



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/00723/2020

THE IMMIGRATION ACTS

**Heard at Bradford (via Microsoft Teams)
On 8 March 2022**

Decision & Reasons Promulgated

On 18 May 2022

Before

UPPER TRIBUNAL JUDGE HANSON

Between

M A H

(Anonymity direction made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Solanki instructed by Duncan Lewis & Co Solicitors.

For the Respondent: Mrs Aboni, a Senior Home Office Presenting Officer.

DECISION AND REASONS

1. By decision promulgated on 19 October 2021 the Upper Tribunal set aside a decision of the First-tier Tribunal in this matter and directed that the matter be considered further.
2. The appellant is a citizen of Bangladesh born on 1 January 1973.
3. There are a number of preserved findings from the earlier decision including those relating to family composition, appellant's immigration and criminal history, the rejection of the protection claim, the

existence of family and private life in the UK, the finding that return to Bangladesh would be an interference with such private and family life, none of which have been challenged.

4. The appellant's immigration history shows he entered the United Kingdom on 25 January 2009 lawfully, with entry clearance as the spouse of a British citizen. On 3 August 2011 he was granted indefinite leave to remain in the UK on the basis of the subsisting marriage.
5. On 4 October 2017 the appellant was convicted of sexual assault at the Bristol Crown Court for which he was sentenced to 20 months imprisonment, ordered to pay a victim surcharge £140, and made subject to a Barring Order which will require him to sign on the Sex Offender Register for 10 years from the date of conviction.
6. The appellant was notified of the decision to deport him from the United Kingdom and a deportation order issued against him on 18 January 2018. Submissions made opposing the deportation on the basis of the appellant's human rights was also considered and refused.
7. The section of the Sentencing Judge's remarks set out in the decision to refuse the human rights claim is in the following terms:

"If you would stand up please. This was very serious offending in relation to your wife. She is entitled to feel safe in her own home and with a child present. You, in your drunken state, treated her in an atrocious way and in a way no one should treat another person, whether having been in a relationship in the past or not.

She must have been terrified, and clearly was terrified, and was forced to call her family to seek their protection. She did not think you were still in the house when you assaulted her and that points to their having been elements of Category 1 in the context of the guidelines, but I accept that you had been there with permission earlier in the evening, which perhaps points closer towards Category 2. But I have to sentence you for what you did in the context of your actions.

I do take account of your guilty plea which, in cases such as this, is not always an approach an offender takes. Looking at the matter in the round, after a trial, the sentence would have been 30 months. Credit takes it down to 20 months but you will have to serve that sentence, or at least up to half of it, and then be on licence for the balance.

Sex Offender Registration for whatever the treated period is, if someone can tell me, and the usual barred list matters. Surcharge, I do not make a restraining order as there is no application to make one today. If one is to be made, an application is to be made in the next 56 days to me".

8. The appellant claimed before the First-tier Tribunal that he was at risk on return from the Awami league, as a supporter of Jamaat-e-Islami, in relation to which that Judge found that the appellant's account was neither credible nor plausible.
9. The First-tier Tribunal Judge did not accept that scarring to the appellant's finger and on his legs was caused as a result of attacks on him or persecution, that if the appellant felt ill at ease in his home area there was no reason why he could not internally relocate, and

that it had been noted that in 2008 after his marriage he lived in Dakar for six months without incident.

10. The appellant's claim to face a real risk on the basis of a fear of his wife's family who he claimed opposed their marriage was considered by the Judge who found that it was unlikely that there is any risk to the appellant from his wife's family and that the appellant has substantial contacts with relations in Bangladesh.
11. The Judge did not find the appellant had made out his claim to be at real risk on return to Bangladesh.
12. The First-tier Tribunal also found no very significant obstacles to return.
13. In relation to article 8 ECHR; the First-tier Tribunal Judge found that the appellant lives in Bradford with a cousin and the children's mother lives in Bristol with the children. The Judge noted a report from Bristol Social Services and that the appellant has contact with the children.
14. The evidence previously given was that the appellant did not live with his wife as he was not allowed to, but that his wife had said that he was welcome to return but they had no plans to do so at that time due to the situation that prevailed and due to the mental stress. The Judge noted, however that it was clear that the appellant's wife would not allow him to return, and the Judge found the evidence of the appellant and his wife about their marital life to be unconvincing.
15. At [111] of the decision the First-tier Tribunal Judge wrote that he agreed with the findings of an earlier judge that Article 8 family life rights were engaged and that a private life has been formed within the UK.

The evidence

16. In the skeleton argument prepared for the purposes of this hearing the background is set out in the following terms:

The factual background to this claim can be summarised as follows,

- a. The A is a national of Bangladesh, date of birth 1 January 1973.
- b. His parents are deceased, his father having passed away when he was a child and his mother passing in 2013. His brother passed away in 2017 from a heart attack. He has three sisters who are all married.
- c. He has been in the UK since January 2009 based on his relationship with his British wife, SB (CB 33).
- d. He has three British children from the marriage (CB 30-32) who he maintains contact with. His children are MJH (15 December 2020), MAH (24 June 2013) and MoAH (6 January 2015).
- e. MoAH has been diagnosed with autism spectrum condition. His expressive and receptive language skills are delayed, he has limited interaction with his peers and shows limited awareness of their presence, he attends school part-time, he becomes overwhelmed in school, he requires support with feeding, he has no awareness of danger. He requires speech and language therapy and special educational provision (CB 46-84).
- f. He had lived with his family and been employed with Dominos since his entry in 2009 until he was detained as a result of offending in 2017 (see §26 grounds of appeal 18/05/2021).

- g. He has an offence of sexual assault against his wife, after having been under the influence of alcohol. This is his only offence. His wife made efforts to withdraw the case and all charges in September 2017 without success (CB 29). She wishes for the A to return to live with the family (CB 27-28).
- h. He remains married but lives separately from his wife and children. He was a very active father whilst living with his family. He met with them every two months when in prison. When released from immigration detention he went to stay with his cousin in Bradford. His wife and children remained in Bristol. Covid-19 has impacted upon physical contact. He still speaks to his wife and children every day. He wishes to be an involved father and his family wish for this too (CB 37-43). He continues to see his children as often as he can in person and they have plans for him to move back to the family home gradually.
- i. He suffers with depressive episode and is said to be at real risk of self-harm and suicide.

17. In his witness statement dated 7 March 2022 the appellant confirms that since June 2020 he has remained living in Bradford with a cousin with his wife and children living in Bristol but claims that he is has remained in contact with them despite the distance. In relation to his mental health the appellant writes:

- 4. My mental health has continued to deteriorate, largely due to my uncertain immigration circumstances. Having been in this country for a significant period of my life and having settled with my family, the prospect of returning to a place where I would most definitely be subjected to torture and abuse, and highly likely to be killed, is undoubtedly having a profound impact on my mental state. As well as this, any move back to Bangladesh would ultimately mean that I will be separated from my family, from my three children and my wife whom I love.
- 5. Another aspect remains the fact that I am unable to work or financially provide for my family owing to my immigration case. Added to this has been my recent issues with my motorcycle insurance. I was told that I would have to pay £1300, as well as further costs for the MOT and any other costs arising from owning the motorcycle. I am ashamed that I have to ask strangers to help me and I wish to be back in a position where I can earn money to support those close to me. I used to be continuously employed and provide for my family. My hope is to do this again if given status. I would have no hope of this if removed. This would be awful for my wife.
- 6. An extremely significant factor in the deterioration of my mental health is also the separation that has happened with my being in Bradford and my wife and children being in Bristol. The fact that I am unable to see them regularly creates a despondent situation, which has ultimately furthered my depression. I am constantly thinking about my children and always become sad at the situation I have caused.
- 7. Having recently been in contact with my doctor, I have seen my medication for my depression (mirtazapine) doubled in dosage from 15mg to 30mg such is my current mood. The impact that this situation is having on my mental health cannot be underestimated.

Alcohol use

- 8. I have not touched alcohol since I have been released from prison. I completed numerous courses whilst in prison, and since being out even the thought of

alcohol brings with it the memory of shameful incident that put me in prison in the first instance.

