



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

Case No: UI-2024-000151

First-tier Tribunal Nos: HU/56633/2021  
IA/15662/2021

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

On 19<sup>th</sup> of June 2024

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE SAINI**

**Between**

**MNI**  
**(ANONYMITY ORDER MADE)**

**and**

**The Secretary of State for the Home Department**

Appellant

Respondent

**Representation:**

For the Appellant: Mr J Dhanji, Counsel; M & K Solicitors  
For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

**Heard at Field House on 4 June 2024**

**Order Regarding Anonymity**

**Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, [the appellant] (and/or any member of his family, expert, witness or other person the Tribunal considers should not be identified) 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 (and/or other person). Failure to comply with this order could amount to a contempt of court.**

**DECISION AND REASONS**

**Introduction**

1. Further to a previous error of law hearing on 22<sup>nd</sup> February 2024, I issued a decision finding that a material error of law had been established in the decision and reasons given by the First-tier Tribunal, promulgated on 15<sup>th</sup> November 2023, in respect of the assessment made by the First-tier Tribunal of the very significant obstacles faced by the Appellant on return to Bangladesh, arising from his mental health issues (that error of law decision is appended to this decision).
2. Accordingly, I set aside the decision solely in respect of the First-tier Tribunal's discrete finding on very significant obstacles under paragraph 276ADE(1)(vi) and directed that the matter be relisted for remaking before any judge of this Tribunal. By chance this matter came before me once more on the above date. I proceeded to hear this matter in respect of that one remaining issue in order to complete the assessment of the Appellant's human rights appeal.
3. I have before me the following documentation:
  - (a) A composite bundle numbering 228 pages containing the previous determination of the First-tier Tribunal, of 15<sup>th</sup> November 2023 as well as the grounds seeking permission to appeal to the Upper Tribunal and the notice of decision granting permission to appeal as well as, separately, my own error of law decision. The remainder of the bundle replicates the Appellant's Bundle before the First-tier Tribunal and the Respondent's Bundle before the First-tier Tribunal. There are, however, three pages missing from the Appellant's Bundle, which have not been replicated in that consolidated bundle which comprise six prescriptions for medication issued to the Appellant by his GP dating from June 2021 through to 12<sup>th</sup> January 2022 prescribing mirtazapine in 30 milligrams per day dosage (those pages not being provided to me as the parties agreed that I had the salient facts from those three pages as specified above).
  - (b) Country Policy and Information Note (CPIN), Bangladesh: Medical Treatment and Healthcare, Version 2.0, July 2022.
4. Before me the parties agreed that the scope of the appeal was confined to a consideration of paragraph 276ADE(1)(vi) under the Immigration Rules and given that the Immigration Rules are not a complete code for human rights, Article 8 ECHR outside the Rules to the extent that anything remained to be determined. Notwithstanding the scope of the appeal identified, in making closing submissions, Mr Dhanji accepted that the Appellant's appeal in respect of his private life concerning any very significant obstacles to reintegration outside the Rules, would stand and fall with any assessment already made under the Rules. In short, if I did not find in the Appellant's favour under the Rules, there was no utility in my considering Article 8 outside the Rules.

## **Evidence**

5. I heard evidence from the Appellant through a court appointed Sylheti interpreter, who adopted his previous witness statement before the First-tier Tribunal and was asked supplementary questions by his Counsel, in evidence-in-chief, and was then cross-examined at length by Mr Clarke, and shortly re-examined by his Counsel followed by a handful of clarificatory questions from myself with both parties having the opportunity to ask any questions arising from my own, but declining to do so. I then heard closing submissions from both

parties, following which I indicated that I would reserve my decision, which I give further below.

6. I formally record that I have taken all of the abovementioned documentary evidence and oral evidence fully into account (the oral evidence being set out in my Record of Proceedings and not rehearsed here) in reaching my decision and making my findings. For the sake of clarity I shall only set out the parts of the above evidence of primary importance and relevance to my specific findings upon private life in respect of any very significant obstacles that I need to resolve as stated above. I record my gratitude to both representatives for their detailed submissions, which I rehearse only insofar as relevant to my analysis of the materials and making findings thereupon.

