Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/13176/2019(V)

THE IMMIGRATION ACTS

Heard remotely at Field House	**Decision & Reasons Promulgated**
On 15th January 2021	**On 26th February 2021**

Before

UPPER TRIBUNAL JUDGE FRANCES

Between

K I
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr A Miah, instructed by M A Consultants
For the Respondent: Mr E Tufan, Home Office Presenting Officer

This has been a remote hearing which has been consented to by the parties. The form of remote hearing was video by Skype (V). A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents that I was referred to are in the bundles on the court file, the contents of which I have recorded. The order made is described at the end of these reasons.

DECISION AND REASONS

1. The Appellant is a citizen of Bangladesh born on 7 February 1990. He appeals against the decision to deport him under Section 3(5) of the Immigration Act 1971 on human rights grounds. The Appellant's appeal was heard by First-tier Tribunal Judge Clarke on 25 November 2019 and dismissed for the reasons given in his decision dated 16 January 2020. Permission to appeal against this decision was granted by the Upper Tribunal and an error of law was found by Upper Tribunal Judge Kekić for the reasons given in her decision promulgated on 28 August 2020. The appeal was adjourned for re-hearing and the matter came before me.

2. In summary, Judge Kekić found that Judge Clarke had erred in his assessment of the Appellant's private life in failing to undertake a full balancing exercise of the factors in favour of the Appellant such as his good behaviour record in the probation officer's report, his long residence, the low level prison sentence he received and the moveable quality of the public interest. These were matters which were relevant to the balance sheet assessment and, as the judge appeared to have misapplied the guidance on weight to be given to private life, it could not be said that his conclusions as a whole could be sustained.

3. Upper Tribunal Judge Kekić preserved the following findings of fact:

    i) The Appellant entered in December 2002 aged 12;
    ii) He was remained in the UK with various grants of discretionary leave from May 2003 until the grant of indefinite leave to remain in September 2010;
    iii) He visited Bangladesh in 2011 for two and a half months;
    iv) In February 2018, he was convicted of two counts of supplying class A drugs and received a ten month prison sentence. He did not appeal against the conviction or sentence;
    v) The Appellant is a foreign criminal under Section 117D(2) of the Nationality, Immigration and Asylum Act 2002;
    vi) The exceptions under paragraph 399 of the Immigration Rules cannot be met;
    vii) The requirements of paragraph 399A(a) and (b) have been met;
    viii) The Appellant does not have family life in the UK;
    ix) He speaks both Bengali and English;
    x) He has had periods of depression for which he was prescribed antidepressants;
    xi) Prior to losing his jobs and becoming involved with drugs he had a good work record;
    xii) He was involved with the local mosque and Bangladesh community.

4. At paragraph 34 Judge Kekić concluded:

    "The issues of whether there are very significant obstacles to his re-integration on return to Bangladesh or whether there are very compelling circumstances

over and above those contained in paragraphs 399 and 399A will need to be re-assessed in the context of the years he has spent here including his six years here as a child. The judge did not make clear findings as to the family remaining in Bangladesh and the contact the Appellant has with them. That will also need to be addressed. The public interest arguments made in the grounds can also be argued at the resumed hearing which shall take place before the Upper Tribunal."

Immigration history

5. The Appellant entered the United Kingdom on 24 December 2002 and claimed asylum as an unaccompanied minor. On 21 May 2003 he was granted discretionary leave to remain following the refusal of his asylum claim. His discretionary leave was extended and, on 21 September 2010, he was granted indefinite leave to remain outside the Immigration Rules. On 13 January 2011, the Appellant went on a short holiday to Bangladesh. He returned to the UK on 30 March 2011.

6. On 23 February 2018, the Appellant was convicted at St Albans Crown Court of two counts of supplying class A drugs. The Appellant pleaded guilty and was sentenced to ten months' imprisonment and ordered to pay a victim surcharge of £140. On 26 April 2018, the Appellant was served with a notice of a decision to deport him under Section 3(5) of the Immigration Act 1971. He filed Article 8 submissions on 24 May 2018 and his human rights claim was refused on 26 July 2018.

