IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-002921
First-tier Tribunal No: HU/53721/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 13 June 2023

Before

UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

MB
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr P Richardson, Counsel, instructed by Lawmatic Solicitors
For the Respondent: Ms A Nolan, Senior Presenting Officer

Heard at Field House on 3 May 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

Introduction

1. This is the re-making of the decision in the appellant's appeal against the respondent's refusal of his human rights claim.

2. The Appellant is a citizen of Bangladesh who arrived in the United Kingdom as a student in 2010. He was granted an extension in that category but his leave to remain expired on 7 April 2016 and he has remained in this country unlawfully ever since. By an application (deemed to constitute a human rights claim) made on 22 March 2021, the Appellant sought leave to remain on the basis of Article 8.

3. In the covering letter which accompanied the application a number of factors were put forward in support of the contention that a removal to Bangladesh would violate his protected rights under Article 8. These factors included: (i) the length of time he had resided in the United Kingdom; (ii) his close relationship with an elderly lady described as an "aunt" (but was not in fact a blood relative); and (iii), importantly, the fact that the Appellant was from the Hindu minority in Bangladesh and, in his own right and through his father and to an extent his elder brother, had been prominent in the promotion of that faith whilst in that country. It was said that the Appellant had received a specific threat in 2016 whilst he was in the United Kingdom which related to his previous activities and prominence.

4. The Respondent concluded that there were no very significant obstacles to reintegration, with reference to paragraph 276ADE(1)(vi) of the Immigration Rules and there were no exceptional circumstances in the context of Article 8 more generally. No specific consideration was given in the refusal letter to the issue of any risk to the Appellant on the basis of his faith and whether they were relevant to the consideration of very significant obstacles.

5. By a decision promulgated on 15 December 2022, I concluded that the First-tier Tribunal had erred when dismissing the appellant's appeal. The

error of law decision is annexed to this re-making decision. In summary, I concluded that the First-tier Tribunal failed to engage with the question of whether the appellant's reliance on a protection-related issue constituted a "new matter", or alternatively that it erred by failing to consider the evidence put forward in relation to the protection-related issue.

6. Whilst the First-tier Tribunal's decision was set aside, I expressly preserved certain findings of fact: [27] of the error of law decision. In effect, these addressed the appellant's circumstances in the United Kingdom as regards in relationship with an "aunt" and other matters.

7. The resumed hearing was originally listed in February 2023, but had to be adjourned on the day because no interpreter had been booked (this was because none had been requested by the appellant's representatives).

The issues

8. In light of the error of law decision and discussion at the adjourned hearing in February, a number of issues have been confirmed and/or clarified.

9. Firstly, the decision in JA (human rights claim; serious harm) Nigeria [2021] UKUT 97 (IAC) permits the appellant to rely on protection-related issues in his appeal, which itself is based on Article 8 only.

10. Secondly, the specific protection-related issue relied on by the appellant in this appeal, namely that he would face very significant obstacles to reintegration by virtue of his Hindu faith and particular profile, does not constitute a "new matter". The respondent only withheld consent in relation to any attempted reliance on the Refugee Convention and/or Article 3.

11. Thirdly, paragraph 276ADE(1) does potentially apply in this appeal, notwithstanding the fact that it has been deleted from the Immigration Rules. This is by virtue of a transitional provision in the relevant Statement of Changes.

12. Fourthly, the respondent continues to rely on the fact that the appellant owes a litigation debt and that this would in any event preclude him from being able to satisfy paragraph 276ADE(1)(vi).

13. In all the circumstances, the central issue in this appeal is whether it would be disproportionate to remove the appellant to Bangladesh, with reference to Article 8 only and with a particular focus on whether any protection-related problems would create very significant obstacles to his reintegration into Bengali society.

The evidence

14. In terms of the documentary evidence, I have been provided with the following:

(a) The respondent's original appeal bundle;

(b) The appellant's original First-tier Tribunal bundle;

(c) The appellant's first new bundle, indexed and paginated 1-22;

(d) The appellant's first supplementary bundle, indexed and paginated 1-18;

(e) The appellant's second supplementary bundle (containing country information), indexed and paginated 1-15.

15. The appellant attended the hearing and gave oral evidence with the assistance of a Bengali (Sylheti) interpreter. I was satisfied that there was mutual understanding throughout the hearing. There were no issues of vulnerability on the appellant's part, whether raised by him or his representatives, or apparent to me.

16. The appellant's oral evidence as a matter of record and I do not propose to rehearse it here. Suffice it to say that he adopted his witness statement, dated 26 January 2023 and was asked some questions by Mr Richardson in relation to his elder brother, certain activities undertaken in the United Kingdom, and what he would wish to do if removed to

Bangladesh. Ms Nolan asked questions relating to claimed threats from an Islamic party in Bangladesh, Jamatul Muzahidin Bangladesh (the JMB), the position of the elder brother, particular documentary evidence, and the litigation debt.

17. I will refer to relevant aspects of the appellant's evidence when setting out my findings of fact, below.

The parties' submissions

18. I received concise and helpful submissions from Ms Nolan and Mr Richardson, all of which are a matter of record. I have taken these fully into account when assessing the evidence and the relevant legal issues arising in this case.

19. The central thrust of the respondent's submissions was that whilst the appellant is of the Hindu faith and has been a priest, his account of threats made against him and/or his claim that his family has been targeted by Islamic extremists is not credible. The country information does not demonstrate that he would face very significant obstacles on return to Bangladesh.

20. On the appellant's side, it is said that the evidence is reliable and, when combined with country information and the appellant's desire to practice as a Hindu priest, there would be very significant obstacles to integration and it would be disproportionate to remove him to Bangladesh.

Findings of fact

21. In making the relevant findings of fact, I have considered the evidence as a whole, paying particular attention to that specifically drawn to my attention by the representatives. I have not expressly addressed each and every aspect of the evidence, nor am I bound to do so. I have sought to focus on those parts of it that I consider to be of most relevance to the central issue in this appeal.