Family

9. I continue to miss my wife and children and try to contact them every day. I called the children before and after school and on the weekend. I make use of both audio and video calls to maintain contact.
 10. Whilst I am happy to see my children, and this contact provides support and love, I wish for further contact as do they. It is very hard on all of them, especially my wife who has the burden of being a single mother without the support of her husband.
 11. I last visited my family two or three months ago when I went to Bristol. Prior to this, I would visit approximately once a month. I went for the full day. We mostly spent time in the house, going out for food and doing things we would normally do as a family. When I last visited, the children were so happy and so excited. When they saw me they began climbing all over him to be close to him. They just wanted to be close to me and me to them.
 12. My wife is also stated that she wants to see my slow reintegration to the family, first through coming around to the family house three or four times a week, then every day after school to help out with the children before eventually fully reintegrating myself into the family home. This is currently not viable due to my current financial circumstances, as well as my current location which makes it difficult for me to physically visit regularly.
 13. I truly wish to be able to live with my family again. They are everything to me and I cannot envisage a world without them being present. Being away from them has very hard but at least I see them and have hope now. I do not want to consider a world where I cannot see or hear them regularly effort. That would devastate all of us.
- 18.** The appellant gave oral evidence in relation to which it, as it was accepted he is a vulnerable witness, care was taken to ensure that he was able to cope with the experience. I am satisfied that the appellant was able to understand the questions, to give appropriate answers, and to participate fully in the proceedings without his vulnerability preventing him from doing so. I have also taken such vulnerability into account when assessing the evidence in accordance with the Joint Presidential Guidance.
 - 19.** The appellant confirmed that he used to see the children monthly, that his last visit to the children he thought was in January 2022, that the children will be upset if they were not able to see him in person. The appellant confirms he takes his medication which had now been increased to 50 mg from 30 mg but could not explain why there was no evidence from his GP of his current mental health and the medication he described.
 - 20.** The appellant has also provided a witness statement from his wife SB dated 7 March 2022. As with all the witnesses both the earlier and later witness statements have been considered in full.
 - 21.** In her statement SB confirms that since June 2020 she has remained in Bristol living with their three children with the appellant in Bradford with his cousin.

22. There is confirmation that the appellant has contacted SB and the children every day via video and audio calls which she describes as being vital for the children as well as for herself. In relation to the family SB writes:

Family

4. [The appellant] has been contacting myself and the children everyday via video and audio calls. This has been vital for the children and myself. For the children, they continue to see their father who they love very much, even if it is much less than they would hope to be able to do so.
5. For myself, it grants the children and myself a distraction from the current situation. Being a single mother of three children - one of whom has been diagnosed with autism - is an extremely tiring role, and having [the appellant] be present, even in a virtual setting, allows all of us some respite from real life. Our son who is autistic () requires significant attention. Whilst he attends a special needs school and is provided with support on the weekends, when he is left with myself, it can often be the case that I have to largely focus on him. This can mean that my other two children don't receive the attention that they should and would be able to receive with [the appellant] present.
6. [The appellant] has made concerted efforts to come to Bristol in order to see the kids regularly. He last visited approximately two months ago. Prior to this, he would visit monthly. When he came, I was really happy and relaxed for the first time in a long time. I had someone who I trusted to look after the children and to take away the pressure from myself.
7. He spent the day with us largely at our home, before we went out to get food as a family. The children were extremely happy and I was allowed to relax for the day. It felt like a return to before any of our issues.
8. The children constantly want to speak with him and miss him. When he is not here, they ask when he will contact next. When he does call, they are really excited and very happy, constantly wanting his attention. It can often take some time to explain when he has to go, and can often involve tears. The last time [the appellant] was in Bristol, it was very similar, with the children constantly wanting to be with and around their father.
9. I still wish for [the appellant] to come and move in with me and the children in Bristol. However, I would like to make this a gradual transition to ensure that the incident that had happened previously does not happen again, and I believe I could see this with regular visits by [the appellant]. However, currently this is not possible. It is too expensive for him to currently move. There is also the issue of [the appellant] needing to sign in every week which we do not wish to disturb. It would be much easier without these things for us to move back towards being a full family again.
10. I do not wish to see [the appellant] go back to Bangladesh. As I have stated in my previous statement, the increased burden it would put on myself, as well as the high likelihood of my husband being harmed means that I do not believe in any circumstances he should be sent back to Bangladesh.
11. I remain extremely hopeful that we can one day become a full family again. If he were granted asylum - and would therefore be able to work - I have no doubt that he would be able to move to Bristol to begin this slow integration back into the family that we once were, ending with [the appellant] moving back in. I do love my husband, as do my children. My children continue to ask when he will be home. His impact on our family cannot be understated. He is needed here for my sake and the children's sake.

23. There was no cross examination of SB.

The expert evidence.

- 24.** The appellant has also provided a number of reports in support of his appeal including reports relating to the children, a psychiatric report by Dr Sen, an Independent Social Worker's report, report of a country expert, together with other supportive material, all of which has been considered.
- 25.** The psychiatric report is dated 4 January 2021 and it was not disputed that Dr Sen had the necessary expertise to be considered as an expert witness in the field of psychiatry.
- 26.** Having undertaken the necessary assessment Dr Sen writes:

5. Opinion

- 5.1 MH currently satisfies criteria for a diagnosis of moderate depressive episode, according to the International Classification of Mental and Behavioural Disorders, version 10 (ICD-10). His mood is very low, he has problems with sleep, problems with appetite, his concentration is poor, he feels slowed down in mind and body and also has multiple somatic symptoms like dizzy spells, spinning of the head, chest pain, palpitations and indigestion, which are linked to anxiety. MH would undoubtedly benefit from treatment for his condition with an antidepressant, which would help to lift his mood and particularly improve symptoms like sleep and appetite, which would help to provide some relief. It is hard to comment how long he would need to be on such treatment as this is very much linked to an improvement of his situation, with the threat of deportation and the prospect of facing persecution in Bangladesh in his mind. Which are all the factors which would continue to aggravate his recovery from a moderate depressive episode.
- 5.2 MH does report the trauma from the culture he endured in Bangladesh and in his mind, he remains fearful of such treatment were he to be returned to Bangladesh. However, his current mental health symptoms are more linked to the trauma he perceives at the prospect of deportation and at the prospect of estrangement from his family, particularly his children, if he was removed to Bangladesh.
- 5.3 On the question of whether MH's mental health and trauma could affect his memory, individuals who suffer from depression problems with concentration, which can have an effect on their memory. MH undoubtedly reports problems with concentration and this can have an effect on his recollection of past events.
- 5.4 With regards to MH's treatment, I noted that he was prescribed an antidepressant Sertraline whilst in immigration detention but this was not at the proper therapeutic dose of Sertraline used in cases of depression. If Sertraline is re-prescribed for him, the dose needs to be between 100 and 150 mg for maximum effect, titrating against side effects. I note that MH has now been started on the antidepressant Mirtazapine at the dose of 15 mg daily. The dose of this antidepressant can go up to 45 mg and I would certainly recommend that the dose be doubled to 30 mg and if there is no response, to go up to 45 mg for best effect. MH was also able to engage with one-to-one therapy in immigration detention and though this was primarily focused on his substance abuse, he was also judged suitable for psychological therapy in immigration detention, which eventually could not be offered to him due to changes from Covid-19. I would recommend that his GP referred him for psychological therapy through the IAPT Service, which offers quick access to such therapy.

