IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-001211
First-tier Tribunal No: HU/52251/2022
LH/00689/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 28 May 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE SHEPHERD

Between

MD AMRAN MIAH
(NO ANONYMITY ORDER MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms Redford, counsel, (instructed by City Heights Solicitors)
For the Respondent: Mr Wain, Senior Home Office Presenting Officer

Heard at Field House on 13 May 2024

DECISION AND REASONS

Background

1. This matter concerns an appeal against the Respondent's decision letter of 29 March 2022 ("the Refusal Letter"), refusing the Appellant's application made on 23 April 2021.

2. The Appellant applied on the basis of his private life, particularly on medical grounds.

3. The Respondent refused the Appellant's claim in the Refusal Letter. This stated that the Appellant fell for refusal on suitability grounds (section S-LTR of the immigration rules), as he had two outstanding litigation debts. It was also not accepted that the Appellant met the

requirements of there being very significant obstacles to integration into Bangladesh under 276ADE(1)(vi). As regards his medical (mental health) conditions, it was considered that Bangladesh had a functioning healthcare system which was capable of assisting him; the Appellant could either travel to access medical facilities or relocate in order to access them. It was not accepted that the Appellant met the threshold for a breach of article 3 ECHR.

4. The Appellant appealed the refusal decision, alleging that he had an instalment arrangement in place to meet the litigation debts such that this should not be held against him, and providing medical expert reports in respect of his mental health.

5. His appeal was heard by First-tier Tribunal Judge Robinson (the "Judge") at Hatton Cross on 2 October 2023. The Judge subsequently dismissed the appeal in her decision promulgated on 26 October 2023.

6. The Appellant applied for permission to appeal to this Tribunal on two grounds which may be described as follows:

   (a) Ground 1: The Judge failed to make a finding on a relevant matter and provided insufficient reasoning in relation to suicidal ideation and risk of suicide. The reasoning behind the Judge's finding that she was not 'able to make findings regard the level of severity of any suicidal ideation' was unclear. Different standards of proof applied to the Appellant claims under article 3 and article 8, and yet discussion of the Appellant's conditions in [21]-[23] did not sufficiently distinguish between these standards. The Judge also failed to explain adequately or at all why she rejected either the expert evidence of Ms Costa or Dr Nallet, or why their evidence was insufficient for the Judge to make a finding on the risk of suicide.

   (b) Ground 2: The Judge failed to engage sufficiently with the background evidence on the practical availability of adequate mental healthcare in Bangladesh. The Judge relied only on the Respondent's CPIN from May 2019 before finding that 'there is no apparent reason why he could not move to Bangladesh to obtain the necessary treatment'. However, there was more recent evidence which presented a picture of inadequate mental healthcare in Bangladesh, in particular a BJPsych International report on 'The current state of mental healthcare in Bangladesh: part 1 – an updated country profile' dated 22 October 2021.

7. Permission to appeal was granted by First-tier Tribunal Judge Lawrence on 20 March 2024, stating:

> "1. The application is in time.
>
> 2. Permission is granted on ground 1, which asserts arguable, material failures to make a finding on a relevant matter and insufficient reasoning in relation to suicidal ideation and risk of suicide, for the reasons stated in the grounds.
>
> 3. Permission is granted on ground 2, which asserts an arguable, material failure to engage sufficiently with the background evidence on the availability of adequate mental healthcare in Bangladesh, for the reasons stated in the grounds."

8. The Respondent did not file a response to the appeal.

The Hearing

9. The matter came before me for hearing on 13 May 2024 at Field House.

10. Ms Redford took me through the grounds of appeal in detail, referring to the medical evidence that was before the Judge.

11. As regards ground 2, I asked whether the Judge's attention had been specifically drawn to the passage of the BJPsych International report highlighted in the grounds of appeal, and whether submissions had meen made to link its content with the Appellant's specific circumstances. Ms Redford said she did not know as she was not the representative who attended the hearing, however the amount of medical evidence was not so large such that the Judge could not reasonably be expected to have familiarised herself with it. She said the bundle index would also have indicated there was a report in addition to the CPIN.

12. I asked Ms Redford whether any of the medical documents discussed the likely impact of removal on the Appellant, and whether there was a piece of evidence that tied together the likely situation facing the Appellant on return to Bangladesh in terms of medical treatment, and the impact of that situation on the Appellant as a particular individual. She said the medical expert reports were not country reports but they mention the support that the Appellant receives in the UK and the recommendation that he be able to continue with his current therapy; the evidence in the Appellant's skeleton argument referred not only to government facilities being inadequate but said that few support services are available.