22. At the outset I re-confirm the preserved findings of fact from the First-tier Tribunal's decision. These are to the effect that: (a) the appellant's relationship with the individual he regards as an "aunt" does not demonstrate one of material dependency by her on him; (b) there is no family life enjoyed in the United Kingdom; (c) the appellant's private life did not, as at the Spring of 2022, amount to very much by way of substance.

23. I accept that the appellant is of the Hindu faith. This has effectively been conceded by the respondent, but in any event he has been consistent throughout. At the hearing, Ms Nolan confirmed that there was "no issue" with the assertion that the appellant and also had a role as a priest. I find it to be more likely than not that this was and is the case. The appellant has been consistent in claiming to have undertaken relevant training for about five years in the early to mid-2000s and worked as a priest between 2005 and 2009 whilst in Bangladesh. This is supported by his claim to come from a 'priestly' family, which included his father and, subsequently the elder brother. I agree with Mr Richardson's submission that the Hindu priesthood is firmly based in the caste system and that the vocation will run through families. The appellant's father was himself a priest, and I also am prepared to accept that the elder brother took up a similar role after the appellant left Bangladesh.

24. There is supporting documentary evidence relating to his religious position contained in the appellant's First-tier Tribunal bundle. A letter dated October 2016 from the Bangladesh Puza Udjapon Porishod states that he played a "great role" in protecting property, presumably that of a Hindu community in the area. A letter from the same time from Sreehottyo Purohit Mondoli makes a similar point, as do those from the Bangladesh Hindu Buddha Christian Oikyo Parishod and Sree Sree Burha Shibbarhi. The latter refers to the appellant being its "Chief Priest" between 2005 and 2009. This evidence appears to show that the appellant was actively involved in his community and played a relatively significant role in protecting the rights of Hindus. I am prepared to accept

that he held what is described as a position of “Chief Priest” for one particular organisation between 2005 and 2009.

25. My acceptance of the general thrust of the supporting letters does not, however, necessitate a further finding that the appellant and/or other family members have been specifically targeted by extremist organisations in the past, or currently. None of the letters provide any detail as to any claimed targeted threats or attacks, nor do they explain what was meant by, for example, “protecting property”. There are a variety of possible explanations as to what the appellant might in fact have done in order to assist the Hindu community: protecting the property of others is not the same as being targeted for doing so. I have viewed the evidence as a whole, and, for reasons set out in due course, find that important aspects of the case put forward by the applicant are unreliable and untrue.

26. I accept the appellant’s evidence that his elder brother continues to work as a Hindu priest in Bangladesh. His evidence to me is that the elder brother has not received any threats since the alleged attack in October 2021. I find that to be the case.

27. The country information shows that the JMB is a known extremist organisation in Bangladesh. As a matter of general background, this is supportive of the claim.

28. I have taken full account of the country information on religious persecution and discrimination. This does provide support for an increase in attacks against religious minorities, including Hindus, in 2021 and seemingly prior to that. As with the evidence on the JMB, this is generally supportive of the appellant’s case.

29. Having accepted certain relevant evidence, there are significant problems with other aspects of the appellant’s account. In finding this to be the case, I have borne in mind the point made in JA (Nigeria), at paragraph 3 of the judicial headnote, where it is said that a fact-finding Tribunal may approach the evidence in cases such as the present with “some scepticism”. In so doing, I certainly do not start from a position

that the appellant has an additional evidential burden to meet, nor do I assume untruthfulness on his part. I have not, however, been provided with any credible explanation as to why the appellant did not attempt to make a protection claim in 2021.

30. The appellant claims that in August 2016 a threat letter from the JMB was sent to the family home in Bangladesh. This apparently prompted him to make an asylum claim in December 2016 (that claim was refused and certified, with a subsequent judicial review application proving unsuccessful at the permission stage). Given that the appellant left Bangladesh 2010 and the threat letter produced in evidence asserts that JMB had "come to know" that he was in the United Kingdom only in 2016, I had enquired during oral evidence as to whether the appellant knew how they had found out. In response, he assumed that they had obtained knowledge because of his attendance at protests in this country, that they had "informers" and/or that they knew through Facebook.

31. In light of the evidence as a whole, I do not regard this aspect of the evidence as reliable. A six-year period of time is not insignificant. There is no suggestion that the JMB had found out through his family in Bangladesh. His assumptions were entirely speculative and did not come close to explaining why there was such a long gap between him leaving Bangladesh and the letter, and also as to how the JMB came to, or might have come to, know of his location. This gives rise to circumspection on my part.

32. In his witness statement, the appellant had made reference to the 2016 threat letter, but to no other threats made against him by the JMB or anyone else. However, in oral evidence he stated that he had received several threats, perhaps "three or four", "mainly" whilst he was still in Bangladesh. He stated that "most of the time" the threats were sent by post. When asked to explain why these had not been mentioned previously, the appellant appeared to firstly blame his solicitors or his own lack of good English, and then to say that the threat letters had only been copies and so had not been mentioned by him.

33. I find this aspect of the evidence to be simply untrue. It is clear that on a fair reading of the witness statement, only a single threat letter is referred to. There is no credible explanation as to why others would not have been referred to if indeed there had been any. I do not accept that the solicitors were at fault in any way. The appellant's assertion that he mentioned these to them in preparation for his case was a poor attempt at deflection. I do not accept that any limitations in English led to the omission. Overall, I find that the appellant has lied in order to try and create the impression that he has been specifically and repeatedly targeted over time.

34. In terms of the General Diary document, dated 1 September 2016, I acknowledge that it purports to support the reliability of the JMB threat letter mentioned by the appellant and I have taken into account as being favourable to his claim. It does not, however, address the concerns I hold over the JMB threat letter, as discussed earlier. In addition, I agree with Ms Nolan's submission that there is a real concern as to why the appellant's brother (who made the report) referred to the "safety of my younger brother" (i.e. the appellant). Firstly, the appellant was in United Kingdom at that time and was safe. Secondly, the appellant told me that he had asked the brother to make the report for their safety (i.e. the family still in Bangladesh). That is not consistent with the wording of the document itself. The General Diary document is, I find, unreliable as to its contents.

