



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-003851
On appeal from: HU/51190/2021
IA/05661/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 28 May 2023

Before

UPPER TRIBUNAL JUDGE GLEESON

Between

IDRIS ALI
(NO ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Mr Mark Symes of Counsel, instructed by City Heights Solicitors
For the respondent: Mr Stephen Whitwell, a Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The appellant challenges the decision of the First-tier Tribunal dismissing his appeal against the respondent's decision on 1 April 2021 to refuse him leave to remain on human rights grounds based on his private life in the UK. He is a citizen of Bangladesh.
2. For the reasons set out in this decision, I have come to the conclusion that the appeal must be dismissed.

Procedural matters

3. **Vulnerable appellant.** The appellant has depression and anxiety. He is a vulnerable person and is entitled to be treated appropriately, in accordance with the Joint Presidential Guidance No 2 of 2010: Child, Vulnerable Adult and Sensitive Appellant Guidance.

First-tier Tribunal

4. The First-tier Judge dismissed the appeal. He accepted that the appellant did have a private life in the UK but gave it little weight, by reference to part 5A of the Nationality, Immigration and Asylum Act 2002 (as amended).
5. The appellant appealed to the Upper Tribunal and permission was granted.

The appellant's case

6. The background and the appellant's history are set out briefly at [7]-[10] of Mr Berry's submissions. The appellant came to the UK as a student in October 2009, completing a foundation course in business studies at Holborn College and an undergraduate degree in applied accounting at Anglia Ruskin University. His leave was extended to 31 December 2013.
7. In 2014, with his application still pending, the appellant began studying at Sanjari International College, for an Extended Diploma in Strategic Management and Leadership. The College's sponsor license was revoked and the appellant was unable to obtain a further CAS because he could not produce to Ealing Hammersmith and West London College the 28 days of bank statements which they asked him to produce, in line with the requirements of the Immigration Rules HC 395 (as amended).
8. The applicant made an application for leave to remain without a supporting CAS, asking for the decision to be deferred until he could obtain a CAS (so outside the normal 60 days' to obtain a replacement CAS). The respondent proceeded to make the decision without a CAS. The appellant's application for further student leave was refused on 10 March 2015 and his appeal dismissed on 8 January 2016. He has been appeal rights exhausted since 2016.
9. Various further applications for leave to remain were unsuccessful and the appellant has now had no leave to remain for 7 years. He has been supported and accommodated in the UK by the kindness of relatives and friends.
10. In 2016, the appellant's father suffered two strokes and had cancer. He died in 2017. The appellant was unable to travel to see his father in his last year, because of his immigration circumstances. He would like to visit his mother and help her in her grief.
11. Following his father's death, the appellant's mental and physical health declined. He has been diagnosed with depression and anxiety.

The 2016 decision

12. In that decision, First-tier Judge Bennett recorded that the appellant's case was that he was unable to obtain a CAS in time for his application to the respondent. There was no evidence that the appellant had paid the college's fees. The appellant's evidence was that he had been unable to produce bank statements demanded by the college. That was not the respondent's fault.
13. Judge Bennett was not satisfied as to any very significant obstacles to his integration in Bangladesh, where he had lived until coming to the UK. The

appellant still maintained a bank account in Bangladesh, with First Security Islami Bank Limited, from which he had produced a bank statement and a solvency certificate for the hearing.

14. The appellant was young enough to rebuild in Bangladesh and had never been given any reason to believe that he would be able to stay in the UK regardless of whether he continued to qualify for leave to remain. He could study there, or if he found a college here which would issue him a CAS, he could apply for entry clearance. He could continue his private life in Bangladesh, studying or working, and making new friendships there. He could maintain his contact with UK friends by modern means of communication.
15. Judge Bennett dismissed the appeal. His decision is the *Devaseelan* starting point for any further appeal.

The 2022 decision

16. In 2020, the appellant made a human rights claim for leave to remain on the basis of his private life in the UK. On 1 April 2021, the respondent refused it with an in-country right of appeal.
17. First-tier Judge Ferguson dismissed the appeal. However, in so doing, he overlooked a supplementary bundle which was before him.
18. The appellant appealed to the Upper Tribunal.