13. Ms Redford submitted that the Judge's finding that there is no apparent reason why the Appellant could not move to Bangladesh fails to engage with the evidence that, although treatment is available, it is very scarce. She took me to specific passages of the BJPsych report dealing with there being a lack of resources and stigma and submitted that the Judge's finding that help exists does not address whether the Appellant could access and obtain it with his particular conditions; if there was a real risk that he could not access it, with his history of suicidal ideation and specific plans stretching over several years, that is sufficient for the article 3 test in AM Zimbabwe [2020] UKSC 17.

14. Mr Wain replied to say the grounds of appeal were opposed for the following reasons:

    (a) Ground 1: The Judge correctly applied the appropriate (high) threshold in article 3 suicide cases at [33]-[35], referring to MY (Suicide risk after Paposhvili) [2021] UKUT 00232 (IAC) and J v SSHD [2005] EWCA Civ. Whilst her findings concerning the assessment of Dr Nallett's report are under the heading of 'article 8' at [21]-[23], it is clear that the Judge refers back to these in her findings at [34]-[35] applying the appropriate threshold. The Judge accepts the report's conclusions that the Appellant has mixed anxiety and depression disorder with past suicidal ideation. The Judge places weight on the medical documents in [21]-[23] and her findings reflect what the evidence says against the caselaw principles, which specifically require a causal link between the threatened act of removal and the treatment relied on as violating the Appellant's article 3 rights. None of the medical reports refer to the situation on enforced removal and the impact on the risk of suicide; this is why the Judge could not assess the severity of the risk. The Judge has fully reasoned why there is no risk, despite placing weight on the medical reports.

    (b) Ground 2: it has been accepted that there is no specific evidence for the Appellant as regards the position on return; Mr Wain said he could not see that the BJpsych article had been relied upon but at [30] the Judge specifically acknowledges that facilities are inadequate with stigma attached. She gives reasons as to why, in spite of that, the Appellant would still be able to access what is available. The Judge refers to the CPIN in [30] which discusses the availability of psychotherapy in both government and

private facilities. Those facilities included provision for psychotherapy and sertraline, both of which were recommended by Dr Nallett's report. The Judge's findings are therefore consistent with the background evidence.

15. Ms Redford responded to repeat her submission concerning there being a conflation of the standards of proof between articles 3 and 8. She said that the Judge only refers to treatment being available and does not address whether the Appellant could access it; she did not accept that the Judge addresses this sufficiently in [31]. She again referred to specific parts of the BJPsych report. She said a further report tying together the Appellant's conditions with the background evidence was not needed as the background evidence heavily emphasises the scarcity of treatment and this could be read against the context of the Appellant's conditions.

16. The representatives agreed that if material error were found, the appeal could be retained for remaking within the Upper Tribunal given the narrowness of the issues, although Ms Redford said the Appellant would likely wish to provide updated medical evidence.

17. At the end of the hearing, I reserved my decision.

Discussion and Findings

18. I remind myself of the important guidance handed down by the Court of Appeal that an appellate court must not interfere in a decision of a judge below without good reason. The power of the Upper Tribunal to set aside a decision of the First-tier Tribunal and to proceed to remake the decision only arises in law if it is found that the tribunal below has made a genuine error of law that is material to the outcome of the decision under challenge.

19. I also remind myself of the need for decisions to provide sufficient explanation and reasoning (see, for example, the headnote of MK (duty to give reasons) Pakistan [2013] UKUT 00641 (IAC), including as to the origin of the point or evidence on which findings are based so as to avoid both confusion and further dispute in any onward appeal – see, for example, the headnote of MK (duty to give reasons) Pakistan [2013] UKUT 00641 (IAC).

20. The Judge's findings concerning those the Appellant's claim to be at risk on return due to sexuality, and concerning the suitability provisions, have not been challenged. The grounds of appeal relate only to the Appellant's claims concerning his health conditions.

21. For reasons which I shall discuss, I do not find either ground to be made out.

22. Ground 1. The Judge clearly sets out in [17] and [18] the correct standards and burdens of proof for article 8 and article 3 respectively. At [19] she says that the fact that evidence is not referred to does not mean it has not been considered.

23. There follows a heading of "Article 8(1) and findings of fact". It is clear that what is contained within this section is a finding in [20] that article 8 is engaged by the Appellant's situation and in [21]-[27] a discussion of the background and evidence. The heading is therefore merely a device for the purposes of structuring the decision. I do not accept that the entirety of this section is an analysis of the Appellant's claim made under article 8. It is clear from the later headings relating to the specific grounds of appeal that this section is discussion and findings, with later sections containing the Judge's conclusions concerning those distinct grounds, referring back to the earlier findings. Having set out the correct applicable standards of proof, there is nothing to indicate that the Judge has not applied to them when she makes her individual findings. There is no need for her to repeatedly refer to

the standard being applied. A further indication that the correct standards are applied throughout the decision is the Judge's reference under the various headings to appropriate, applicable, caselaw. Whilst the structure may not be ideal in terms of clarity of expression, this is not enough in itself to comprise error of law. I note that no challenge has been brought against the Judge's findings in relation to 276ADE and suitability which are contained under headings referring to those topics, despite the conclusions under those headings also referring back to findings made earlier in the decision, such as in [32] when the Judge refers to her earlier finding in [27] that the Appellant is not a gay man.