## **Findings**

### **Background**

7. I shall not set out the factual background to this appeal having preserved the findings of the First-tier Tribunal at paragraphs 1 to 13 and 16 to 18 and paragraph 17, save for the third and fourth sentences, which were found to contain a material error of law. As stated in my error of law decision, this remaking turns upon any expansion that the Appellant may put forward further to his witness statement of 9<sup>th</sup> October 2023, which confirmed that he had been suffering from depression and mental health issues and that he “takes prescription medication”.

## **Findings**

8. My error of law decision directed that the Appellant was at liberty to serve any further evidence that he sought to rely upon in relation to this remaining issue concerning his mental health. However, despite having that opportunity, no further subjective evidence was forthcoming and the only new piece of material that is before me is the CPIN, provided by the Respondent. Therefore, despite having the further opportunity to do so, and several months in which to compile and consolidate any further material in relation to his mental health, the Appellant, with the benefit of legal representation, has declined any opportunity to put forward any new material before me in relation to his mental health issues.
9. Therefore, despite having found an error of law in respect of the judge’s findings in concluding that there was no further evidence to support the Appellant’s position that he is still taking medication, I am faced with the same evidentiary situation as was faced by the First-tier Tribunal in that there is no medical evidence before me which postdates the last piece of medical evidence in the Appellant’s bundle, which is the final prescription for mirtazapine dated 12<sup>th</sup> January 2022 prescribing 30 milligrams of that drug on a daily basis. The only new subjective evidence is the oral evidence I heard from the Appellant.
10. As noted by the First-tier Tribunal, I also note that the Appellant has provided medical evidence going back to 2018 in the form of a letter dated 9<sup>th</sup> May 2018 from a Dr Tahir Mehmood of Blenheim Medical Centre in Luton which confirms that the Appellant is registered at that medical centre, is under the regular care of GPs at that practice, and at the time of that letter being written in May 2018, he was being reviewed on a weekly basis for depression and regular repeat medication, which was being prescribed for his ongoing symptoms. I also have a

further letter from the GP's practice dated 5<sup>th</sup> July 2021 which confirms that the Appellant asked the GP to provide a medical summary letter which resulted in a letter from a Dr A Khan of the same practice, which confirms that the Appellant has been registered at that GP surgery since November 2016, that he has a history of ongoing depression with anxiety for which he was assessed on 23<sup>rd</sup> June 2021 on the basis of a relapse/deterioration in his mental health, which the Appellant described as including low mood, anhedonia, anxiety, poor sleep and poor appetite with a PHQ 9 out of 20 (PHQ being a patient health questionnaire instrument for screening, diagnosing, monitoring and measuring the severity of depression). The GP goes on to say that the Appellant restarted regular medication in the form of mirtazapine and was referred to a mental health link worker for therapy with a follow up planned (the remainder of the letter pertains to other immaterial generalised medical health issues).

11. Thus, I note that the Appellant was registered with his GP since 2016 for approximately seven and a half years at present date, and was previously able to attend the GP and obtain letters which confirmed his ongoing treatment. In oral evidence before me, the Appellant also indicated that he was still registered with that same GP practice. In addition to those letters I also have evidence of the Appellant being referred for talking therapy. In addition, I also have prescriptions given to the Appellant from April and May 2018, which include prescriptions for zopiclone, amitriptyline, paracetamol, citalopram, naproxen and pregabalin. Further to those prescriptions from April and May 2018, the next prescriptions I have are from June 2021 through to 12<sup>th</sup> January 2022 prescribing mirtazapine at 30 milligrams per day.
12. I therefore find that in 2008 the Appellant registered with his GP in 2016, began taking medication for depression in April and May 2018 and appears to have benefitted (or at least not worsened) from that prescription given that the second letter from the GP of 5<sup>th</sup> July 2021 describes his having a history of ongoing depression with anxiety for which he was assessed on 23<sup>rd</sup> June 2021 in respect of a "relapse" or "deterioration" in respect of health. Thus, it does appear that the Appellant has not suffered chronically from anxiety and depression without any change to his condition as otherwise the GP would not have referred to his relapsing when assessed in June 2021. In any event, given that relapse and given that there were prescriptions for seven months from June 2021 to January 2022, I am satisfied on balance that the Appellant was indeed suffering from anxiety and depression at least until January 2022.
13. As noted previously the Appellant did not take the opportunity to provide the Tribunal with any further evidence of his mental health other than that outlined above and consequently, I must decide on balance whether or not the Appellant is still suffering from depression primarily based upon his oral evidence. Mr Clarke highlighted, and Mr Dhanji indeed accepted, that there were issues concerning the Appellant's credibility, however I do not find that this is a matter which would prevent me from accepting the Appellant were suffering from ongoing mental health concerns, were there to be any supporting evidence in the form of even sporadic or piecemeal prescriptions, for example. However, as I have said, there is nothing provided to support that the Appellant is still suffering from mental health other than his say so. The Appellant was asked in cross-examination why it is he could not obtain a letter from the GP to which he responded repeatedly, that given that his wife had given birth to a child in December 2023 the Appellant could not afford any medication because this