Upper Tribunal proceedings

19. At the hearing on 12 January 2023, it was common ground that omitting to consider the evidence in the supplementary bundle was a material error of law. Mr Adrian Berry of Counsel represented the appellant on that occasion. I set aside the First-tier Tribunal decision and directed as follows:

“(1) The decision in this appeal has been set aside and will be remade in the Upper Tribunal;

(2) No further evidence is to be admitted without the leave of the Tribunal and a rule 15(2A) application;

(3) Mr Berry’s written submissions to stand as the appellant’s skeleton argument for the resumed hearing;

(4) The respondent has leave to file a position statement, not later than 7 days before the resumed hearing;

(5) The appeal is to be listed on the first available date with a time estimate of half a day. If the parties disagree with the time estimate, they are to inform the Upper Tribunal forthwith, giving reasons; and

(6) Liberty to apply.”

20. No rule 15(2A) application or further evidence was received. This appeal falls to be remade on the basis of the evidence advanced up to and including 12 January 2023.

21. Mr Berry was unable to appear today: Mr Mark Symes, who appeared, had prepared his own skeleton argument. In the interests of justice, I have had regard to both skeleton arguments, to the oral submissions today, and to the respondent's position statement, as well as to the evidence before the First-tier Tribunal and the supplementary bundle.

The supplementary evidence

22. The original supplementary bundle before the First-tier Tribunal contained:

- (a) Evidence of the appellant's registration on 9 July 2013 as a player in the Middlesex Championship, on behalf of Ealing Tree Bridges Cricket Club;
- (b) His Red Cross Society badge (undated);
- (c) A letter dated 18 March 2022 from iCope Camden South Team, the Psychological Therapies Service of Camden and Islington NHS Foundation Trust,
- (d) A witness statement from Mohammad Fazley Rabbi (dated 21 March 2022); and
- (e) Two reports from Dr Christina Nallet MD, dated 20 December 2020 and 13 March 2022.

23. At the error of law hearing, the appellant also adduced:

- (a) An updated witness statement from him (dated 8 March 2023);
- (b) A letter from Jean-Luc Leiritz, his NHS Peer Coach (dated 6 February 2023);
- (c) A letter from Cynthia Obianyor, Population Health Nurse (dated 19 January 2023); and
- (d) A clinical letter from Dr Gina Waters, consultant psychiatrist (dated 16 January 2023).

24. All of that evidence is relevant to the remaking of the decision in this appeal.

Witness statements

25. The appellant in his latest witness statement explained his father's dreams for him and the financial and personal difficulties which had meant that he could not achieve what his father had wanted. He considered that his father's strokes and subsequent death were his fault.

26. The appellant had not been able to contribute to the UK as he would have wished, due to his status. He had signed up to be an NHS Volunteer Responder but due to his lack of identity documents, he had not been able to work for them. He had trained in social care work and wanted to work as a carer and contribute to society. The appellant had been helping as a Community Reserve Volunteer for the Red Cross, working as a Covid-19 Community Vaccination Outreach Support Volunteer.

27. He had played cricket for Ealing Three Bridges until 2014, when due to his mental struggles, he stopped playing and had since been 'constantly tired and socially withdrawn'. Cricket had been a passion and he hoped one day to be able to play again, when he was in a better mental state.
28. The appellant had developed strong and supportive friendships in the UK, and had an exceptionally close bond with his friends. He knew that he had the potential to complete his studies and would wish to do so and realise his father's dream. His ex- fiancée had now married someone else, as she did not want to wait for him.
29. Unemployment was high in Bangladesh; the appellant would not be able to work there and would have no 'referrals from influentials' or support network there.
30. A witness statement from the appellant's friend, Mohammed Fazley Rabbi, dated 21 March 2022, said that he had known the appellant for 10 years and regarded him as like a younger brother. Mr Rabbi helped the appellant with his immigration applications as required. The appellant had been suffering a mental health condition 'due to lack of right to work, immigration status, family detachment, father's demise, incomplete education etc' which had been worse during the pandemic. There was a huge socio-economic difference in Bangladesh after the pandemic, and he would have difficulty adapting on return.