24. The findings made in [21]-[27] are that:

(a) some weight is placed on the reports of Ms Costa and Dr Nallett with regard to their diagnoses albeit they are based on the Appellant's own account and there is no indication they had access to GP records [21].

(b) the Appellant suffers from mixed anxiety and depressive disorder and is taking sertraline as well as engaging in regular talking therapy [22].

(c) the Appellant has had suicidal ideation in the past, with weight being placed on the letter from Newham Talking Therapies, Ms Costa's report and Dr Nallet's report, however the evidence does not support current suicidal ideation and a finding cannot be reached regarding the level of severity of any suicidal ideation [23].

(d) it has not been shown, even to the lower standard, that the Appellant is a gay man [27].

25. I find that separate reasoned assessments under articles 3 and 8 are evident. Having discussed the overall background and evidence and making some findings in [21]-[27], the Judge refers back to those findings when making further findings and reaching conclusions concerning article 3 at [34]-[35] and article 8 at [36]-[41]. Those findings/conclusions are as follows:

26. Article 3:

(a) the Appellant has mixed anxiety and depressive disorder and has disclosed suicidal ideation in the past

(b) the Appellant does not meet the threshold contained in AM (Zimbabwe) or the test in J v SSHD, as the evidence is not sufficient to discharge the burden in this regard

(c) there is no evidence that the Appellant would not be able to access treatment in Bangladesh or that his health will deteriorate rapidly on return.

27. Article 8:

(a) factors against the Appellant's in the proportionality exercise are: the maintenance of effective immigration control is in the public interest; the Appellant has not met the requirements of the immigration rules; he has lived in the UK unlawfully since 2015 and little weight should be given to his private life during this time; there would not be very significant obstacles to integration in Bangladesh where the Appellant could obtain treatment for his medical issues, he has contact with his mother and there is no evidence he could not obtain employment.

(b) factors in favour of the Appellant are: he has ongoing mental health issues and would benefit from continuing his current treatment; he has lived in the UK for around 14 years including lawful residence between 2009 and 2015 and has established private life here.

(c) the disruption to the Appellant's private life and treatment caused by removal would be offset by his being able to obtain medical treatment and being in contact with his mother.

(d) the removal decision is proportionate.

28. I consider that the findings made by the Judge were open to her on the evidence that was before her.

29. When reaching her finding in [23] that the evidence does not support current suicidal ideation and a finding cannot be reached regarding the level of severity of any suicidal ideation, the Judge has clearly considered all of the medical evidence appertaining to the Appellant. That evidence contains different conclusions as to whether suicidal ideation is current or past. Dr Nallet's report, being dated 28 February 2022, obviously provides more up-to-date evidence than Ms Costa's report which is dated 25 May 2021. Dr Nallet specifically says, as is highlighted by the Judge in [23], that the Appellant does not have current suicidal ideation.

30. It is clear that the Judge does not reject the evidence of the two experts but takes it into account and gives the Appellant the benefit of it, finding in [22] that he suffers from mixed anxiety and depressive disorder and takes sertraline. The Judge clearly explains in [21] that some weight is placed on their reports but this is limited because they are dependent on the Appellant's own account and there is no indication that they had access to his GP records.

31. Only the two expert reports and the Appellant's witness statement (and not the letter from Newham) are mentioned in the Appellant's skeleton argument that was before the Judge. The grounds of appeal to this Tribunal themselves state (my emphasis in bold):

> "In his witness statement of June 2022 the Appellant refers to feeling suicidal and in oral evidence the Appellant said that a few times he had suicidal thoughts **though he did not state when this was".**

32. The letter from Newham Talking Therapies dated 15 November 2022 was more recent than the expert reports. I cannot see that it was relied upon in the Appellant's skeleton argument. The letter refers to the Appellant having disclosed suicidal ideation but does not state when this occurred and it also states "he reported that when this happened, he has stopped himself as he remembers his religion".

33. As above, the Judge cited the correct caselaw in [34] when addressing article 3, and that caselaw confirms that a causal link needs to be shown between the act or threatened act of removal or expulsion and the inhuman treatment relied on as violating an applicant's article 3 rights. As was confirmed by Ms Redford at the hearing, there is nothing in the medical reports, and no other document(s), which discusses the likely impact of return on the Appellant's mental health conditions and risk of suicide.

34. Overall, based on the evidence, the Judge was clearly entitled to reach the findings that she did, and those findings are sufficiently explained. No error is disclosed and ground 1 is in the nature of mere disagreement.