- 5.5 MH's current state of mental health and some of his physical health problems are undoubtedly as a result of the situation in which he finds himself following the index offence, which led to his estrangement from his family as well as the threat of deportation from the UK. MH has no previous history of mental health problems, but undoubtedly does have a history of problem use of alcohol. It does not seem to satisfy criteria for a diagnosis of alcohol dependence syndrome as he managed to carry on working throughout the time he was consuming alcohol and did not significant withdrawal symptoms. However, his alcohol use was undoubtedly a significant contributory factor towards the index offence and has had a serious effect on his life. To his credit, MH acknowledges this and was able to engage with therapy whilst in detention. I was not able to look through his prison records, but there are references to some work that he did on his alcohol use even whilst in prison. There is no doubt that his current mental health problems started after he was imprisoned and went into immigration detention, from the evidence available to me. However, I have not been able to access his GP records to further corroborate this information.
- 5.6 I did not conclude that MH satisfies criteria for a diagnosis of post-traumatic stress disorder (PTSD), where individuals display symptoms directly attributable to their experiences of torture. However, what I did conclude from my interview is MH's conviction that he would be victimised by the opposition political party, who are in power in Bangladesh at this time and by members of his own family and his wife's family if he returned to Bangladesh. Without going into the issue of whether such a thought process is based on reality, it is undoubtedly true that such a thought process is further contributing to his moderate depressive episode.
- 5.7 If MH is removed to Bangladesh, as a result of this thought process where he perceives himself to be at serious risk, his mental health would undoubtedly deteriorate and there is an increased risk of self-harm or suicide. MH reported this in his clinical interview with me, saying that he might as well end his life if he was deported, as the prospect of estrangement from his children and family and a return to Bangladesh where he perceives danger for himself would just be too much for him to handle. His children are an important protective factor which has kept him from making any attempt at self harm whilst in immigration detention though he had such thoughts on many occasions but a removal to Bangladesh would remove this protective factor and thus further increase the risk of deterioration of his mental health and the risk of self-harm and suicide for MH.
- 5.8 If MH did not get medical treatment, there is a risk that his moderate depressive episode will get worse. His mental health condition was judged to be sufficiently serious in immigration detention for him to be started on psychological therapy. The other risk is a resumption of his alcohol use which will further worsen his symptoms of depression. There is also a risk of his physical health symptoms getting worse like his hypotension, headaches and gastric problems. Overall, there is a real risk of further deterioration of MH's health if he does not get medical treatment.
- 5.9 With regards to immigration detention, there is adequate evidence from the medical records from immigration detention that it worsened his mental state, a fact repeatedly commented on to the Home Office by a number of Rule 35 reports completed by doctors looking after him in immigration detention. Further experiences of detention will undoubtedly lead to further worsening of MH's mental state, both detention itself and estrangement from his family as well as the prospect of deportation, which would be very real for MH should he be detained again.

- 5.10 With regards to thoughts of suicide, I do find it plausible that MH will harm himself if removed to Bangladesh. He has repeatedly expressed such thoughts in immigration detention and has repeatedly said that the sole protective factor for him has been the there is a real risk that if removed to Bangladesh he would see his estrangement from his children as permanent and this will increase the risk of him making an attempt to harm himself.
- 5.11 With regards to MH's risk of reoffending, I have not had access to the prosecution papers, the remarks of the sentencing judge in Crown Court or the probation records. Every attempt was made by MH's legal representatives to procure this information and I even delayed completing my report till this information could be procured. However, the Ministry of Justice informed MH's representatives that due to Covid-19, they could only provide limited disclosure. Thus, my assessment is based on what I saw in the Home Office records, descriptions in the immigration detention medical records and MH's own account of the offence. I did note that MH's wife and children maintained regular contact with him in immigration detention and his wife had even been to visit him whilst in immigration detention. I also note that the offence seemed to have followed a prolonged bout of alcohol consumption as well as an argument linked to him being unaware of his wife's family visiting his house whilst he was out working. MH continues to report complete amnesia for the offence, which is not uncommon in individuals who were intoxicated while committing an offence. I note that MH has no previous forensic history. All of these factors lead me to conclude that alcohol played a very significant role in his offence and would be very significant in his risk of reoffending. I note that MH did engage extremely well with Phoenix Futures with regards to addressing his alcohol misuse, particularly with his key worker EG, whom he met regularly and developed a good awareness of the role of alcohol in his offending. I also note that he attended substance misuse groups in immigration detention, although his attendance was not always a regular and consistent. I also noted that he did use NPS or legal highs in immigration detention when he was very frustrated about the prospect of release. This suggests to me that he would remain vulnerable to using coping strategies like alcohol use if faced with difficulties within the community. A key part of the rehabilitation thus would be continued contact with a substance misuse service to monitor his alcohol use and subjecting him to regular random checks to ensure that he did not relapse and for him to attend Alcoholics Anonymous groups local to the place where he is living in the UK. With such safeguards in place, I do believe that his risk of offence can be minimised, especially in the presence of protective factors like the support of his children and family as well as employment, which will help him to appropriately structure his time.
- 5.12 With regards to the treatment which would most benefit MH in order to improve his quality-of-life, the best treatment for MH will be regular contact with a mental health service initially to monitor the dose of his antidepressant and to ensure that his depressive symptoms are well controlled working in conjunction with a substance misuse service to regularly monitor his alcohol use. Due to the severity of his offence and the effect on the children, any contact with the family needs to be under the supervision of child protection services and progress regularly risk assessed before future decisions are made, keeping the best interests of the children in mind. MH should also be supported to get back to some form of employment, keeping in mind the challenges around it, as he is now on the sex offenders register. However, it needs to be remembered that MH has a long record of stable employment not just in the UK but also in Kuwait and also whilst in detention. It is important that he is supported back into employment as that would be an important protective factor mitigating the risk of relapse of his alcohol misuse as well as assist his recovery from the moderate depressive episode. This can be accessed through the occupational therapist attached to the community

mental health team. What is most important is to remove the prospect of deportation so that MH can best access to treatment which would help to improve his quality-of-life, which is a combination of antidepressant treatment, monitoring his alcohol use through a substance misuse service, access to employment and regular contact with his family, particularly his children.

- 5.13 From my interview, I did feel that MH was fit to give evidence should he be required to do so at a tribunal as he was able to give me a detailed background history, most of which I corroborated from the other factual information I had available to me from other documentation. And the issues with regards to his immigration case. I thus also have no concerns about his capacity to give instructions to the solicitors for his court case.
27. Although applications have been made to adjourn the final hearing to obtain an up-to-date report from Dr Sen, which were refused by the Upper Tribunal partly as a result of the very late instruction to obtain such material which would have resulted in the loss of the allocated hearing, and failure to establish that any such report would have been required, it transpired that in any event Mrs Aboni accepted the diagnosis of the appellant's mental health presentation.
28. As noted, there is also within the appellant's bundle an assessment from an Independent Social Worker, Jane Bartlett, dated 4 March 2021.
29. In her report there is reference to the child MoAH who has a diagnosis of autism who could not be interviewed due to social communication difficulties. There is also reference the child having been diagnosed as suffering from ADHD.
30. Having considered in detail the family as a whole, including individual relationships, Jane Bartlett writes:
- 5.1 A return of their father to Bangladesh will separate these children from the benefits that paternal care provides to a child's development. MH committed a very serious offence against his wife for which he received a prison sentence. This incident has ultimately deprived his three sons of their paternal care they had depended upon, up until their father's imprisonment. MH takes full responsibility for his actions and reports that he has not drunk alcohol since that time. He states that he has participated in therapeutic interventions in prison, to help him to understand his reliance on alcohol at that time, and to commit to abstinence. Should their father be removed from the UK now, his children will continue to suffer the emotional effects of parental loss as a result, and this harm will be compounded by the ongoing struggles encountered by their mother as their developmental needs change, including the challenges she will face to secure the 'best fit' provisions to meet MoAH's specialist requirements.
- 5.2 The core assessment (2020), recognises the importance of MH's paternal relationship with his children, including the contribution he could make once more, in relieving SB of the full burden of parenting. The social worker recommended '*no further action*' was required by protective services on the basis that SB is regarded as a highly protective parent who does not minimise the issues of concern. This recommendation is also made on the basis that MH reports to be abstinent from alcohol for several years, given it is acknowledged by agencies that his offending behaviour has been fuelled by his likely addiction. The core assessment appropriately categorises the risk of repeated offending against the protective factors evident in the children's community, their school and primary, through the love and protection of their mother. There is a strong emphasis within the core assessment, upon the

capacity of SB to take safeguarding action to protect the children, should she need to do so. This is important because a potential return home for MH must be tested out safely.

- 5.3 The evidence presented indicates that MH is committed to his children and had always intended to be in a position to ensure that his sons safely learn about the role of men in families and the rules of relationships with partners. MH profoundly regrets the effect of his personal battles upon his children. Koestner et al (1990) found that,

“the time a child spends with its father, as well as the father’s care about their child, good predicate is of a child’s future empathy, compassion and care for others. The role of the father in his child’s development is unique in the areas of emotional intelligence, self-esteem and self-confidence”.