needed to be paid for. Whilst I accept that medication does need to be paid for, that would not have prevented him from obtaining a letter summarising any ongoing mental health concerns, similar to the one that he had obtained and presented to the Tribunal dated 5<sup>th</sup> July 2021, and given that there is no indication that he would need to have paid for that letter equally, I cannot understand why a letter was not obtained for the purposes of this remaking despite having ample opportunity and several months to obtain such a letter or indeed a copy of the GP's records which would evidence the Appellant's purported ongoing mental health issues.

14. Therefore, on balance, given that there is nothing more before me other than the brief unspecific answers given by the Appellant in evidence-in-chief as to his still being depressed and being forgetful; and given the failure to provide any evidence of his present condition, which he would have been able to obtain from his GP without cost, such as a letter, or at least, unfulfilled (i.e. unpurchased) prescriptions for medication, I am unable to find that the Appellant is suffering from depression or anxiety since January 2022.
15. Turning to what remains of the Appellant's appeal, the Appellant's Counsel indicated that my remaking was confined to his private life under the Rules and outside them in respect of the very significant obstacles to reintegration. When making my assessment, I bear in mind authorities from the Higher Courts on this matter, such as *Secretary of State for the Home Department v Kamara* [2016] EWCA Civ 813 which confirms at [14] that 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 the 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. With that threshold in mind, even if I am wrong in respect of whether or not the Appellant is suffering from depression and anxiety at the present time, and even if he is still eligible for mirtazapine, I note, as highlighted by Mr Clarke, that the CPIN confirms at paragraph 10.1.4 that mirtazapine is available in Bangladesh, and notwithstanding that there is an extreme shortage of psychiatrists in Bangladesh, who are in low percentage compared with the general population, as there is no evidence of the Appellant receiving treatment from a psychiatrist at any point in time, I do not find that the shortage of psychiatrists alongside the availability of mirtazapine will result in a very significant obstacle to his reintegration in respect of his mental health issues in the alternative to my previous finding that he is not suffering from such conditions at present.
16. Turning to the remainder of the Appellant's private life in respect of 276ADE(1) (vi), I note that the Appellant has been living in the UK for fourteen years, since his marriage on 15<sup>th</sup> November 2013 and given the preserved findings at §16 the First-tier Tribunal's decision that the Appellant would be returning to a country of his nationality where he speaks Bengali, Sylheti and having spent his formative years there, would likely retain, not merely a linguistic but also cultural ties to Bangladesh, and given, as recorded at §17, that the Appellant has family in Bangladesh (notwithstanding that he suggested that there were only sisters there in Bangladesh, who he is no longer in contact with, which he failed to substantiate by any evidence) I do not accept that the Appellant would experience any difficulties adjusting or reintegrating on return to Bangladesh. In

respect of his partner and child, whose side he would be leaving should he return or be returned to Bangladesh, I find that any separation would be temporary given that the Appellant's spouse has recently obtained refugee status and given that he may be eligible to apply for status as the partner of a refugee. I pause to note that Counsel for the Appellant asked me *not* to enter into a family life assessment and so I cease my assessment in respect of the partner and child at that point, especially as this remaking is confined to the discrete point of very significant obstacles in respect of the Appellant's private life.