35. The appellant told me that his father had been threatened whilst working as a priest and prior to his death in 2007, but it had not been "that serious". Although not a particularly significant point, I find it to be unlikely that several apparently serious threats were made against the appellant whilst in Bangladesh (at least, on his account), whilst those directed at the father were not of that nature, despite him also being a working priest.

36. The appellant claims that his elder brother was attacked by Islamic extremists in October 2021 and a newspaper article has been produced

in support. The translated article quotes the elder brother as saying that he had previously received “death notices”. This stood in stark contrast to the appellant’s oral evidence, where he confirmed that as far as he knew there had been no threats, previously or thereafter. Given the clear evidence of communications between the appellant and his family in Bangladesh, I do not accept that he would have been unaware of serious threats against his older brother, if these had in fact occurred.

37. Further, I find it to be of note that the article also quotes the elder brother as saying that “my younger brother [i.e. the appellant] has escaped on (*sic*) England due (*sic*) their continuous (*sic*) life-threatening. My family is extremely worried about my younger brother”. The appellant had left Bangladesh approximately 11 years previously and was residing in safety in the United Kingdom. In my view, the quote attributed to the elder brother was gratuitous in nature: there was no need for it in the context of the article. Having regard to the evidence as a whole, even if the article is a genuine document, the elder brother’s comments were more than likely designed to assist with the appellant’s claim in this country.

38. Staying with the alleged attack on the elder brother, in oral evidence the appellant described the injuries received as “not that serious”. Yet the article describes the attack generally as being “brutal” and that the elder brother was targeted with “local and foreign weapons with an intention of killing him.” It goes on to say that the elder brother was later admitted to hospital. The appellant’s evidence is inconsistent with the contents of the article. Again, there has been regular contact between the appellant and his elder brother and there is no credible reason why such an inconsistency would arise.

39. Overall, I find both the article and the appellant’s evidence to be unreliable.

40. I note that there is no witness statement or affidavit from the elder brother.

41. In light of the evidence as a whole, I do not accept that the elder brother has had to move from place to place in order to avoid threats and/or attacks. That is because there have been no threats and/or attacks, notwithstanding his ongoing work as a priest.

42. The respondent's CPIN on documentation, version 2.0, published March 2020, includes evidence that Bangladesh is one of the most corrupt countries in the world and that the production of false documents and/or obtaining unreliable translations of documents is possible. I take this evidence into account as being of some relevance.

43. I turn to the appellant's circumstances in the United Kingdom, which are subject to the preserved findings of fact from the First-tier Tribunal's decision.

44. There is no new reliable evidence which undermines any of the preserved findings.

45. I accept that the appellant does undertake certain religious and/or community activities in this country, although his witness statement says very little about this. There are a couple of photographs and a letter from the Shree Shree Loknath Bhakta Porishad (UK) which are sufficient to show that the appellant has attended at most a very limited number of apparent protests in this country (in all likelihood, there has been only one). I am entirely satisfied that it is highly unlikely that such activities will be known by, or would ever become known by, the Bangladeshi authorities or any extremist organisation.

46. Other photographs and a letter of support from the Sanaton Association in this country indicates that the appellant is a committed member and that he volunteers and carries out what might be described as some priestly duties (he does not of course have permission to stay in the United Kingdom as a religious worker).

47. I find that the appellant's religious identity is important to him, given his family's tradition and the activities undertaken in Bangladesh and the United Kingdom. I find that he would wish to undertake community and religious activities if removed to Bangladesh.

48. Bringing all of the above together, I find that the evidence on claimed targeting of the appellant and his family is unreliable and, applying the balance of possibilities, I do not accept it to be true. Specifically, I do not accept that the appellant or any member of his family have been individually targeted by the JMB or any other extremist organisation. Although I need not do so, I state a consequential finding that this important aspect of the appellant's claim has been effectively made up in order to create a false risk profile. The actual profile held by the applicant is much less significant than claimed.

49. As to the litigation debt, I find that there were two distinct amounts, one dating from 2016 and the other from 2017. I accept that the appellant has paid off part of the debt, but that an amount remains outstanding. There is merit in Ms Nolan submission that the appellant did nothing to address payment until after he received the respondent's decision on the human rights claim in 2021. In evidence, the appellant told me that he had intended to pay, but had had no job and eventually, a cousin had offered to give/lend some money. Having regard to the evidence as a whole, I find that the appellant did not intend to pay off the debt when it arose, nor do I accept that he made reasonable efforts to try and obtain funds to start making payments prior to 2021. I find that the impetus for making payments was the refusal of his human rights claim and the knowledge that one the reasons for the refusal was the outstanding debt.

50. In respect of other matters, I find that the appellant is in good health. I accept that he is a member of a cricket team and that he has a social circle in this country. There are no particularly strong ties in this regard, however. On his own evidence, he has family still residing in Bangladesh.

Conclusions

51. Paragraph 276ADE(1) of the Rules provides as follows:

> "276ADE(1). The requirements to be met by an applicant for leave to remain on the grounds of private life in the UK are that at the date of application, the applicant:
>
> (i). does not fall for refusal under any of the grounds in Section S-LTR 1.1 to S-LTR 2.2. and S-LTR.3.1. to S-LTR.4.5. in Appendix FM; and
>
> …
>
> (vi) subject to sub-paragraph (2), is aged 18 years or above, has lived continuously in the UK for less than 20 years (discounting any period of imprisonment) but there would be very significant obstacles to the applicant's integration into the country to which he would have to go if required to leave the UK."