- 5.4 In addition, the impact of long-term adversity for the children could antagonise further the behavioural issues experienced by MAH and the developmental needs of MoAH. We understand now that adversity in childhood trauma resulting from parental loss can also have a much longer term health effect upon the individual. In an American study, 2017;

“One of the most striking conclusions of an Adverse Child Effect (ACE) study was how drastically certain early experiences increase the risk of cardiovascular disease, cancer, and lung disease. That was key to my understanding of how strongly emotional stress is linked to the body, particularly during the critical developmental period in children. But there’s another piece that largely goes unrecognised: the biological changes that result in the activation of stress responses lead not only to the increased risk of medical problems, but to a dramatic increase in the risk of engaging in high-risk behaviour. So it’s not as simple as just saying that high-risk behaviour is the course of worse health. You also have to take into account the neurobiology that underlies the connection between early adversity and increased risk behaviour. In fact, there was a clear dose response relationship. In other words, a person with four or more ACE’s is 10 times as likely to use IV drugs as a person who had none. Some of that has to do with behavioural explosions and the environment they’re in, but some of it has to do with how changes in the brain, particularly the reward pathways, increase the risk of substance dependence.”

- 5.5 Each of the children require continuity and stability in the life that they know. If their father is removed Bangladesh life is highly likely to become emotionally and materially, worse for the more, and consequently highly risky in the present and in the future. If they need to say goodbye to MH, the long-term emotional effects will be even more permanently damaging for them. They will worry about their father’s well-being, his welfare; is he safe, is he well, is he eating, does he have friends? They may also experience irrational guilt for letting him go and for not being able to prevent the separation. It is for the reasons given here, that I believe the best interests of MJH, MAH and MoAH will be met through a reunification of their father to their daily lives. Their developmental potential and future well-being will benefit significantly from MH’s paternal influence and support in the short-term and long-term.
- 5.6 I extremely strongly recommend that it will be in the best interests of MJH for his father to be granted legal status to remain in the UK, where he might continue to benefit from his support for his educational provision, his networks and to remain securely in the community and culture that he values.
- 5.7 I extremely strongly recommend that it will be in the best interests of MAH for his father to be granted legal status to remain in the UK, so that he might

provide support for his behavioural needs and his educational provision and to remain securely in the community and culture that he values.

- 5.8 I extremely strongly recommend that it will be in the best interests of MoAH for his father to be granted legal status to remain in the UK, provide support to his wife which will better enable MoAH to benefit from her tailored, specialist educational provision, his professional care plan and to remain securely in the community and culture where he is safe.
- 5.9 I strongly recommend that it will be in the best interests of SB for her husband to be granted legal status to remain in the UK, to assist her in raising their three sons.
- 5.10 I strongly recommend that it will be in the best interests of MH begging to be granted legal status to remain in the UK, where he might raise his children comparatively safety, in the community and culture that they trust,
- 31.** In her submissions Mrs Aboni relied upon the reasons for refusal letter in which the Secretary of State although noting the family composition found that it was in the best interests of the children that the appellant does not form part of any functioning unit with their mother, given the nature of his offending behaviour has been directed against her, and that the appellant did not consider the welfare and impact his behaviour would have upon his children and his wife.
- 32.** The Secretary State did not accept it will be unduly harsh for the children to remain in the UK in the sole care of their mother which is the situation they have been in since the appellant separation from his wife to date, and that their mother will be more than capable of meeting the children's needs with no evidence that they depend upon the appellant for their day-to-day health and welfare, or that they will be unable to access relevant provisions from the Local Authority, Local Education Authority or National Health Service in the event of the appellant's absence through removal.
- 33.** The Secretary of State argues that there was no evidence to show that the appellant's presence is needed to prevent any of the children from being ill treated, or for their health or development being impaired, and nothing to show their mothers case will be other than safe and effective.
- 34.** Enquiries of Bristol Children Services confirmed the children are known to Social Services but there is no current involvement and no ongoing concerns and no ongoing proceedings; indicating satisfaction with the standard of care the children receive from their mother.
- 35.** It was not accepted it would be unduly harsh for SB to live in Bangladesh as a national of that country or that he would face very significant difficulties if he relocated there; it was submitted it will not be unduly harsh upon SB or the children to remain in the United Kingdom if the appellant was deported. The conclusion of the lengthy refusal letter is that the appellant had not established any basis on which the deportation and subsequent interference with any protected right was not proportionate.
- 36.** Ms Solanki, in her skeleton argument supported by a further submissions, argued 1) The appellant is at real risk under Article 3

ECHR on health grounds, 2) He meets Exception 5 of Section 117C, owing to the impact of deportation on his children and his wife, and/or 3) He meets Exception 6 of Section 117C, there are very compelling circumstances in his case.

Discussion

37. In relation to Article 3 based upon a risk of suicide, it was submitted on MH's behalf:

Firstly, there is a real risk of the A committing suicide if he were deported to Bangladesh,

- a. A was seen for a psychology assessment in detention and presented as highly distressed and tearful and emotional, he attended a psychology group, he was on ACDT owing to risks to himself and said he would kill himself if removed (CB 112-114).
 - b. A Rule 35 Report was completed in June and July 2019 and says he was mentally fatigued and overly anxious about being separated from his children, he described being hyper anxious, hypervigilant, having difficulty sleeping and some associated panic attacks. He was diagnosed with significant anxiety with some element of depression. The trigger behind his deterioration was the distance between him and his kids, there was said to be a risk he may stop eating altogether and being with his family would assist (CB 115-131).
 - c. His medical records shows he had been suffering with depression for some time in detention and placed on medication, he was referred to psychosocial intervention, to the wellbeing group, the Tree of Life Psychology Group. In June 2019 it was said he would benefit from face to face work with his mental health. He was placed on ACDT and ACCT. (CB 141-220, 233-254).
 - d. A Psychiatric Report from Dr Sen 4 January 2021 (CB 311-354) opines that A satisfies the criteria for a diagnosis of moderate depressive episode and has several health problems including palpitations and dizziness which are linked to anxiety, the prospect of estrangement from his family aggravates his health (§5.1), that his sole desire is to be able to spend time with his 3 sons, he felt as if 'my head pops out' when he starts to think about his children, (§3.14.1), it is recommended that A would undoubtedly benefit from treatment for his condition with an antidepressant (§5.1). Dr Sen advises that the best treatment for A would be regular contact with a mental health service to have psychological therapy, regular contact with a community mental health team, to monitor the dose of his antidepressant and to ensure that his depressive symptoms are well controlled working in conjunction with a substance misuse service to regularly monitor his alcohol use (§§1.3.1, 5.4, 5.8, 5.11, 5.12). He adds that if A does not get medical treatment, there is a risk that his moderate depressive episode will get worse, the other risk is a resumption of his alcohol use which will further worsen his symptoms of depression, there is also a risk of his physical health symptoms getting worse like his hypertension, headaches and gastric problems. (§5.8). Dr Sen opines that there is a risk of deterioration of A's mental health and the risk of self-harm and suicide on the part of A if he is removed to Bangladesh as he would see the separation from his children as permanent (§§5.7, 5.10).
13. Secondly, there are no effective mechanisms in place in Bangladesh to protect the A from committing suicide as the A would be unable to obtain adequate treatment for his conditions,
- A country expert report, Saqeb Mahbub, confirms the following in his report of 11 June 2020 (CB 255- 279):
 - a. §§45 to 49 - Mental health is one of the most neglected topics owing to prevalent stigma, the state does not provide adequate