17. Therefore, notwithstanding the admirable submissions of Mr Dhanji who has put his client's case as high as one possibly could, I find that the Appellant has not established that there are very significant obstacles preventing him from relocating, returning to and reintegrating into Bangladesh.

### **Conclusion**

18. In summary, I find that the Appellant has not established that there are very significant obstacles to his reintegration to Bangladesh under paragraph 276ADE(1)(vi). Given, as accepted by the Appellant, that Article 8 outside the Rules stands and falls with an assessment under the Rules, I do not go on to perform that assessment, which is, in any event, academic.

### **Notice of Decision**

19. The appeal is dismissed in respect of the sole remaining issue of the Appellant's mental health in the context of private life and mental health, in particular, in the context of paragraph 276(1)(vi) and Article 8 ECHR.
20. The appeal is dismissed.

*P. Saini*

Deputy Judge of the Upper Tribunal  
Immigration and Asylum Chamber

11 June 2024

**APPENDIX: ERROR OF LAW DECISION**

**IN THE UPPER TRIBUNAL  
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**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr J Dhanji, Counsel; M & K Solicitors

For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

**Heard at Field House on 22<sup>nd</sup> February 2024**

**Order Regarding Anonymity**

**Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, [the Appellant] (*and/or any member of his family, expert, witness or other person the Tribunal considers should not be identified*) 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 (*and/or other person*). Failure to comply with this order could amount to a contempt of court.**

**DECISION AND REASONS**

1. The Appellant appeals against the decision of First-tier Tribunal Judge Anthony promulgated on 15<sup>th</sup> November 2023, dismissing the human rights appeal arising from further submissions submitted on 17<sup>th</sup> August 2021.

2. The Appellant applied for permission to appeal on two grounds. Permission was granted by First-tier Tribunal Judge Saffer in the following terms:

“It is arguable that the Judge has materially erred in law in not giving a reason for rejecting the Appellant’s oral evidence that he was taking prescription medication when considering whether the Appellant is still depressed, as if he did not require it, it would not be prescribed. This appears to me to be stronger than ground 2 as the rejection of the article 8 claim does not mean the Respondent would necessarily remove the Appellant but I do not limit the grant”.

3. Before me Mr Clarke confirmed that the appeal was contested and that there was no Rule 24 response from the Respondent.

### **Findings**

4. At the conclusion of the hearing I reserved my decision which I now give. I find that the decision demonstrates a material error of law in respect of Ground 1 alone for the following reasons.

#### Ground 1

5. In relation to Ground 1 Mr Dhanji succinctly argued that as noted at paragraph 14 to 15 of the First-tier Tribunal’s decision, the judge heard oral evidence from the Appellant in expansion upon his witness statement of 9<sup>th</sup> October 2023 which confirmed that the Appellant had been suffering from depression and mental health issues and that the Appellant “takes prescription medication”. The judge specifically found that there is a prescription from 2018 in the bundle for Zopiclone, Amitriptyline, Paracetamol, Citalopram, Naproxen and Pregabalin and notes that according to a letter of 9<sup>th</sup> May 2018 from the Appellant’s GP “he is being treated for depression”. The judge further goes on to find at halfway through paragraph 14 as follows:

“I find that in 2018, the appellant was taking medication for his depression and back pain. I have also taken into consideration the letter from his GP dated 5 July 2021 in the respondent’s bundle. I find the appellant continued to be treated for depression with anxiety in 2021. The appellant was commenced on Mirtazapine and referred to the mental health link worker for therapy”.

6. However at paragraph 15 the judge then finds conversely as follows:

“However, I find there is no up to date medical evidence confirming the appellant continues to suffer from depression and that he continues to require prescription medication. In the absence of medical evidence, I find there is nothing to indicate the appellant still suffers from depression or any other significant mental health difficulties. Neither is there anything to indicate the appellant requires ongoing prescription medication”.



7. Mr Dhanji essentially argued that his was a reasons challenge as the judge had before him the Appellant's witness statement of 9<sup>th</sup> October 2023 which recorded at paragraph 20 as follows:

"I wish to state that whilst I have been in the UK, I have been suffering from depression and mental health issues. I am regularly under review with the GP and on medication for this".