35. As regards ground 2, I consider this to be in the nature of 'island hopping' i.e. it rests on a selection of evidence rather than the whole of the evidence that the Judge heard (see Volpi v. Volpi [2022] EWCA Civ 464).

36. I have already discussed how there was no piece of evidence that tied together the Appellant's mental health conditions and the situation on return in Bangladesh concerning his particular ability to access such treatment as was available. Rather there was evidence concerning each of these things in its own right and it appears to have been left to the Judge to draw links between the two, when it was the Appellant's case to make.

37. The grounds of appeal seek to rely heavily on the BJPsych International report mentioned therein. The report appears at page 183 of the Appellant's bundle and is listed as number 13 in the index to that bundle. It is not referred to at all in the Appellant's skeleton argument that was before the Judge. This instead relied upon the expert reports and "the Respondent's CPIN at pages 240-270 of the bundle". Paragraph 20 of the skeleton stated that (my emphasis in bold):

> "The Appellant has also highlighted that **based on the Respondent objective evidence** there are few support services for those suffering with mental health disorders in Bangladesh and mental health is highly stigmatised and, in any event, there will be a cost to any medication and treatment."

38. Whilst the extracts from the BJPsych report referred to in the grounds of appeal, and at the hearing before me, provide evidence as to the situation generally in Bangladesh, and what practical difficulties in accessing treatment *may* arise, I cannot see that any argument was raised before the Judge as to how this related to the Appellant specifically. There is nothing within the Judge's decision that indicates a submission was made highlighting that the Appellant wished to rely on it in detail, or at all. It therefore appears to simply have been inserted into the bundle and left to the Judge to make something of it, when the Appellant's skeleton argument only appears to rely on the Respondent's CPIN.

39. The Judge mentions the CPIN specifically at [30] and accepts there is reference within it to facilities being inadequate and stigma being attached to mental illness. However, she goes on to give reasons why the Appellant would be able to access treatment nonetheless, being that: his medication is available in Bangladesh [30]; there is nothing to say he is not fit to travel or that he could not obtain employment, he has family in Bangladesh with whom he is in contact; he is not a gay man and has not been disowned by his family, he lived in Bangladesh until he was 26 and will have knowledge of the life, language and culture [31]; and even if he is gay, there is no evidence to show that this would amount to a very significant obstacle to integration "including lack of access to medical treatment given the other positive factors in his life indicating the ability to re-integrate". No real challenge has been made to these findings.

40. In [35] the Judge finds that:

> "There is no evidence that the Appellant would not be able to access treatment in Bangladesh for his health conditions or that his health would deteriorate rapidly on return to that country".

41. As referred to above, the Judge confirms at [19] that:

> "I have reviewed all the documentary and oral evidence in this case and considered it all in the round. The evidence is summarised in the following paragraphs only to the extent that it is necessary to do so in order to give findings of fact and provide reasons for those findings. The

> fact that evidence is not referred to in this summary does not indicate that it has not been considered".

42. It is well established that a Judge need not rehearse every piece of evidence before them but need only identify and resolve key conflicts in the evidence and explain in clear and brief terms their reasons, so that the parties can understand why they have won or lost (see e.g. Budhathoki (reasons for decisions) [2014] UKUT 00341 (IAC)). Also, as per the case of MA (Somalia) v. SSHD [2010] UKSC 49:

> "…the court should not be astute to characterise as an error of law what, in truth, is no more than a disagreement with the AIT's assessment of the facts. Moreover, where a relevant point is not expressly mentioned by the tribunal, the court should be slow to infer that it has not been taken into account".

43. Considering everything, I do not accept that the Judge failed to engage adequately with the background evidence on the practical difficulties accessing mental healthcare in Bangladesh. She confirmed that she had reviewed the evidence, she specifically refers to the CPIN which was relied upon by the Appellant in the skeleton argument and which contains similar content to the BJPsych report; and she gave sound, unchallenged, reasons as to why the Appellant would be able to access treatment despite this background evidence.

44. To conclude, I find the decision is not infected by any material errors of law. The decision therefore stands.

45. Having considered the question of anonymity, and the applicable Presidential guidance, I do not consider that an anonymity order is required given that there is no challenge to the findings of First-tier Tribunal Judge Robinson concerning the Appellant's protection claim based on his sexuality, an anonymity order has not been requested, and the claim made for article 3 is not based on risk arising from any person in Bangladesh such that his identity being published within the proceedings should not lead to a risk of harm.

Notice of Decision

1. The appeal to the Upper Tribunal is dismissed. The decision of First-tier Tribunal Judge Robinson promulgated on 26 October 2023 is maintained.

2. No anonymity order is made.

L.Shepherd
Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber
17 May 2024