Submissions

7. Mr Miah relied on the skeleton argument dated 15 September 2020 submitted on the Appellant's behalf. He confirmed that there were preserved findings by the Upper Tribunal and the two issues remaining in this appeal were whether there were very significant obstacles to re-integration in Bangladesh and whether there were compelling circumstances over and above those in the Immigration Rules.

8. In relation to very significant obstacles, Mr Miah submitted that the Appellant came to the United Kingdom as a minor and he knew very little about the country where he was born. He had mental health issues, as a result of experiences in Bangladesh, and was taking medication. He had visited Bangladesh once, without seeing his family, and then returned to the UK because he did not feel safe. The absence of family support and ties in Bangladesh, and the difficulty the Appellant would experience in re-establishing himself, finding housing and building a support network amounted to significant obstacles to re-integration. The facts of this case and the matters referred to at paragraph 7 of the skeleton argument were sufficient to meet that threshold.

9. Mr Miah submitted the Appellant had lived in Bangladesh until the age of 12 and therefore his memories of the country would be extremely limited. In contrast, he had spent 18 years in the UK. The Appellant would be considered an outsider on return to Bangladesh and would be a target as someone who had returned from the United Kingdom. He would be considered to be someone whose friends or family would be able to pay considerable sums for his release. There was an undisturbed finding in the First-tier Tribunal decision that the Appellant was trafficked from Bangladesh to the United Kingdom.

10. Mr Miah submitted that there was nothing else that could be required in order to establish very significant obstacles to integration. The fact that the Appellant came to the UK as a minor and had lengthy residence here, which was lawful not precarious, together with the other factors taken cumulatively meant that he could meet the threshold of very significant obstacles.

11. In relation to compelling circumstances, Mr Miah relied on paragraph 9 of the skeleton argument and the cases referred to therein, Akinyemi v The Secretary of State for the Home Department [2019] EWCA Civ 2098 at [44] to [51] in support of the proposition that the public interest has a flexible or moveable quality and KO (Nigeria) v Secretary of State for the Home Department [2018] UKSC 53 that it makes a difference whether a foreign criminal came to the UK as a child or as an adult. In this case, the Appellant came to the UK as a minor and although the Appellant had committed a serious crime, he was sentenced to a heavily reduced term of ten months, having pleaded guilty and expressed remorse.

12. Mr Miah submitted the Appellant's offending behaviour was out of character as was evident from the sentencing remarks, the letters of support from his employer, his school, his friends and members of his extended family. Prior to the offence the Appellant's behaviour had been beyond reproach and, but for a minor offence in 2009, he was of good character. The Appellant had engaged with probation at all times and was considered by the probation officer to be someone who was honest and forthright. The Appellant had worked in Marks & Spencer's as a trainee customer assistant and Sainsbury's. His previous employer referred to him as a valued, loyal and hardworking member of staff. The Appellant had also studied in the United Kingdom and obtained vocational qualifications in carpentry and joinery, and had obtained GCSEs.

13. The Appellant had spent much of his youth in the UK and committed offences as an adult. The probation report showed that the likelihood of reoffending was low. The letters of support and employment references demonstrated that the offence was out of character. On these particular facts, the Appellant's offending behaviour was outweighed by the specific facts of his Article 8 private life.

14. Mr Tufan relied on the skeleton argument dated 29 September 2020. He submitted that the two issues were significant obstacles to integration and very compelling circumstances: Sections 117C(4)(c) and 117C(5) and (6) of the 2002 Act. The Appellant

came to the United Kingdom aged 12 and therefore had spent his formative years in Bangladesh. The Appellant was aware of the circumstances faced by all visitors in Bangladesh, having returned there for two and a half months in 2011. The Appellant was bilingual and, having maintained contact with the Bangladeshi community in the UK, he was aware of the culture in Bangladesh. The Appellant claimed that his mental health issues were as a result of issues arising in Bangladesh. There was no evidence save the Appellant's assertion that this was the case and no protection claim had been made in response to the notice of intention to deport.