Dr Nallet's evidence

31. Dr Christine Nallet is an experienced locum general practitioner who trained at the University of Louvain, Belgium, before obtaining a Diploma in Tropical Medicine at the Prince Leopold Institute in Antwerp; an MSc in Human Nutrition at the University of London School of Hygiene and Tropical Medicine; Diplomas in Family Planning, Child Health and Chinese Herbal Medicine, and the RCGP substance misuse certificate. She has had training in psychosexual medicine, some courses in forensic medicine, and has worked training medical students on family planning (including contraceptive implants) as well as acting as an appraiser for the Kings College PCT and personal learning awards.
32. In 1987-1988, Dr Nallet worked with Médecins Sans Frontières (MSF) in Sudan and in Lebanon, dealing with chronic diseases such as tuberculosis and leprosy, vaccination in war-torn areas, and running a child feeding centre. In 1992, she was in charge of a MSF project in Chad, Africa, leading on nutrition, food technology, and paediatric work.
33. Dr Nallet began her GP training in 1993, followed by Senior House Officer roles in 1994-1995 (presumably also part of her training). Since 1996 she has had various roles, mainly as a locum GP. The First-tier Judge considered her original May 2019 report and her updating report of 20 December 2020. To that can now be added a further supplementary report of 13 March 2022.
34. In her updating opinion on 13 March 2022, Dr Nallet's opinion remained that the appellant suffered from ongoing moderate to severe mixed depression and anxieties. He felt that he had failed his father and himself by being unable to complete his education in the UK or make his late father and his family proud of him. He had lost his fiancée, because of his lack of educational attainment and immigration status.

35. Dr Nallet recommended psychotherapy and antidepressants, neither of which the appellant was taking, and the opportunity for some educational pride before the appellant returned to Bangladesh. She stated that psychological and medical treatment was less available there:

“They are also estranged to such treatments as this mental distress was caused by the possibility given to a young person to come to another country of higher studies and remaining in that country for 13 years without any achievement.”

36. Under the heading ‘Risk and Prognosis’, Dr Nallet repeated her opinion that the appellant needed long-term psychotherapy and medical treatment. Settling back into ‘the estranged environment’ of Bangladesh, where he had lost his social place and connections, and had no work, would be a risk for the appellant’s mental rehabilitation:

“He needs the ability to obtain a tool that can show he is not a failure and build back his self-esteem and a new life with some strong foundation, such as a skill nearly achieved by acquiring a diploma in a country that was once considered prestigious to have a diploma from.

Going back to his country could undermine his spirit further and strengthen the impulses he has that his life has become a burden. No-one can quantify the suicide feelings of anyone, but reducing its probability to happen is what has to be considered to improve the chance of success of reaching a good prognosis.”

37. This later evidence, overlooked in the decision of the First-tier Tribunal, is in line with the opinions given in Dr Nallet’s two previous reports. As Judge Jackson stated when granting permission to appeal, it is the third report which sets out Dr Nallet’s qualifications as set out above.

Evidence from iCope Camden

38. A letter dated 18 March 2022 from Ms Taniye Welmillage, a Psychological Wellbeing Practitioner with Camden and Islington’s Psychological Therapies Service (iCope Camden South Team) confirmed that the appellant had reported severe symptoms of anxiety and depression in January 2022 and that he scored highly for risk, ‘indicating a deterioration of his mental health, which continues to be ongoing’. He was awaiting further assessment by the Core Team in Kentish Town.

Evidence from the Kentish Town Core Team

39. The latest bundle contains three updates on the appellant’s medical circumstances, from Dr Gina Waters, Mr Jean-Luc Leiritz, and Ms Cynthia Obianyor, all of the Kentish Town Core Team, who have been working with him since his referral to them by Ms Welmillage on 10 March 2022:

- (i) On 16 January 2023, Dr Gina Waters stated that the appellant had been treated by the team for recurrent depressive disorder, and that she had personally reviewed him in March and July 2022, when he had poor sleep and appetite, with low mood and suicidal ideation, as well as anxiety and

panic attacks. His symptoms were treatment-resistant: various antidepressants had not resolved them fully. He was currently on mirtazapine (45 mg at night). Dr Waters asserted that the appellant's symptoms were made worse by his lack of immigration status and that he had no support network in Bangladesh;

- (ii) Ms Cynthia Obianyor, Population Health Nurse with the same Core Team, noted that she had been having regular contact with the appellant since his referral to the Kentish Town Core Team. He had begun on 15 mg mirtazapine which had been increased gradually to 45 mg, but without much effect on his depressive symptoms. She noted that other antidepressants which the appellant had used in the past had not helped.