- support and facilities, private treatment is not sought owing to stigma and misconceptions about mental disorder, there is no specific mental health authority, no facility provides follow up care in the community, there is no day treatment facility.
- b. §62 - For someone like H, who is from Sylhet, it is likely to be more difficult, if not impossible, to access proper therapy sessions in his rural/sub-urban area. Furthermore, it is unlikely that he will be able to obtain from local pharmacies as prescriptions from the UK will not be accepted by the pharmacies here.
 - c. §63 - The social attitude towards mental health patients is harsh and hostile in Bangladesh. It is highly likely that his depressive illness would be ruled out as non-existent or mild stress.
 - In an addendum report dated 1 February 2021 country expert Saqeb Mahbub (CB 280-310) he says:
 - d. §§10 to 21 - There is a shortage of psychiatrists and trained clinical psychologists. Only two state run hospitals provide treatment for those mentally unwell. There is a lack of resources and disproportional distribution of the available resources. WHO found that there was a lack of medication and qualified staff.
 - e. §§27 to 28 - It is difficult to gain access to antidepressant drugs by the relevant mental health patients in Bangladesh, mainly because there is a limited number of authorized institutions (almost all based in Dhaka) issuing prescription for the drug. While only a few rural community hospitals, such as those in Sylhet, may issue prescription of the drug to patients, the accessibility problem is aggravated as there is usually a scarcity of such medication in the rural hospitals' stocks. As such, patients residing in rural areas are required to travel all the way to Dhaka in order to purchase and avail the drug from appropriate hospitals/pharmacies. This inaccessibility to the medication stands as an impediment for patients like Mr. H who regularly require the medication.
 - f. §§31 to 33 - gaining access to psychological therapy sessions is difficult for patients like Mr. H in Bangladesh. There are only 260 psychiatrists offering their services, all Dhaka centric. There are no such services found in rural areas of Bangladesh.
 - g. §§34 to 41 - Whilst there are substance misuse rehabilitation centres, based on the number of reported cases of torture and death of patients, the institutional competence to deal with patients is doubtful.
 - h. §§44 to 46 - The range of services offered to people contemplating causing self-harm is very limited in Bangladesh (as seen in paragraphs 42 and 43) by only a few private institutions. The scope of services is very limited as only tele-counselling is offered with no other supporting services such as the suicide prevention first responder or any crisis team to respond to any such suicide attempts.
 - i. §§47-57 - Mr. H is particularly vulnerable as the social stigma attached to mental health issues is stronger against men as opposed to women amongst the primitive population of Bangladesh. Particularly, in rural areas, such as Sylhet, attitudes and practices related to religious beliefs, cultural practices, and social conditions lead to everyday discrimination which include mockery, ostracization, torture in the name of treatment, etc
 - j. §§58-65 - People with serious mental health issues may be found roaming about the streets, and rather than cared for are often ridiculed and called all sort of derogatory insults such as "pagla" (English translation: "looney") and shunned by people.
 - R's own CPIN on Bangladesh: Medical and Healthcare Issues dated May 2019 says 'Despite considerable needs, there are few support services

available for those suffering from mental health disorders and [there is] no specific mental health authority in Bangladesh.’ ‘Government facilities for treating persons with mental disabilities were inadequate [for the country as a whole].’ ‘Based on the information found in several sources, mental illness in Bangladesh is highly stigmatized and mental healthcare is in its nascent stages. Healthcare provision is limited.’ ‘Due to the dearth of mental health professionals and poor logistic support, the existing three tier health care delivery system is not functioning well for mental health conditions. Referrals of patient with mental disorders to mental health specialists by the general practitioners or other health care providers are almost non-existent. [Referrals are] also hampered due to superstitious beliefs related to psychiatric disorders. ‘Considerable social stigma attaches to reporting mental illness.’

14. Thirdly, the R has not discharged its procedural obligation under Article 3 ECHR because the A has provided evidence capable of demonstrating a real risk of a breach of Article 3 ECHR and the R has not raised any evidence to dispel the doubts raised by the evidence of the A or sought individual and sufficient assurances in the A’s case. 3 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/800181/CPIN.BangladeshMedical_and_Healthcare.v1.0.May_2019.pdf 15. The A has made out risk under Article 3 ECHR.

38. Recent guidance on the correct approach to be adopted in such cases has been provided by the Upper Tribunal in MY (Suicide risk after Paposhvili) [2021] UKUT 00232 (IAC) the headnote of which reads:

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

39. In the judgment the Upper Tribunal found:

16. The J test, as formulated at [26] to [32] notes: -

“First the test requires an assessment to be made of the severity of the treatment which it is said that the applicant will suffer if removed. This must attain a minimum level of severity. The court has said on a number of occasions that the assessment of its severity depends on all the circumstances of the case. But the ill-treatment must ‘necessarily be serious such that it is ‘an affront to fundamental humanitarian principles to remove an individual to a country where he is at risk of serious ill-treatment’: see Ullah paras [38]-[39].

Secondly, a causal link must be shown to exist between the act or threatened act of removal or expulsion and the inhuman treatment relied on as violating the applicant's Article 3 rights. Thus, in Soering at para [91], the court said:

'Insofar as any liability under the Convention is or may be incurred, it is liability incurred by the extraditing contracting state by reason of its having taken action which has as a direct consequence the exposure of an individual to proscribed ill-treatment' (emphasis added).

See also [108] of Vilvarajah where the court said that the examination of the Article 3 issue 'must focus on the foreseeable consequences of the removal of the applicants to Sri Lanka ...'

Thirdly, in the context of foreign cases, the Article 3 threshold is particularly high simply because it is a foreign case. And it is even higher where the alleged inhuman treatment is not the direct or indirect responsibility of the public authorities of the receiving state, but results from some naturally occurring illness, whether physical or mental. This is made clear in para [49] of D and para [40] of Bensaid.

Fourthly, an Article 3 claim can in principle succeed in a suicide case (para [37] of Bensaid).

Fifthly, in deciding whether there is a real risk of a breach of Article 3 in a suicide case, a question of importance is whether the applicant's fear of ill-treatment in the receiving state upon which the risk of suicide is said to be based is objectively well-founded. If the fear is not well-founded, that will tend to weigh against there being a real risk that the removal will be in breach of Article 3.

Sixthly, a further question of considerable relevance is whether the removing and/or the receiving state has effective mechanisms to reduce the risk of suicide. If there are effective mechanisms, that too will weigh heavily against the applicant's claim that removal will violate his or her Article 3 rights".

17. In Y the Court of Appeal stated: -

"15. ... The corollary of the final sentence of §30 of *J* is that in the absence of an objective foundation for the fear some independent basis for it must be established if weight is to be given to it. Such an independent basis may lie in trauma inflicted in the past on the appellant in (or, as here, by) the receiving state: someone who has been tortured and raped by his or her captors may be terrified of returning to the place where it happened, especially if the same authorities are in charge, notwithstanding that the objective risk of recurrence has gone.

16. One can accordingly add to the fifth principle in *J* that what may nevertheless be of equal importance is whether any genuine fear which the appellant may establish, albeit without an objective foundation, is such as to create a risk of suicide if there is an enforced return."

18. The fifth point was reformulated as follows: -

"[...] whether any genuine fear which the appellant may establish, albeit without an objective foundation, is such as to create a risk of suicide if there is an enforced return. [15]"

19. Sir Duncan Ouseley in R (Carlos) v SSHD [2021] EWHC 986 (Admin) stated at [159]:

“Article 3 and suicide risk: this is another facet to which Paposhvili and AM (Zimbabwe) apply. It is for EC to establish the real risk of a completed act of suicide. Of course, the risk must stem, not from a voluntary act, but from impulses which he is not able to control because of his mental state”.

20. Insofar as the judgment in AXB v SSHD [2019] UKUT 397 relates to the procedural aspects arising from Paposhvili, what is stated at [112] (replicated at paragraph 3 of the headnote) was endorsed by the Supreme Court in AM:-

“The burden is on the individual appellant to establish that, if he is removed, there is a real risk of a breach of Article 3 ECHR to the standard and threshold which apply. If the appellant provides evidence which is capable of proving his case to the standard which applies, the Secretary of State will be precluded from removing the appellant unless she is able to provide evidence countering the appellant’s evidence or dispelling doubts arising from that evidence. Depending on the particular circumstances of the case, such evidence might include general evidence, specific evidence from the Receiving State following enquiries made or assurances from the Receiving State concerning the treatment of the appellant following return.”

21. In respect of the obligations on the Respondent following Paposhvili, the Supreme Court stated at [33] as follows:-

“In the event that the applicant presents evidence to the standard addressed above, the returning state can seek to challenge or counter it in the manner helpfully outlined in the judgment in the Paposhvili case at paras 187 to 191 and summarised at para 23(b) to (e) above. The premise behind the guidance, surely reasonable, is that, while it is for the applicant to adduce evidence about his or her medical condition, current treatment (including the likely suitability of any other treatment) and the effect on him or her of inability to access it, the returning state is better able to collect evidence about the availability and accessibility of suitable treatment in the receiving state. What will most surprise the first-time reader of the Grand Chamber’s judgment is the reference in para 187 to the suggested obligation on the returning state to dispel “any” doubts raised by the applicant’s evidence. But, when the reader reaches para 191 and notes the reference, in precisely the same context, to “serious doubts”, he will realise that “any” doubts in para 187 means any serious doubts. For proof, or in this case disproof, beyond all doubt is a concept rightly unknown to the Convention.”