15. In relation to compelling circumstances, the only thing that could be balanced in the Appellant's favour was his sentence of ten months. The sentencing guidelines demonstrated that the starting point was a sentence of three years. The Appellant's sentence had been reduced because of his guilty plea and good character. Mr Tufan referred to HA (Iraq) v Secretary of State for the Home Department [2020] EWCA Civ 1176 at [92] and [93]. He submitted the relative seriousness of the offence could be deployed at the second stage and only came into play if there were other compelling circumstances. The fact that the offence was viewed as less serious could inform the weight to be attached to the public interest and could inform an opinion that the Appellant's Article 8 rights outweighed the public interest, but on the facts of this particular case, the ten months' sentence of imprisonment did not come into the equation. It was not capable of tipping the balance.

16. Mr Tufan referred to the case of Secretary of State for the Home Department v Kamara [2016] EWCA Civ 813, in which the Appellant had come to the UK at the age of six and the Appellant's circumstances amounted to very significant obstacles because of the particular situation existing at the time in Sierra Leone. Mr Tufan relied on Mwesezi [2018] EWCA Civ 1104, in which Lord Justice Sales concluded at [36] that there were no compelling circumstances even though the Appellant came to the UK aged 2 years old. The particular circumstances of Kamara resulted in that appeal being allowed. The fact that the Appellant had lost all connections to Bangladesh was not sufficient. The Appellant would have to demonstrate a strong Article 8 claim in order to outweigh the public interest in deportation.

17. In response, Mr Miah submitted that the Appellant did have a strong Article 8 claim because he came to the UK at the age of 12. He had spent six years in the UK as a child. This was relevant because a seven year period was considered significant in establishing private life in respect of a child. In this case the Appellant had six years' residence as a child plus the remaining 12 years as an adult. This made his claim particularly strong.

18. I asked whether the Appellant could meet paragraph 276ADE without criminality. Mr Miah submitted that the Appellant's position was different to somebody who had been here without leave for twenty years. The Appellant had indefinite leave to remain. His lawful residence meant that his case should be assessed differently to those under paragraph 276ADE. He relied on ZH (Bangladesh) (no reference) that

described the Appellant as having worked illegally and holding a false bank account. That conduct was sufficient to establish private life.

19. The distinctive feature in this case was the Appellant's significant amount of time as a minor and his significant amount of time residing in the UK with lawful leave. The probation report was important and the factors referred to at [31] of Judge Kekić's decision should be taken into account. This case was different to the other situations cited. It was not a case where the Appellant was arguing he could not obtain medication in Bangladesh. It was the case that the Appellant was suffering from depression. He had the benefit of a support network in the UK but he would not have the benefit of a support network if he returned to Bangladesh. The fact that he was suffering from depression was relevant, not his access to medication. The position was that the Appellant accepted that there were relatives in Bangladesh including his mother but he did not have contact with anyone there.

Discussion and conclusions

20. The Appellant is 30 years old and came to the United Kingdom in 2002 when he was 12 years old. He has spent six years in the UK as a minor and 12 years in the UK as an adult. He has been living in the UK lawfully for 18 years. He has visited Bangladesh once for a period of two and a half months in 2011. The Appellant was educated and has been in employment in the UK. The Appellant's conviction in 2009 at Haringey Magistrates' Court was not relevant to this appeal. The relevant conviction is the 23 February 2018 for which the Appellant received a sentence of ten months' imprisonment. The Appellant is a foreign criminal because the offence was considered to cause serious harm.

21. I have taken into account the preserved findings at paragraph 3 above. The matters relied on to establish very significant obstacles to re-integration are that the Appellant has lengthy lawful residence in the UK, he came as a minor in 2002 and has only returned to Bangladesh once. He has no material family ties in Bangladesh and having arrived in the UK at the age of 12, he has little memory of the country. The Appellant suffers from depression and has the support of family and friends here in the UK which he would not have if he returned to Bangladesh. The Appellant had been trafficked to the UK from Bangladesh when he was young.