Ms Obianyor asserted that the appellant's symptoms were made worse by his immigration status, that he had no support network in Bangladesh and was estranged from his family because of his inability to complete his studies; and

- (iii) Mr Jean-Luc Leiritz, an NHS Peer Coach with the same team, had been looking after the appellant since his referral by Ms Welmillage on 10 March 2022 (see above). Mr Leiritz describes his letter as a 'support letter' and sets out the appellant's contentions as they appear in his witness statement.

Mr Leiritz expressed no professional opinion but hoped that the appeal would be decided in the appellant's favour 'so that he can start to live a fulfilling life again which he deserves'.

Other evidence

40. The appellant also relied on country evidence, specifically a report published by Cambridge University Press for the Royal College of Psychiatrists on 2 August 2021, entitled *The current state of mental healthcare in Bangladesh: part 1 - an updated country profile*; a Human Rights Watch report which indicates that Bangladesh's healthcare system was overwhelmed by the Covid-19 pandemic; the CIA World Factbook 2021 on Bangladesh; and a press report from the Dhaka Tribune dated 20 April 2021, referring to the difficulties for even skilled workers in obtaining employment in Bangladesh following the Covid-19 crisis.

Submissions

Respondent's position statement

41. For the respondent, Mr Whitwell relied on the position statement and on the respondent's refusal letter. The issue for the Tribunal was whether, on the evidence, the appellant would face very significant obstacles to his reintegration in Bangladesh, as required by paragraph 276ADE(1)(vi) of the Rules, or in the alternative, whether there was any residual claim under Article 8 ECHR for which leave should be granted outside the Rules.
42. The appellant had lived in Bangladesh until just before his 21st birthday. His mother and siblings were still there, and he had spent most of his life in

Bangladesh. He speaks both Bengali and English.

43. The medical evidence produced did not demonstrate very significant obstacles to reintegration: he has moderate to severe depression and anxiety. Dr Waters' letter of 16 January 2023 stated that his symptoms were not fully resolved, but did not clarify whether they were likely to resolve.
44. Dr Nallet was a general practitioner, not a consultant, and while her report recognised the constraints of medical evidence, she had descended into the arena. The appellant was using a peer coach, had been prescribed medication which was available in Bangladesh, and had been advised to undertake a course of psychotherapy, which had not yet occurred. The 'very significant obstacles' relied upon continued to be principally the appellant's disappointment at not having fulfilled his father's dreams for him.
45. Little weight could be given to the appellant's private life, by reference to section 117B(4) and (5) of the Nationality, Immigration and Asylum Act 2002 (as amended), because all of it developed in the UK when his presence was either precarious or unlawful.
46. The appeal should be dismissed.

Mr Berry's submissions

47. Mr Berry in his written submissions argued that there would be very significant obstacles to the appellant's integration on return to Bangladesh, as envisaged in paragraph 276ADE(1)(vi) of the Immigration Rules HC 395 (as amended).
48. At [24], Mr Berry asserted that the very significant obstacles in this case were:
 - (i) The length of time the appellant had been in the UK, the life he tried to build here, and 'an appreciation of the unfortunate turn his life has taken';
 - (ii) The reports of Dr Nallet and supporting materials regarding his current circumstances, his mental health problems, and the likely negative impact of a forced return to Bangladesh, including the potential for such return to trigger suicidal thoughts;
 - (iii) The NHS evidence regarding the appellant; and
 - (iv) The evidence of his friends and relatives about his difficulties following his inability to complete his studies, and his father's illness and death.
49. Mr Berry contended that given the appellant's personal vulnerabilities, the length of his absence from Bangladesh, his poor support network and the difficult country conditions, he would lack a reasonable opportunity to build an adequate private life in Bangladesh. There would be very significant hardships and difficulties for him on return.
50. On the plus side, the appellant had worked as a volunteer with the Red Cross and has qualifications which would enable him to work in the UK.