52. It can be seen that paragraph 276ADE(1) contains a time-fixing provision; the various requirements must be satisfied *as at the date of application*. Mr Richardson's primary submission was that the appellant should succeed if he can demonstrate the existence of very significant obstacles to integration as at the date of hearing. In other words, if he could meet the Rules now, this would be determinative of the Article 8 claim. Ms Nolan submitted that for the purposes of paragraph 276ADE(1), I was required to look back to when the human rights claim was made in late March 2021.

53. In the first instance, I conclude that Ms Nolan's position is correct. The wording of paragraph 276ADE(1) is clear. It expressly refers to "the application" and that must relate to the application (which must include an application which is deemed to constitute a human rights claim) in fact made by the individual concerned and not an application hypothetically made as at the date of hearing. I see nothing in paragraph 276AO which requires a different interpretation. The case of OA and Others (human rights; 'new matter'; s.120) Nigeria [2019] UKUT 65 (IAC), referred to by the representatives, is distinguishable because the Rule there in question, paragraph 276B, did not include a time-fixing provision.

54. Therefore, satisfaction of paragraph 276ADE(1)(vi) can only be decisive of the appellant's Article 8 claim with reference to the circumstances pertaining as at the date of application in March 2021.

55. I firstly assess the appellant's Article 8 claim in the context of the circumstances as they were in March 2021. I will then go on and consider his position as of the date of hearing.

56. In assessing the issue of very significant obstacles to integration, I direct myself to the well-established legal principles set out in Kamara [2016] EWCA Civ 813; [2016] 4 WLR 152 and, for example, Parveen [2018] EWCA Civ 932. In the latter case, Underhill LJ said at [9]:

> "9. That passage focuses more on the concept of integration than on what is meant by "very significant obstacles". The latter point was recently addressed by the Upper Tribunal (McCloskey J and UTJ Francis) in *Treebhawon v Secretary of State for the Home Department* [2017] UKUT 13 (IAC). At para. 37 of its judgment the UT said:
>
> > "The other limb of the test, 'very significant obstacles', erects a self-evidently elevated threshold, such that mere hardship, mere difficulty, mere hurdles and mere upheaval or inconvenience, even where multiplied, will generally be insufficient in this context."
>
> I have to say that I do not find that a very useful gloss on the words of the rule. It is fair enough to observe that the words "very significant" connote an "elevated" threshold, and I have no difficulty with the observation that the test will not be met by "mere inconvenience or upheaval". But I am not sure that saying that "mere" hardship or difficulty or hurdles, even if multiplied, will not "generally" suffice adds anything of substance. The task of the Secretary of State, or the Tribunal, in any given case is simply to assess the obstacles to integration relied on, whether characterised as hardship or difficulty or anything else, and to decide whether they regard them as "very significant".

57. The threshold is undoubtedly high, although no gloss need be applied to the words used in the relevant provision.

58. In respect of the term "integration", Sales LJ (as he then was) held at [14] of Kamara that:

> "14. In my view, the concept of a foreign criminal's "integration" into the country to which it is proposed that he be deported, as set out in section

> 117C(4)(c) and paragraph 399A, is a broad one. It is not confined to the mere ability to find a job or to sustain life while living in the other country. It is not appropriate to treat the statutory language as subject to some gloss and it will usually be sufficient for a court or tribunal simply to direct itself in the terms that Parliament has chosen to use. The idea of "integration" calls for a broad evaluative judgment to be made as to whether the individual will be enough of an insider in terms of understanding how life in the society in that other country is 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 or family life."

59. The assessment must take account of all relevant considerations, both specific to the individual as well as what might be termed as "generic".

The appellant's circumstances as at March 2021

60. Leaving aside for the moment the appellant's position as a Hindu who has carried out duties as a priest in Bangladesh and the United Kingdom, I conclude that there are no factors which, whether in isolation or cumulatively, demonstrate anything close to very significant obstacles to integration. Although the appellant has been in this country for a significant period of time, I am satisfied that he has not in any way been entirely divorced from Bengali culture, language, and/or social mores. He has close family in Bangladesh, with whom he has regular contact and would undoubtedly offer meaningful support to him on return. In principle, he is relatively well-educated and would be able to find and maintain reasonable employment (he has worked whilst in this country). There are no adverse health considerations. It is extremely unlikely that he would be left to live in what he has described as "extreme poverty". I conclude that the appellant would be enough of an insider to be able to reasonably participate in society and re-establish himself through social interaction and economic activity.

61. The question then arises as to whether his faith and particular profile relating thereto would, in isolation, or taken together with all other

considerations, meet the elevated threshold set by paragraph 276ADE(1)(vi)?

62. Applying that threshold and undertaking the broad evaluative assessment required, I conclude that it would not. I say this for the following reasons.

63. Firstly, I have read and considered all of the country information cited by the representatives and included in the appellant's second supplementary bundle and the respondent's CPIN on religious minorities and atheists, version 2.0, published in October 2018 (the later version of the CPIN is relevant to my assessment of the appellant circumstances as at the date of hearing). The CPIN summary includes the following passage:

> "2.4.19. Hindus, their property and places of worship, have faced targeted attacks, either committed or incited by Islamists, heightened political tensions, for example, during the 2014 elections. Instances of societal discrimination, harassment, and occasional violence against Hindus occurs. Hindus are also disproportionately affected by land seizures, which have also been a factor in some attacks."

64. Within the body of the CPIN itself, there is reference to JMB and another jihadist organisation which have perpetrated attacks on prominent members of minority communities and religious facilities and events, including Hindu temples. In respect of state protection from non-state actors, it is said that the effectiveness and conduct of the police "varies".

65. In so far as the country information contained in the second supplementary bundle comes from objective sources and relates to the situation in Bangladesh as at March 2021, it appears as though there was an increase in attacks on Hindu minority household and temples in or around October of that year. It is unclear whether this state of affairs existed in March and the Amnesty International and Human Rights Watch

reports seem to relate to events surrounding the specific Hindu festival of Durga Puja, which takes place in October.