40. Dealing with each of the elements so far as they apply to this appeal, it is not made out the appellant’s subjective fear of ill-treatment on return is objectively well founded. It is a preserved finding of the First-tier Tribunal that the appellant’s account of what he claims happened to him in Bangladesh, and therefore his claimed fear resulting therefrom, is neither credible nor plausible. The Judge below found the appellant could return to his home area and nor had it been made out that he could not live anywhere else. In relation to the appellant’s claim to face a real risk of his wife’s family as a result of their being

opposed to the marriage, the Judge below dismissed this element of the appeal too for sustainable reasons.

41. Whilst the reasons relied upon by the appellant directly have not been shown to have any merit there may be an additional element now in that the offences he committed were against his wife and the question of whether his wife's family, if the appellant returned to his home area, would take direct action against him. There is no evidence of a credible threat that this might occur but even if the same did exist it was not made out the appellant could not internally relocate.
42. I do not find out the appellant has established that he will face a risk of ill-treatment which will attain the minimum level of severity even bearing in mind the appellant's vulnerability and the issues identified relating to him in the report of Dr Sen, the ISW, and the evidence as a whole. It is not made out the appellant will face ill-treatment of such severity as to amount to an affront to fundamental humanitarian principles if he is removed to Bangladesh. Accordingly, it is not made out the appellant can satisfy the first test of J.
43. In relation to the second test; as the appellant's claim to face ill-treatment sufficient to engage article 3 has for the reasons pleaded not been shown to be satisfied no causal link has been proved. So far as there may be a causal link between the risk of suicide and the appellant's inability to have face-to-face contact with his children and his expressed helplessness if he is unable to have ongoing contact with his children, the removal of the identified protective element, it is not made out that that act itself of a denial of direct contact with his children is sufficient to engage article 3 rights..
44. As noted above, this is a foreign case.
45. The fifth question posed by J whether a fear of ill-treatment in a receiving state from which the risk of suicide is to be based is objectively well-founded was further defined by the Court of Appeal in Y, as noted above, adding the requirements to view a more subjective element; that whether any genuine fear which the appellant may establish, albeit without an objective foundation, is such as to create a risk of suicide if there is an enforced return.
46. It is that additional element which is at the core of this aspect of the appeal. Even though there is no credible risk that the appellant will suffer harm for the reasons claimed, whilst there is no credible evidence his children will be harmed if he is deported to Bangladesh as the care they receive from their mother clearly meets all their identified needs, as accepted by Social Services, the appellant has a subjective fear both into relation to what may happen but also the fear of not being able to see his children any further, which creates the risk of suicide as identified by Dr Sen.
47. The Supreme Court in AM (Zimbabwe) found the burden is upon the individual to establish their removal will result in a real risk of a breach of article 3 ECHR. The appellant claims this will arise as a result of his committing suicide, even though he has not self harmed to that degree in the UK. At [5.10] of his report Dr Sen wrote "*With regards to thoughts of suicide, I do find it plausible that [MH] will harm himself*

if removed to Bangladesh. He has repeatedly expressed such thoughts in immigration detention and has repeatedly said that the sole protective factor for him has been the thought of his children. There is a real risk that if removed Bangladesh he would see his estrangement from his children as permanent and this will increase the risk of him making an attempt to harm himself”.

48. There is clearly a strong subjective element to the risk of suicide in this appeal arising as a result of the combination of the appellant’s personality, state of his mental health, and removal of the appellant physically from the lives of his children. What Dr Sen does not say, however, is that the appellant will commit suicide but rather it will increase the risk of him attempting to harm himself.
49. The burden advocated by the Supreme Court is upon an individual to prove that if returned there is a real risk of a breach of article 3 to the requisite standard. The need is to provide evidence which is capable of proving his case he will commit suicide. I find that although the evidence indicates a strong possibility it does not, necessarily, prove that such an event would occur as a protective factor of the appellant’s children will still exist, by way of indirect contact continuing as it does at present, on the telephone or by video means, rather than there being no contact at all. If the appellant loves his children as he claims, is as close to his children, and wishes to maintain contact with his children, that protective element still exists.
50. The appellant has provided evidence which he seeks to rely upon to support the claim that Internet contact from Bangladesh is not as it is from the UK. I accept such propositions. What the appellant has not established is that if he is in cities such as Dhaka, where he lived previously, that he will not be able to access the Internet to enable him to maintain the best contact he can with his children. I find it is not made out that he will not be able to continue his relationship with his children, albeit indirectly. I do not find the appellant has established that the facts cross the high threshold of article 3 ECHR in relation to this aspect of the appellant’s appeal.
51. The burden therefore does not pass to the Secretary of State on the facts to provide sufficient evidence to dispel doubts arising from the appellant’s own material although if it did an examination of the available country material is necessary.
52. The appellant provides evidence from a country expert regarding availability of mental health services within Bangladesh which was also expanded upon in the submissions set out above.
53. There is also in existence a Bangladesh World Health Organisation Special Initiative for Mental Health who have published a situational assessment which recorded that in 2018 Bangladesh Parliament approved a new Mental Health Act. A new Mental Health Policy, approved by the Ministry of Health in 2019, reflects a shift from a medical to a psychosocial treatment model with emphasis on decentralization and community-based services and support for persons living with mental illness. In relation to the availability of psychiatric care it is recorded:

Healthcare Facilities for Mental Health Bangladesh's largest specialty hospital, the National Institute of Mental Health and Treatment, is located in Dhaka and has 500 beds. The density of psychiatric beds is five times higher in Dhaka than in the rest of the country. A minimal .05% of expenditures from the Ministry of Health and Family Welfare is devoted to mental health, of which an estimated 67% is invested in mental hospitals. A total of 56 public hospitals have psychiatric outpatient facilities. Three facilities were visited during the assessment process. These are described below. All noted a lack of qualified staff to provide psychosocial interventions. The general hospital had some essential psychotropic medications but had no injectable antipsychotic medication and inadequate supplies of the other medicines.

54. In relation to the availability of medication:

Psychiatric Medications Stocks of psychotropic medications, including antipsychotics, antidepressants, anxiolytics, mood stabilizers, and antiepileptics are held and dispensed from hospitals, health centres, and health posts. Prescribing of these medications can be carried out by doctors, nurses, medical officers, and community health officers. One Facility Checklist completed in a rural health center reported having only one psychotropic medication (diazepam) in stock.

- 55.** The above reference to the introduction of the new Mental Health Act and policy, implemented from 2020, means that it post dates a lot of the reference material in the Secretary of States CIPU, entitled Country Policy and Information Note Bangladesh: Medical and Healthcare issues, Version 1.0 May 2019.
- 56.** The country experts report addressing mental health issues in Bangladesh is noted. [45] of that report refers to the stigma related to mental health disorders, material from the WHO dated 2017 and 2019 and 2007. The claim at [48] of there being no centralised body responsible for mental health has to be considered against more recent WHO publications.
- 57.** Whilst there may be a reluctance on the part of patients and families to seek professional help as a result of stigma or lack of ability to access services, especially outside Dhaka, that does not mean that those services that are available, including access to medication, (even if not the same as that currently prescribed to the appellant) and in-house services, are not available and would not be accessible if the appellant sought the same. The appellant has already received a diagnosis and has evidence he can take to present to medical professionals which should short-circuit in the assessment process. It is not made out the appellant is at risk as it has not been made out the appellant faces any real risk from the authorities in Dhaka; meaning there is no reason why he should not approach them for assistance if required. I do not find the appellant has established an entitlement for a grant of international protection on the basis of Article 3 ECHR on health grounds.
- 58.** The second point taken by the appellant is that he meets Exception 117C(5) Nationality, Immigration Asylum Act 2002 on the basis his deportation from the UK will be unduly harsh upon his wife and children.