8. Consequently notwithstanding that there was a dearth of evidence from June 2021 onwards until the date of hearing in November 2023, the judge nonetheless had the testimony from the Appellant that he was still being treated for depression and mental health issues and was regularly under review with his GP and was on medication for this. Therefore without giving reasons for rejecting his testimony on this discrete point, I find that it was not open to the judge to find that the Appellant was no longer receiving treatment or medication merely due to the absence of documentary evidence corroborating the Appellant's testimony.
9. Therefore, I find that an error has been established in respect of the assessment of the Appellant's mental health at paragraphs 14 to 15 to the discrete extent that that may have an impact upon the third sentence in paragraph 17 of the Judge's findings, which reads as follows:

"I have already found there is nothing to indicate the appellant suffers from depression or any other significant mental health difficulties. I find that there is insufficient evidence to conclude that his health conditions taken together with the other factors I have considered above can meet the elevated threshold of 'very significant obstacles'."

10. Therefore the assessment of the Appellant's mental health and the impact that such an assessment may have on a paragraph 276ADE(1)(vi) assessment, remains to be completed further to the judge's findings at paragraphs 1 to 13 and 16 to 18 which are preserved save for the third and fourth sentences of paragraph 17.

## Ground 2

11. Turning to Ground 2 Mr Dhanji highlights that the Appellant had claimed before the First-tier Tribunal that he had a partner in the UK who had claimed asylum, which the judge was aware of, given that the First-tier Tribunal Judge states at paragraph 33 as follows:

"I accept the appellant's partner cannot be removed until her asylum claim has been decided negatively. However, in light of the history I have referred to and in light of the fact they have been economical with the truth, I see no reason why a temporary separation of the appellant from his partner would be disproportionate".

12. Therefore, the judge was aware, Mr Dhanji says, that the Appellant's partner had claimed asylum and was not removeable at the date of hearing. Consequently Mr Dhanji submits this issue should have had a different outcome other than the judge finding that the Appellant could be subjected to a temporary separation until such time as "his partner is able to join him in Bangladesh or when he is able to join her in the UK".

13. However, notwithstanding that paragraph 329 of the Immigration Rules prohibits the removal of dependants of an asylum applicant, Mr Dhanji accepted that, under paragraph 349 of the Immigration Rules, the Appellant would not strictly fall under the definition of a partner of an asylum applicant because he had not consented to being recognised as one and was not named as a dependant on the asylum application. Consequently, I find that although not all judges including myself might have reached the conclusion that the First-tier Tribunal Judge did at paragraph 33 of his decision, nonetheless, the findings were open to the judge to make and so they must remain undisturbed.

### **Notice of Decision**

14. The Appellant's appeal is allowed in part in respect of Ground 1.
15. The appeal is to be retained in the Upper Tribunal where the sole remaining issue of an assessment of the Appellant's mental health in the context of paragraph 276ADE(1)(vi) and whether there are very significant obstacles arising from any alleged mental health issues alongside the findings of fact already made by the First-tier Tribunal at paragraphs 16 to 18 (barring the two sentences I have identified above in paragraph 17).

### **Directions**

16. Standard directions are to be issued.
17. A Bengali Sylheti interpreter will be required.
18. The appeal is not being retained by me and can be listed before any Upper Tribunal Judge.
19. The Appellant is at liberty to serve any further evidence that he seeks to rely upon but must do so no later than fourteen days before the resumed hearing. If any further evidence is provided by the Appellant, I direct that the new evidence be provided in a composite bundle containing the materials before the First-tier Tribunal from both parties as well as the decision of First-tier Tribunal Judge Anthony and my error of law decision, and the further material that the Appellant seeks to rely upon.
20. That new evidence and composite bundle must be compliant with OCR and be text searchable and accessible with PDF software.
21. The appeal is to be listed in accordance with the availability of Mr Dhanji (whose clerks may be contacted at the following address: ~ ).

*P. Saini*

Deputy Judge of the Upper Tribunal  
Immigration and Asylum Chamber

22 February 2024