66. I accept that members of the Hindu minority faced discrimination in March 2021. I also accept it to be likely that there were some threats and attacks against prominent Hindu religious figures, property, and specific events. The evidence does not demonstrate it to be more likely than not that the difficulties faced by the Hindu minority was then particularly pervasive or at such a level of severity as to represent, in general terms, a very significant obstacle to any member of that faith having to return to Bangladesh and integrate into society.

67. Secondly, on my findings, whilst the appellant held a religious position which was above that of an ordinary member of the Hindu community whilst he was in Bangladesh, he has never been the subject of any threats or attacks. Again, on my findings, the same applies to his father and elder brother, despite their roles as priests. The elder brother has continued to work as a priest in the home area. The family have not had to move and they remain in the family home. There has been no question of insufficient state protection because, on my findings, none has been sought or required. Put shortly, there is no material adverse profile for the appellant or his family which might go to take his circumstances on return out of the generality and into a category in which specific discrimination/threats/or attacks would be likely to cause very significant obstacles to integration.

68. Thirdly, as at March 2021 I conclude that the appellant would have been able to undertake work as a priest in Bangladesh once again, if he so chose. That position would have created (or re-created) a certain profile bringing with it the possibility of a risk of targeted threats or attacks. However, I am satisfied that such a possibility would not be more likely than not to materialise. The discrimination which I accept exists in Bangladesh would not in my judgment have been at such a level as to constitute a significant obstacle to integration. I bear in mind that the appellant lived within that society until 2010 without the serious problems alleged. Further, his family have continued to live there without

serious problems. Alternatively, the appellant would have been able to practice his faith whilst not working as a priest and any obstacles would have been reduced accordingly.

69. Fourthly, on a cumulative basis I accept that returning to Bangladesh in March 2021 would have involved obstacles to integration. Such obstacles may, again on a cumulative basis, have been significant. In my judgment, they would not, however, have been very significant.

70. Therefore, paragraph 276ADE(1)(vi) cannot be satisfied and cannot be decisive of the Article 8 claim: TZ (Pakistan) [2018] EWCA Civ 1109.

71. For the sake of completeness, I add that the outstanding litigation debt and the circumstances surrounding the belated repayments lead me to conclude that this too prevented the appellant from being able to succeed with reference to the Rule.

The appellant's circumstances as at the date of hearing

72. I turn to consider the appellant's circumstances as at the date of hearing (strictly speaking, I remained seized of the appeal until promulgation, but that makes no difference in this case).

73. In so doing, I have considered the latest version of the respondent's CPIN on religious minorities in Bangladesh, version 3.0, published in March 2022. I have also considered all of the country evidence contained in the appellant's second supplementary bundle.

74. Although I have concluded that paragraph 276ADE(1)(vi) is time-fixed, an ability to meet the substantive requirement of demonstrating very significant obstacles would be highly relevant to the proportionality exercise: Caguitla (Paragraphs 197 and 199) [2023] UKUT 116 (IAC). Alternatively, even I were wrong in my view that paragraph 276ADE(1)(vi) requires a date of application assessment only, it would make no difference to the outcome of this appeal. For the reasons set out below, I conclude that the appellant cannot demonstrate the existence of very significant obstacles to integration as at the date of hearing.

75. I have already referred to some of the country evidence and that should be read across to this part of my decision.

76. In relation to the latest CPIN, it has not been suggested that very significant obstacles would be created by virtue of state actions against Hindus and I conclude that no such risk exists. In terms of non-state actors, the summary section includes the following:

> "2.4.31 In general, Hindus are able to express and practise their faith freely throughout Bangladesh without facing harassment. However, they face some abuses, including by Islamic religious extremists, such as vandalism to temples and homes, physical violence, threats and harassment and rape and abduction of Hindu women and girls
>
> 2.4.32 Hindus, their property, and places of worship face targeted attacks, either
> committed or incited by Islamists, particularly during heightened political tensions, during election periods and during the October 2021 Durga Puja religious festival. In October 2021, after a Hindu man was accused of desecrating the Holy Qur'an, communal violence broke out when Islamists attacked Hindus and their places of worship, resulting in hundreds of Hindus becoming injured and at least two being killed. Hindus are also affected by land seizures, which have been a factor in some attacks
>
> 2.4.33 However, in general, the level of societal treatment of Hindus is not sufficiently serious by its nature and/or repetition, or by an accumulation of various measures, to amount to persecution or serious harm. The onus is on the person to demonstrate otherwise. Each case must be considered on its own facts and merits."

77. I have considered section 6 of the CPIN, which specifically addresses the position of Hindus in society. Examples of the source material cited include:

> "6.2.1 In considering societal treatment of Hindus, MRGI noted: 'Major political events such as national elections have served as flashpoints for communal violence, with Hindus the worst affected. In early 2014, for instance, in the build up to the election, Hindus were subjected to threats and attacks to intimidate communities ahead of the vote. In the wake of the Awami League's electoral victory, Hindus and other minorities continued to be targeted, with a large number of Hindu temples burnt down, vandalized and looted. The refusal of communities to boycott the elections led to widespread violence in certain areas, such as Malopara, where Jamaat-eIslami activists spread false rumours that a number of their members had been killed in clashes to incite largescale attacks against the community. An

estimated 500 Hindu families from Gopalpur village alone lost their homes in the violence."