Mr Symes' submissions

51. Mr Symes submitted that the appellant had shown close ties in the UK, in particular with his uncle Shafiqul, his cousin Mohammad, and his Imam Mr Haque, as well as numerous close friends. He resided lawfully from 2009-2013, but his studies were then interrupted. The appellant relies on *Kulumbegov v Home Office* [2023] EWHC 337 (KB), which cited *Denisov v Ukraine* (application no 76639/11, 25 September 2018), to the effect that a person's professional life may in certain circumstances fall within the scope of Article 8 ECHR 'private life'.
52. The immigration decision interfered with the appellant's private life: his links with his family in Bangladesh had diminished, partly because they blamed the stress of his study visa difficulties for his father's death from cancer exacerbated by two strokes, which the appellant himself feared were due to the worries he had created. His mother was partially blind and relied on his siblings, who had their own families and were in low-paid work. Social capital to assist him would be in short supply.
53. The appellant relied on *CDS (Brazil)* [2010] UKUT 305 (IAC), arguing that later criticism of that decision went no further than restricting it to circumstances where a course of study was interrupted 'for bureaucratic reasons'. The appellant was financially independent, supported by friends, and with good prospects for finding work if his status were regularised. He spoke good English. His employment prospects in the UK were better than in Bangladesh, where after the pandemic, many who formerly worked in skilled work were forced into unskilled occupations. The CIA World Factbook recorded that 40% of the population of Bangladesh was underemployed.
54. The appellant would rely on the medical evidence in the supplementary bundle. His health problems would seriously compromise his ability to integrate in Bangladesh. His residence had been precarious (until 2013) and thereafter unlawful, but not through any fault of the appellant's own. His private life was exceptionally strong and the appeal should be allowed.

Conclusions

55. I remind myself that the decision and reasons promulgated on 8 January 2016 is the *Devaseelan* starting point for any consideration of this appeal. There is no change to that factual matrix today. Section 117B requires me to give little weight to the private life which the appellant has developed in the UK during his period of student leave (when his presence was precarious) or during his period of unlawful residence.
56. The appellant's principal argument on reintegration is that he has disappointed himself and his family by failing to complete his studies here, but that is not a strong enough reason to outweigh the public interest in controlling immigration, even if I were entitled to give it weight.
57. There remains the medical evidence. The standard to be applied to considering this risk was set out in *MY (suicide risk after Paposhvili)* [2021] UKUT 232 (IAC):

Where an individual asserts that he would be at real risk of (i) a significant, meaning substantial, reduction in his life expectancy arising from a

completed act of suicide and/or (ii) a serious, rapid and irreversible decline in his state of mental health resulting in intense suffering falling short of suicide, following return to the Receiving State and meets the threshold for establishing Article 3 harm identified at [29] - [31] of the Supreme Court's judgment in AM (Zimbabwe) v Secretary of State for the Home Department [2020] UKSC 17; [2020] Imm AR 1167, when undertaking an assessment the six principles identified at [26] - [31] of J v Secretary of State for the Home Department [2005] EWCA Civ 629; [2005] Imm AR 409 (as reformulated in Y (Sri Lanka) v SSHD [2009] EWCA Civ 362) apply.

58. Dr Nallet, the appellant's general medical practitioner, considers that the appellant has moderate to severe mixed depression and anxiety; he had failed his father, and lost his fiancée in Bangladesh, because she tired of waiting for him and married elsewhere. He needs both antidepressants and psychotherapy, but after 13 years in the UK, was not availing himself of either.
59. The observation at [29] above was to the effect that his suicide risk was not quantifiable 'but reducing its probability to happen is what has to be considered to improve the chance of success of reaching a good prognosis'. That does not come close to meeting the *J v SSHD/Y (Sri Lanka)* standard.
60. The other issue advanced on integration is the appellant's assertion that he would be unable to find work and/or family support on return. It is his case that he could and would work in the UK. The employment and healthcare evidence summarised at [33] above is all mid-pandemic evidence. The appellant could have, but has not, advanced evidence about the employment circumstances in Bangladesh now.
61. I do not consider that the evidence of healthcare and employment difficulties in Bangladesh in 2021 is evidence that those difficulties exist today, or that the appellant, who does have experience and qualifications, would be unable to find work on return.
62. For all of the above reasons, I dismiss the appellant's appeal.

Notice of Decision

63. For the foregoing reasons, my decision is as follows:

The making of the previous decision involved the making of an error on a point of law. I set aside the previous decision. I remake the decision by dismissing the appeal.

Judith A J C Gleeson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

Dated: 19 May 2023