59. I accept the evidence that the appellant's wishes to maintain contact with his children. They are currently not living in the same household and have limited contact due to financial difficulties in maintaining their monthly face-to-face contact.
60. As noted above, the arguments that problems may arise in maintaining indirect contact as it currently exists through the Internet are not accepted and I find that such contact could be maintained even if initially only on the telephone.
61. It is not disputed the best interests of the children are to remain in the United Kingdom with their mother and father, as it cannot be disputed that it will be unduly harsh for the children to be expected to go live in Bangladesh, or with their mother alone if the appellant is deported.
62. I find the appellant's wife, the children's mother, has support available to her in the UK from her own family and from the statutory services, some of whom have been involved previously in this family and who are satisfied with the abilities of the children's mother to be able to care for the children. That was an assessment made whilst the appellant was absent from the family unit indicating that although it may be problematic the children's mother is able to meet their needs.
63. Although the appellant's wife expressed a desire to have the appellant back in the household for the sake of the children it is not made out his removal will result in unduly harsh consequences for her.
64. In relation to the children, I have evaluated the question of whether the appellant's deportation will be unduly harsh upon them only with reference to the child themselves. What is required when assessing this aspect is to take note of the underlying concept of an enhanced degree of harshness sufficient to outweigh the public interest in the medium offender category.
65. The ISW report clearly sets out the opinion of the author that the best interests of all the family members is for the appellant to be able to remain in the UK, but that is not the determinative factor.
66. It is not disputed that the children would prefer their father to remain in the UK. It is not disputed that the appellant has played an active role in the children's lives. It is not disputed that they would prefer that arrangement continued.
67. I accept that the children will have suffered an element of parental loss when the appellant was imprisoned and that there may be a repeat of that if the appellant is deported. Although it is claimed by the ISW that the eldest child stated the appellants presence would make a major difference, as he could support his mother and the other children, it is not made out the absence of the appellant would lead to unduly harsh consequences for the children in particularly because of the strength and abilities of their mother.
68. A lot of the evidence talks about the consequences of the appellant being deported which is understandable as that was the question asked of the ISW. I find however that a number of those matters raised is that communication can be resolved. For example the comment that the children may wonder about how their father is, whether he has got friends, whether he is eating or looking after himself, he himself can

resolve by reassuring them as can their mother during contact or if such question arises.

69. In relation to this aspect the appellant submits in the skeleton argument:

- a. The evidence shows the appellant has been an extremely active father. He lived with his family until 2017 when he was detained (see grounds of appeal §26 18/05/2021). Even whilst detained he had regular contact face to face. When released from immigration detention his contact with his children has evidently been very difficult owing to his location and finances, but he has made best efforts to maintain his relationship and has maintained regular contact face to face.
- b. The medical evidence, witness evidence and assessments demonstrates the strength of the children's attachment to their father and that temporary separation has had a distressing impact and permanent separation will be devastating for all concerned.
- c. A's wife's evidence has consistently been that she would like the A to live closer (which he will be able to do with leave and the ability to work) and gradually reintroduce him to the family home.
- d. A Child and Family Assessment has been carried out by Bristol's Children's Services in August 2020. The assessment makes clear that A and his wife wish to live as a family and his wife says she requires his support. The school say mum has been transparent in respect of A and that there have been no concerns during visits. His offender manager reported that he is not a risk to children, when visited there has been no evidence or concerns of use of alcohol or drugs and his cousin who he lived with in Bradford was a good influence on him. The recommendation states that "there is no evidence to suggest A's return would put the children at risk of harm and as such, I am recommending that Children and Young People's Services take no further action." Jahan and Adnan were very articulate and clearly wished for A to be closer to the family and had a positive view of him (CB 85-94).
- e. An Independent Social Worker Jane Bartlett says in her report dated 4 March 2021 (CB 376-423) that his wife reported loving her husband and the children need him badly (§3.12), she is exhausted from being a single parent and feels she is letting all the children down (§3.14), her mood was tired and withdrawn (§3.22), the children would prefer to live with both parents so that their mother is relieved of the complexity of pressure that she faces daily, and that they are also relieved of assumed responsibilities (§§4.3, 4.5), Adnan's reported attention issues (as set out in his school report, July 2020, in addition to his parents' and elder sibling's concern) and his disorganised behaviour, are likely to be linked to the sudden paternal loss and consequent household disarray that the children experienced (§4.6), exposure to further loss, distress and trauma for Jaheim would potentially signify additional emotional harm for him (§4.11), emotional security for Adnan would be disrupted if A is made to leave the UK (§4.13), the combination of the trauma and distress he could experience together with the loss of his father in his life and routines, will put at risk all that he has achieved in the early years of his life (§§4.34-35, 4.47), the children would benefit from an improvement in their mother's emotional wellbeing and mental health, if it were the case that hope is lost and the children must lose their father, all parental hope for their children's future is likely to evaporate (§4.24), Jaheim will never have the family life he craves, and which he understands to be possible. This permanent loss will affect his emotional development significantly as he grows into adulthood, the same applies to the siblings and they will be exposed to each other's grief and behavioural reactions (§4.27), 'his return would cause major trauma' (§§4.29, 4.32) and 'risk of adolescent anger and alienation' (§4.49). his partner may experience irrational guilt if he is return and this will affect her stress levels and care routines (§§4.30-31), she could be at significant risk of an emotional

breakdown (§4.49), A takes full responsibility for his actions (§5.1), the evidence presented indicates that A is committed to his children (§5.3), their developmental potential and future wellbeing will benefit significantly from A's paternal influence and support in the short-term and long-term, it would be in the best interests of all children, the partner and A for A to be granted legal status to remain in the UK (§§5.5-10).

- f. In respect of any suggestion made in respect of his ability to maintain his relationships in the UK via visits and through modern means of communication, the A says his family would be unable to visit owing to finances and Arman's health, he would not have the means to call often, the time difference would make this impossible (Bangladesh is 6 hours ahead), moreover statistics show only 25% of the population in 2020 had access to the internet in Bangladesh . He also refers to Mansoor, R (on the application of) v SSHD [2011] EWHC 832 (Admin) and

'16. Third, the reference to "continue to contact and can visit and communicate and maintain family ties" seems to again have been generic assessment as between husband and wife, husband and minor children, claimant wife and minor children as well as the parents and their older children, who were now over the age of 18 using the ages given at the outset of this judgment. If members of a family enjoy family life in an inter-dependent household of partners and minor and dependent children it is no comfort to say that they can continue to enjoy that family life by telephoning each other, emailing, video conferencing or any of the other forms of electronic technology that may be in existence. Lord Bingham was indicating this in the landmark case of Huang v SSHD [2007] UKHL 11 at paragraph 20, but more recently, and I appreciate not available to the IJ at the time, the Upper Tribunal has made the point in the case of EM (Zimbabwe) [2010] UKUT 98 IAC. If the IJ thought that there would be no interference with the family life enjoyed between husband and wife and parents and minor children if they could communicate from abroad he was again mistaken.'

- g. A is unlikely to ever be able to provide his family with meaningful support if removed. This, for example, is owing to the distance and the loss of the ability to ever see and hold his children (who are described as vulnerable and in need of him) in person, deterioration in his health (see submission 1) and the impact this will have on his ability to emotionally support, his lack of employment prospects (see country expert report) and his inability to financially support from Bangladesh.

23. The evidence plainly demonstrates that it would not be in the children's best interests to separate them from their father permanently. Detention and the separation in the last few years has been harmful. It is more likely than note that making this permanent would be devastating. On the evidence, the test of unduly harsh is made out.

70. It is not disputed the appellant has played an active role in the life of his children but that is not the test. It is part of the jigsaw of facts that has to be considered when assessing the particular impact upon the children if such a role is not available to the appellant and the children in the future. The strength of the tie between the appellant and the children is not disputed.

71. It is not disputed the appellant's wife would like the appellant to live closer and be gradually reintroduced into the family home but that is not the required test which is to consider the consequences of his deportation and the effect upon the family members. Although the

appellant's wife expressed a preference it was not made out that if the appellant was deported and therefore could not look towards a gradual reintroduction into the family home, that the consequences arising therefrom would be unduly harsh.