6.2.3 The DFAT country report 2019 noted that: 'In the lead-up to and following the 2014 elections, activists from the Islamist Jamaat-e-Islami party (see Jamaat-e-Islami (JI)) launched a wave of attacks against the Hindu community, killing more than two dozen, destroying hundreds of homes and businesses, and displacing thousands. DFAT understands that the primary motivation for the anti-Hindu violence, which was most prevalent in the northwest, was resentment over the testimony of Hindu witnesses in International Crimes Tribunal (ICT) proceedings (see International Crimes Tribunal (ICT)). In the aftermath of the violence, the High Court ruled that law enforcement agencies had "seriously failed" to protect members of vulnerable groups, including Hindus. The government responded by providing assistance to victims and helping communities restore religious and private property damaged in the violence. The 2018 election was not characterised by such violence. 'The small-scale localised attacks carried out by Islamist militant groups against minority religious and social groups across the country in 2013-16 killed or seriously injured several Hindus. Police were despatched to protect temples and clergy in response to the attacks and to death threats made by militants…'

6.2.4 The same report outlined: 'There have been occasional cases of mob violence against Hindu targets. In October 2016, a mob of at least 100 violently attacked a Hindu village in Brahmanbaria district in east-central Bangladesh. Although police reinforcements and paramilitary border guards were despatched to the area, the attack left dozens injured, and at least 15 Hindu temples and over 200 Hindu homes badly damaged and looted. Initial media reports suggested Islamists had incited the violence by alleging a Hindu had posted on Facebook an edited photograph of a Hindu deity seated atop the Kaaba in Mecca. A subsequent government investigation found the Facebook photograph had been planted, most likely as a means to incite the violence. A NCHR investigation concluded that the incident was a pre-planned effort aimed at appropriating Hindu land. Authorities arrested and/or charged more than 1000 people connected to the incident, including a local police officer, while the AL suspended three local leaders from the party for their involvement. In a separate incident in November 2017, a mob of approximately 20,000 in Rangpur district in northern Bangladesh set fire

to and vandalised approximately 30 private homes belonging to Hindus. The violence followed a Facebook posting judged to demean the Prophet Muhammad. A press report stated one person was killed during the incident, and five suffered critical injuries. Police arrested more than 50 in the wake of the attack, and the government pledged to compensate those affected."

78. There clearly have been, and are, threats and violent actions perpetrated against the Hindu community in Bangladesh. It would appear as though in the main these are linked to events such as elections and or a particular festival. I do not seek to diminish the seriousness of these matters, but I must consider the country situation in the context of the specific facts of this case.

79. Here, the appellant and his family have not, on my findings, been subjected to serious threats or attacks. They have worked as priests and remained living in the family home (the appellant until 2010). I conclude that the country evidence does not indicate the prevalence of violence to be such that any and all Hindus facing a return from abroad (including priests) currently face very significant obstacles to integration into Bengali society by virtue of their faith alone. Although not strictly necessary my decision, I would add that the country evidence on state protection does not indicate an absence of willingness or ability, only that the position "varies".

80. Even taking the appellant's faith and an intention to work as a priest if removed, together with all other considerations previously mentioned (and bringing his circumstances in the United Kingdom up to date), the elevated threshold has not been met.

81. The appellant cannot therefore succeed in his appeal by reference to the "spirit" of paragraph 276ADE(1)(vi), or indeed, on the alternatively basis referred to in paragraph 74, above, its actual application.

The proportionality exercise

82. Finally, I turn to the wider proportionality exercise required under Article 8(2) on the uncontentious premise that the appellant enjoys a private life in the United Kingdom.

83. The public interest in maintaining effective immigration control is considerable.

84. The appellant's outstanding litigation debt is a factor counting against him, but not to great extent.

85. The appellant's private life was established and has continued whilst his status was precarious (as a student) and then from April 2026, unlawful. There are no particular circumstances in this case which warrant a departure from the "little weight" considerations under sections 117B(4) and 117B(5) of NIAA 2002.

86. The appellant has been in the United Kingdom for over 13 years, a substantial period. I take this into account as a factor weighing in his favour, although it is clearly tempered by what is said in the preceding paragraph.

87. The appellant has been involved in community activities, both in relation his faith and cricket. He will obviously have developed friendships in this regard. It cannot be said that any of these activities come close to representing a significant factor in the appellant's favour, although they are a relevant consideration.

88. His relationship with his "aunt" has been addressed previously. I take it into account here, although it carries little weight overall.

89. I take all the matters previously discussed in relation to the integration issue into account here too. There will be obstacles and, at its highest, these might prove to be significant. They are not very significant.

90. I accept that the appellant speaks reasonable English and this is a neutral factor. I also accept that he is not reliant in public funds and this too is neutral.

91. Weighing all considerations up in the balance, I conclude that the appellant's removal from the United Kingdom would be proportionate and therefore lawful under section 6 of the Human Rights Act 1998.

Anonymity

92. I have maintained the anonymity direction previously made because this case involves protection-related issues, albeit not in the context of a protection claim.

Notice of Decision

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law and that decision has been set aside.

The decision in this appeal is re-made and the appeal is dismissed.

H Norton-Taylor

Judge of the Upper Tribunal

Immigration and Asylum Chamber

Dated: 5 June 2023

ANNEX: THE ERROR OF LAW DECISION

Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number:** UI-2022-002921

THE IMMIGRATION ACTS

Heard at Field House
on 1 November 2022

Decision & Reasons Promulgated

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Before

UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

MB
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the appellant or members of his family. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings.

Representation:

For the appellant: Mr P Richardson, Counsel, instructed by Lawmatic Solicitors
For the respondent: Ms A Everett, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The Appellant appeals against the decision of First-tier Tribunal Kempton ("the judge"), promulgated on 29 April 2022 following a hearing on 21 April of that year, by which the judge dismissed the Appellant's appeal against the Respondent's refusal of his human rights claim.

2. The Appellant is a citizen of Bangladesh who arrived in the United Kingdom as a student in 2010. He was granted an extension in that category but his leave to remain expired on 7 April 2016 and he has remained in this country unlawfully ever since. By an application (deemed to constitute a human rights claim) made on 22 March 2021, the Appellant sought leave to remain on the basis of Article 8.

3. In the covering letter which accompanied the application a number of factors were put forward in support of the contention that a removal to Bangladesh would violate his protected rights under Article 8. These factors included: (i) the length of time he had resided in the United Kingdom; (ii) his close relationship with an elderly lady described as an "aunt" (but was not in fact a blood relative); and (iii), importantly, the fact that the Appellant was from the Hindu minority in Bangladesh and, in his own right and through his father, had been prominent in the promotion of that faith whilst in that country. It was said that the Appellant had received a specific threat in 2015 whilst he was in the United Kingdom which related to his previous activities and prominence.

