with Disabilities Rights and Protection Act 2013".*

Here the judge showed that he had referenced the relevant background material. The judge went on to find that the first appellant would be able to find work and bearing in mind the evidence unchallenged that they were educated and supportive of each other, those findings were open to the judge. The judge's finding as to the second appellant was criticised in relation to childcare and her ability to work. I was not directed however to specific recent evidence that the

second appellant would not be able to find a job or that childcare was not available in Bangladesh or that any such evidence was ignored by the judge on that count. Further to the **Secretary of State v Kaur [2018] EWCA Civ 1423** at [57] their assertion which in this case would include that work or economical childcare was not available is insufficient.

57. The judge turned to the medical evidence and noted that the appellant had had all the NHS could provide to him and improve his mobility and pain. It is noted that the appellant had been provided with a prosthetic and indeed had resisted surgery to date. That was evidence within the bundle. There was further evidence that medical facilities were available in Bangladesh, as referenced in the decision letter, although not equivalent and as the judge noted the wife's support was critical. The judge specifically at [38] referenced public health treatment in Bangladesh and evidently had referred to the background material. Again as pointed out there was no evidence that the medical facilities suitable for the appellant would not be available. There was no firm evidence that medical input from a prosthetic point of view would not be available.

58. I find that overall the judge did address the country background information and properly addressed the issues on healthcare. He accepted as can be seen from [36] the necessity of continuity of care and found the appellant could, if required, travel long distances to access specialist resources. The criticism of the judge's approach to the translation of medical notes goes no way to undermining the overall findings. English is widely spoken in Bangladesh and the first appellant had studied in English in this country for many years and was found to speak the relevant language in Bangladesh.

59. At [37] the judge addressed the appellant's mental health and pain and suicide attempts but identified that there was no indication that he was presently suicidal (that is supported by the documentation) and further noted he takes antidepressants and such care was available in Bangladesh. Although he may have to pay for treatment free or low cost treatment would be available and that was also found by the judge at [38].

60. The problem for the appellant in terms of the challenge was that I had been taken to nothing in any of the medical evidence that facilities in Bangladesh were inadequate such that it would be disproportionate. As the judge recorded at [38] the Tribunal had found that he and his wife would be able to find employment and that option of purchasing treatment would be available to them. The appellant had not provided information or evidence that employment would not be available to him. It was not contested that there were private facilities available. What is suggested is that the facilities are not adequate but there was simply no specific comment on the medical facilities. The judge identified at [38] that free or low cost treatment was available in Bangladesh and although he noted that there was no right of the appellant to free NHS treatment in the UK it is evident that he did in fact record that the appellant had paid for some of his treatment in the UK on the NHS. The judge was entitled to find that having noted the appellants could secure work that they had the option of paying for treatment.

61. Having found no error in relation to the approach to paragraph 276ADE(1)(vi) [40] the judge found 'taking all of these matters into account' the refusal was not disproportionate.

62. I turn to the judge's reference to "very serious obstacles". The judge twice set out in recording the respondent's case at [4] and in the appellants' case at [20] ,a reference to "very significant obstacles" to their return to Bangladesh. His reference to very "serious obstacles" to their return to Bangladesh does not indicate a material error of law. "Serious" can be synonymous with "significant" and had the adjective "very" been omitted from the judge's assessment at [40], I would have been more concerned but the judge's terminology does not in any way indicate a material error of law. The reference at [41] of "unduly harsh consequences" was clearly a transposition when the judge meant to refer to unjustifiably harsh consequences; the test set out in Agyarko [2017] UKSC 11, and the second sentence in [41] clearly demonstrates that the judge did consider the relevant factors and found that it was not disproportionate. That does not indicate the application of an elevated test. The failure to set out a "balance sheet" approach advocated in Hesham Ali is not necessarily an error of law. The judge considered the substance of the appellants' claims and for the reasons given above found they did not constitute either very significant obstacles to reintegration into Bangladesh or alternatively the relocation would have unjustifiably harsh consequences and thus be disproportionate.

63. As I have indicated above I am not persuaded that the additional challenge to the judge's decision in terms of fairness in putting points to the appellants in oral evidence was properly set out in the grounds of appeal. Nonetheless, the lacunae and contradictions in the evidence put forward by the appellants were plain for example that the father was paying for the second appellant's studies when she entered on a dependant's visa.

64. I accept there was no specific reference to Section 55 of the Borders, Citizenship and Immigration Act 2009 and the best interests of the child. That however in my view does not undermine the overall findings or result in a material error of law. The child is 2 years old and simply his best interests are to remain with his mother and father. In the light of EV (Philippines) [2014] EWCA Civ 874 neither parent can have any right to be here and it is difficult to see how the child's interests would differ from those of the parents and thus the omission does not constitute a material error of law. The second appellant asserted that there was a risk to the child but the judge rejected the family hostility and even if those findings were set aside in relation to the hostility, it was found that the appellants could live an independent life elsewhere in Bangladesh. I find there is no error. The judge found at [34] that the appellants would be able to reintegrate and had friends in Bangladesh and both had useful work experience gained in the United Kingdom. The first appellant had superior tertiary qualifications and noted that he had applied for a job as a marketing manager and the reply did not reject him out of hand but invited him to reapply. There was evidence in the bundle that the second appellant was in fact working.

65. In sum, I find no material error of law in the decision of the First-tier Tribunal.

66. I dismiss the challenge and the decision of First-tier Tribunal Judge Manuell shall stand and the appellants' appeal remains dismissed.

Helen Rimington

Judge of the Upper Tribunal Rimington
Immigration and Asylum Chamber

Signed 31st January 2023