22. There was insufficient evidence before me to show that the Appellant's depression was caused by previous experiences in Bangladesh or to show that he would be targeted on return because he was someone from the United Kingdom. The other factors raised by Mr Miah in oral submissions and in the skeleton argument are relevant to the assessment of very significant obstacles and very compelling circumstances.

23. I find that those factors do not give rise to very significant obstacles to integration. Although the Appellant has spent a significant amount of time in the UK, he lived in

Bangladesh until the age of 12 and he has returned there as an adult, travelling around the country for a period of two and a half months. Even if he no longer has any contact with his mother or siblings in Bangladesh, he has not lost all ties with the culture of Bangladesh because he lives with extended family members in the UK and he speaks Bengali. His qualifications and his work history in the UK would not inhibit his employment prospects. The Appellant's depression does not prevent him from working and he is able to obtain medication in Bangladesh. There is no reason to believe the Appellant would be unable to re-establish himself in Bangladesh within a reasonable amount of time.

24. Looking at all factors cumulatively, I am not satisfied, on the particular facts of this case, that the Appellant has shown very significant obstacles to integration, applying the test in Kamara. The Appellant has failed to show that he would not be able to find accommodation and support in Bangladesh so that he would be seen as enough of an insider to be able to live and function there on a daily basis. The Appellant's mental health condition is not so severe as to prevent him from doing so and a lack of support from relatives, given his age, education and work experience, would not prevent him from integrating. Accordingly, I find that the Appellant has not shown that he meets the exceptions in Section 117C(4) of the 2002 Act.

25. There is a preserved finding that the Appellant does not have family life in the UK. There were many letters of support from family members in the UK, most of whom are adults, and whilst the Appellant has grown up with some of those family members and has been taken care of by some of those family members, that was not considered to be sufficient to establish family life.

26. However, those relationships have been established over a significant period of lawful residence and are relevant to the Appellant's private life. The Appellant came to live with extended family members in the UK when he was only 12 years old and he has grown up as part of their family. He has continued to be supported by his extended family members into adulthood. The Appellant is socially and culturally integrated into life in the UK and has lived in the UK for most of his life.

27. The Appellant has a significant length of lawful residence in the UK, 18 years in total, six years as a minor and 12 years as an adult. He has established very close relationships with family and friends who provide support for his mental well-being. He has been employed in the UK and he clearly has a private life which merits substantial weight. In relation to the offence, the Appellant's sentence was significantly reduced because of his guilty plea and remorse, and he cooperated with probation. I take into account, in his favour, his good behaviour record, his long residence, his low level prison sentence and the low risk of reoffending. I accept that the Appellant's offending behaviour was out of character.

28. The weight to be attached to the public interest is significant and the Appellant has been convicted of an offence which has caused serious harm. Taking all these factors into account, the issue is very finely balanced. However, I find that the particular

facts of the Appellant's private life established over a lengthy period of lawful residence in the UK is sufficient to reach the threshold of very compelling circumstances and to outweigh the public interest in deportation. I allow the Appellant's appeal.

Notice of Decision

The appeal is allowed on Article 8 grounds.

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify his or any member of his family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

J Frances

Signed Date: 11 February 2021
Upper Tribunal Judge Frances

TO THE RESPONDENT
FEE AWARD

As I have allowed the appeal and because a fee has been paid or is payable, I have considered making a fee award and have decided to make a fee award of any fee which has been paid or may be payable.

J Frances

Signed Date: 11 February 2021
Upper Tribunal Judge Frances

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after

this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:

2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically).**

3. Where the person making the application is in detention under the Immigration Acts**, the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.

4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically).**

5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.

6. The date when the decision is "sent' is that appearing on the covering letter or covering email.