4. The Respondent concluded that there were no very significant obstacles to reintegration, with reference to paragraph 276ADE(1)(vi) of the Immigration Rules and there were no exceptional circumstances in the context of Article 8 more generally. No specific consideration was given in the refusal letter to the issue of any risk to the Appellant on the basis of his faith and whether they were relevant to the consideration of very significant obstacles.

The decision of the First-Tier Tribunal

5. Having set out the background to the case, the judge concluded that the Appellant could not satisfy any of the Immigration Rules and that there were no exceptional or compelling circumstances. Therefore, the Appellant could not succeed under Article 8 in respect of private life or family life: [28] and [29]. Somewhat oddly, given that the judge has just pronounced her conclusion, she went on to consider a number of matters

which had a bearing on both the Immigration Rules and Article 8 in its wider context. At [30] she stated:

> "30. Having said all that, I do have some sympathy with the appellant's position, it has been an unfortunate series of events. His asylum claim was refused, and I do not have a copy of the determination refusing that claim in 2016. I see that there is now before me the 2018 CPIN on religious minorities and atheists in Bangladesh, which sets out that there are difficulties for minority Hindus in the country. There is certainly discrimination, but as I am not being asked to look at asylum, I am not in a position to comment on whether there is persecution on account of religion. I have no detail about any threat made to the appellant in Bangladesh which resulted in him coming to the UK to study, as opposed to claim asylum as soon as he entered the country. The issue of difficulties of religion on return is not a matter which is sufficiently argued before me on a specific case as related to this appellant. The appellant can discuss with his advisors whether he can make any fresh asylum claim on the basis of any new evidence since the last refusal."

6. In the next three paragraphs the judge went on to deal in some detail with the Appellant's private life and his relationship with his "aunt". The judge noted that this individual had not attended the hearing and her evidence, contained in a witness statement, had not been tested. There was an absence of relevant evidence, including any medical evidence relating to her difficulties in respect which the Appellant apparently provided some assistance.

The grounds of appeal

7. The grounds of appeal asserted that the judge should have considered the protection-based submissions relating to the position of Hindus in Bangladesh generally and the Appellant's specific circumstances as part of the assessment of whether there were very significant obstacles under paragraph 276ADE(1)(vi) of the Immigration Rules. This contention was supported by JA (human rights claim, serious harm) Nigeria [2021] UKUT 97 (IAC). The judge had erred in failing to consider the point. It was also contended that the judge had failed to give sufficient weight to the Appellant's private and family life and had failed to properly consider various features of his circumstances which, it was said, went to demonstrate exceptional circumstances.

8. Permission to appeal was granted by the First-tier Tribunal on 23 June 2022.

The hearing

9. Mr Richardson relied on the grounds of appeal. There was some discussion as to whether the protection-based matter had constituted a

"new matter" for the purposes of section 85 of the Nationality, Immigration and Asylum Act 2002, as amended. Mr Richardson submitted that it had not, primarily because the Appellant was not seeking to rely on Article 3 or the Refugee Convention. He emphasised the significance of JA (Nigeria), which permitted the Appellant to have relied on the protection-based issue as a constituent part of the very significant obstacles assessment. The judge had failed to address the issue of whether there was a "new matter". As it had been put forward in the letter accompanying the Appellant's application, it could be assumed that the Respondent had considered it, albeit implicitly, in her refusal decision.

10. Mr Richardson submitted that it was an important feature of the Appellant's case that he had a particular profile in Bangladesh and it was not simply a question of whether there was discrimination against the Hindu minority in general. Mr Richardson submitted that certain other aspects of the judge's consideration of Article 8 were flawed, with reference to the position of the "aunt".

11. Ms Everett accepted that the judge's decision was unclear on the "new matter" issue. She submitted that the findings in respect of the "aunt" were sustainable in respect of the protection-based issue and very significant obstacles. She suggested that the evidence before the judge was thin and it had been open to her to conclude that the evidence was insufficient to lead to a conclusion that there would have been very significant obstacles to integration.

12. At the end of the hearing I reserved my decision.

Discussion and conclusions

13. I remind myself of the need to exercise appropriate restraint before interfering with a decision of the First-tier Tribunal.

14. I begin with the judge's consideration of the wider Article 8 issues relating to the Appellant's circumstances in the United Kingdom. In my judgment, the judge's findings relating to the Appellant's "aunt" were sustainable. The judge was aware of the fact that the individual had provided a witness statement but she was entitled to take account of the fact that there was no attendance at the hearing. I am satisfied that no specific reason had been given for this and in that sense there was no explanation which had been overlooked. Non-attendance would not be fatal to the attribution of any weight to the statement of evidence, but there is no indication the judge adopted such an approach. Indeed, she accepted that the Appellant spent "considerable time" with his "aunt" and assisted her in many ways. The judge was also entitled to take account of the absence of relevant medical evidence.

15. As regards the Appellant's time in the United Kingdom and community ties, the judge took relevant matters into account and was entitled to place weight on the fact that there were no other supporting witnesses.

16. As Mr Richardson very fairly pointed out during the hearing, the Appellant was faced with the additional obstacles of the mandatory considerations set out in section 117B(4) of the 2002 Act, namely that "little weight" would be attributed to a person's private life where they had been residing in the United Kingdom unlawfully, as the Appellant has been since 2016. Thus, there are no errors in the judge's decision insofar as it relates to the assessment of the Appellant's circumstances in the United Kingdom.

17. However, for the following reasons, I am satisfied that notwithstanding the need to exercise appropriate restraint, the judge has erred in respect of her assessment of the very significant obstacles test.

18. Mr Richardson suggested that the judge had misapprehended that the Appellant had been the subject of an adverse decision of the First-tier Tribunal in 2016 when this was not the case because the Respondent had in fact refused the asylum claim and certified it as clearly unfounded, thereby denying the Appellant an in-country right of appeal. I appreciate that on one reading of the relevant passage in [30], it could be said that the judge had 'got the wrong end of the stick', as it were. However, the word used - "determination" - could relate to a refusal by the Respondent as much as a decision of the First-tier Tribunal. Further, in the final sentence of [30], the judge refers to the "last refusal", indicating that she was aware that it had been the Respondent who had been the final arbiter of the asylum claim in 2016, not the First-tier Tribunal. There is no error in respect of this discreet point.

19. The real problem in the judge's decision is what is said in the rest of [30]. The judge stated that she was not being "asked to look at asylum" and was therefore "not in a position to comment on whether there is persecution on account of religion." That would, on one view, appear to indicate that she had concluded that the protection-issue was a "new matter" and that she had no jurisdiction to consider it at all. Yet, this is not spelt out in terms anywhere in the decision, as it should have been if it was indeed a live issue.

20. It is clear from JA (Nigeria) that protection-based issues can form part and parcel of the consideration of an Article 8 claim, specifically in relation to the existence or otherwise of very significant obstacles under paragraph 276ADE(1)(vi) of the Immigration Rules. I note that JA (Nigeria) was promulgated some time before the hearing before the judge. I have considered whether the issue would inevitably have been a "new matter" and thus a failure to address the point by the judge was immaterial. In my view, it is at the very least debatable whether it was a "new matter". The Appellant had never relied on Article 3 or the Refugee Convention and the protection-based issue had been raised together with the human rights claim as constituting a factor relevant to the assessment of very significant obstacles.

21. There is merit in Mr Richardson's submission that the Respondent had implicitly considered the point in the refusal letter when assessing whether very significant obstacles existed.

22. I conclude that, if the judge was indeed treating the protection-issue as a "new matter", she erred in law by failing to engage with the issue and provide reasons for her conclusion.

23. On the alternative basis that the judge believed that she did have jurisdiction to consider the issue, I have concluded that she failed to address it adequately. I appreciate that the evidence might have been described as somewhat thin. However, evidence there was (comprising the Appellant's witness statement and oral evidence, letters of support, and the Respondent's CPIN) and it required adequate consideration. It was not so deficient as to be inevitably rejected.

24. With the above in mind, what one finds within [30] is the conclusion that the "difficulties of religion on return is not a matter which is sufficiently argued before me on a specific case as related to this appellant." With respect, it is unclear precisely what that means. What it does not do, in my judgment, is adequately address the evidence that was before the judge, evidence which included not simply an assertion of generalised risk to Hindus in Bangladesh, but a more particularised or individualised risk based on the Appellant's personal background. It is not to say that this factor would inevitably have permitted the Appellant to succeed on the very significant obstacles test. However, it was a material element and the judge's failure to adequately address it constitutes an error which *could* (not would) have had a material bearing on the outcome under paragraph 276ADE(1)(vi) of the Immigration Rules.

25. On this basis, and this basis alone, the judge's decision is to be set aside.

Disposal

26. Mr Richardson suggested that if a material error of law was found, the case should be remitted to the First-tier Tribunal. I disagree. In my view, it is appropriate to retain this appeal in the Upper Tribunal and for a re-making decision to be arrived at in due course following a resumed hearing.

27. The judge's findings in respect of the Appellant's circumstances in the United Kingdom, specifically those contained in [31] to [34] are to be preserved.

28. The re-making of the decision in this case will, subject to any significant changes in the Appellant's circumstances, be concerned only with the issue of whether very significant obstacles to reintegration exist with reference to paragraph 276ADE(1)(vi) of the Immigration Rules.

29. If the Respondent seeks to argue that the protection-based issue discussed in this decision constitutes a "new matter", she will need to state this in writing, in compliance with directions issued, below.

30. It is noted that paragraph 276ADE(1)(vi) fixes the relevant date to assess evidence as at the date of application. Having said that, updated evidence may be admissible to shed light on the circumstances as at that date.

31. There is a further matter which requires mentioning. The Respondent's refusal of the Appellant's human rights claim included an allegation that he owned a litigation debt to the Home Office and that this was a basis for refusal under part 9 of the Immigration Rules, specifically paragraph 9.12.1. The judge made reference to this point at [10] of her decision, but did not go on to reach any conclusions. If the Respondent was correct in her assertion, it would preclude the Appellant from relying on paragraph 276ADE(1) at all. Therefore, at the resumed hearing in this appeal the parties will need to address this issue.

Notice of Decision

32. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

33. I exercise my discretion under section 12(2)(a) of the Tribunals, Courts and Enforcement Act 2007 and set aside the decision of the First-tier Tribunal.

34. This appeal is retained in the Upper Tribunal for a re-making decision in due course

Directions to the parties

1. **No later than 14 days** after this error of law decision is sent out, the Respondent shall confirm to the Upper Tribunal and the Appellant in writing whether she contends that the protection-based issue relied on by the Appellant in respect of the very significant obstacles assessment constitutes a "new matter" for the purposes of section 85 of Nationality, Immigration and Asylum Act 2002, as amended. If she does so contend, she must also confirm whether she gives consent for the issue to be considered at the resumed hearing;

2. **No later than 28 days** after this error of law decision is sent out, the Appellant shall file and serve any further evidence relevant to the re-making of the decision in this appeal and at the same time, if necessary, address any "new matter" issue raised by the Respondent under direction 1;

3. **No later than 7 days** before the resumed hearing, the Appellant shall file and serve a skeleton argument addressing all relevant matters;

4. This appeal will be listed for a resumed hearing at Field House, with a time estimate of 3 hours;

5. If an interpreter will be required for the resumed hearing, the Appellant's representatives must inform the Upper Tribunal of this as soon as possible;

6. The parties are at liberty to apply to vary these directions.

Signed: H Norton-Taylor Date: 17 November 2022

Upper Tribunal Judge Norton-Taylor