- 72.** It is accepted that with MoAH having been diagnosed as having special needs the Children and Family Assessment undertaken by Bristol's Children's Services in August 2020 concludes that the appellant and his wife wish to live as a family and that the appellant's wife says that she requires support. That is not disputed. It is not made out, however, that the support she may require cannot be provided elsewhere. Even if the appellant does not pose a risk, provided he is not using drugs or alcohol, this does not mean he is the only person able to provide any support that may be needed.
- 73.** The conclusion of the ISW on this issue which records the appellant's wife claim she is exhausted from being a single parent and that the children would like the family to get back together to ease some of the pressures upon her, is noted, and it is understandable that any parent being responsible for a family unit of three children, one of whom has special needs, can be very stressful. It is accepted that in such circumstances the appellant's deportation may be harsh. What is not made out on the facts, however, is that the consequences of the appellant's deportation mean that the standard of care these children receive will fall below a level that will make it unduly harsh.
- 74.** I accept there will be emotional consequence of deporting the appellant and the family may need the assistance of the school or through social services to manage the same; but it has not been shown that such support would not be available or would not meet the needs of the children through CAMHS or the social worker with experience of dealing with this family, if required.
- 75.** Having considered the evidence with the required degree of anxious scrutiny and concentrating solely upon the individuals concerned, I do not find it made out that the appellant's deportation from the United Kingdom will result in unduly harsh consequences such as to warrant a finding that the appellant succeeds under this exception of section 117 C.
- 76.** The appellant also submits he meets Section 117C(6) in that there are very compelling circumstances in his case. In relation to this aspect the appellant submits:

34. The A argues that there are very compelling circumstances in this case which outweigh the public interest in deportation. These include (but are not limited to),
- a. The A's health, the risk of deterioration and suicide upon return, the lack of adequate treatment and the discrimination and stigma he will face (see submission 1 and below at (e)).
 - b. The strength of his family and private life in the United Kingdom and the impact deportation will have upon him and his family, with reference to the evidence and arguments set out in submission 2.
 - c. His length of residence. He has spent 13 years here. He has resided here lawfully from 2009 until 2018 when he was served with a deportation

- order (this is for some 9 years). From 2011 he held ILR. The rest of the time he has been pursuing applications/appeals.
- d. The A has been out of Bangladesh since 1993 when he went to Kuwait to work; see §95 FTT Determination IJ Baker CB 459. This means he left Bangladesh when he was 20 years old. He spent from 15 years in Kuwait working and for the last 13 years has been in the UK. He has been living outside of Bangladesh for 28 years.
 - e. Contrary to what was held by IJ Baker in 2019, A argues that he is socially and culturally integrated in the UK. The previous findings made in 2019 are contrary to *CI (Nigeria) v The SSHD [2019] EWCA Civ 2027* at §§77-79.
 - i. He has worked, paid tax and national insurance from 2009 until his imprisonment in 2017.
 - ii. He speaks English and has completed courses here in maths and literacy; see §§79-80, 83 Determination IJ Baker CB 457. He is using an interpreter for his hearing but in considering this regard must be had to his vulnerability/mental health and anxiousness.
 - iii. The most significant events in his life have occurred here. His British wife and three British children are in the UK. He enjoys a family life with them which he created here. They are settled here. The integration of his family in the UK is relevant in considering the A's own integration. He also has a cousin and friends in the UK.
 - f. There are very significant obstacles to the A's integration into Bangladesh. He refers to the following points,
 - i. In *Kamara v SSHD [2016] EWCA Civ 813; [2016] 4 W.L.R. 152*, the Court of Appeal considered the test of "very significant obstacles to integration". 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.
 - ii. In *Parveen v The SSHD [2018] EWCA Civ 932* it was held '9. ... 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".'
 - iv. The A refers to his medical evidence and the expert evidence set out in submission 1 and argues that in light of this and applying *Kamara* he will not be able to participate

in society, to have a reasonable opportunity to be accepted by society or to build up a variety of relationships to give substance to his family or private life. iv. Applying the test in Kamara, he would not be able to find a job, sustain life or operate in Bangladesh on a day-to-day basis. The Appellant relies on country expert evidence from Saqeb Mahbub in his report of 11 June 2020 (CB 255-279). In addition to what is said about mental health which is set out above, this shows the following,

- §64 – Regardless of where he chooses to reside in Bangladesh, he may struggle in finding a job as some restaurants in the thriving food industry run thorough background checks before hiring.

- §§50 to 51 – Bangladesh has very recently placed sex offenders in a position where their human rights are at high risk of breach. A significant number of people actually supported the lawmakers’ decision to kill “rapists” in “crossfire”.⁷⁷ Public reaction to this has been approving of the proposed law and further seeking death penalty of convicted rapists. The social attitude towards those alleged or convicted of sexual offences is filled with detest. Vigilante-style murders of rape suspects in Bangladesh is also common.

- §65 – Moreover, increasingly Bangladeshi people are becoming intolerant of sexual offences as reflected by the stringent rape laws formulated recently and the hostile social treatment of those implicated in sexual offence cases. H claims that the news of his conviction got around in his Bangladeshi community (H’s Witness Statement, paragraph 17). If such is the case, the news of his criminal conviction is likely to make it very difficult for him in securing employment as references of good character, particularly from a candidate’s local town/village council official, are considered very important, and sometimes mandatory, in obtaining employment in Bangladesh and such references are likely to not be positive for H.

- g. The A’s only conviction sentence was in 2017. The offence was carried out some 5 years ago. He has been in the community for some 2 years since his sentence without any offending. The person against whom the offence was committed namely his wife, SB, wants the A to remain in the UK to help take care of their children and has continued her relationship with him. They have been married for 12 years. The evidence shows she would actually be harmed by his removal.
- h. The A’s rehabilitation is relevant; see HA (Iraq) at §§135-142. It is important to consider the following evidence in this regard:
 - i. The index offence was brought about by the A’s use of alcohol which the A has not consumed since his imprisonment in 2017 and the A has engaged well with substance misuse programmes. See FTT decision IJ Baker §79, CB 457.
 - ii. The A’s Risk Assessment from Phoenix Futures dated February 2020 states that he is not engaging in high risk behaviour, there is no current risk of poly-substance use or heavy alcohol use, there is no concern from others about risks of violence (CB 221-226).
 - iii. His medical records state he has abstained from alcohol and that he attended SMART recovery in Exeter and a relapse prevention group in the IRC. In March 2019 he was advised to attend the weekly recovery group, the substance groups, given work packs to complete and it was said that his lack of drinking reduces his risk to women. There is mention of his preoccupation with the certificates he got from prison owing to his desire to be a good

- person after the offence. He also was working in the kitchens in the IRC (CB 141-220, 233-254).
- iv. A Psychiatric Report from Dr Sen 4 January 2021 (CB 311-354) says that he completed courses in prison, worked in the kitchen and worked with Alcoholics Anonymous (§3.10.3-4).
 - v. The A's risk of reoffending can be minimised if he continues his contact with substance misuse services which could, for example, monitor his substance use and subject him to random checks and for him to attend a local Alcoholics Anonymous group.
 - vi. The addendum report dated 1 February 2021 from country expert Saqeb Mahbub (CB 280-310) says at §§34 to 41, whilst there are substance misuse rehabilitation centres, based on the number of reported cases of torture and death of patients, the institutional competence to deal with patients is doubtful. Inspections have revealed cruel conditions such as cockroaches, lack of hygiene, being force fed drugs. Rehab centres often operate under such terrible conditions because of the stereotype that drug addicts are criminals who need to be jailed in prison-like situation. There are several, unregistered rehabilitation centres existing in Bangladesh in parallel to a few registered ones. Patients are unable to distinguish between those that are authentic and those that are illegal and unmonitored, causing them to get admitted in centres where they are subject to inhumane treatment.
 - vii. The background evidence shows that A's history with alcohol is likely to be problematic in Bangladesh. Firstly, because his mental health will decline. Secondly, alcohol is available. Thirdly, because there is a lack of rehabilitative programmes. And lastly, because the use of alcohol is prohibited/frowned upon.
 - i. The R has been unable to put forward a general threat to society and the public from the Appellant's continued residence in the UK.
35. It is submitted that when considering all the relevant facts and evidence in this claim, the A has demonstrated that there are very compelling circumstances which outweigh the public interest in deportation. Further submissions will be made orally. On the balance of probabilities, the test under Section 117C(6) is made out..
- 77.** Many of those aspects which are relied upon in these submissions have already been considered above and do not support the appellant's claim.
- 78.** It is accepted the appellant has lived in the UK for a number of years and that he would no doubt have been able to continue to reside here had he not offended in the manner that he did when he committed the offence of sexual assault – intentionally touching a female with no penetration against his wife in the circumstances outlined above.
- 79.** Where an individual is unable to succeed under one of the statutory exceptions and relies upon very compelling circumstances that, in addition to the facts they seek to rely, upon requires consideration of the Secretary of State's case to enable a decision-maker to arrive at a decision compatible with article 8 ECHR.
- 80.** Whilst the appellant has spent a number of years and not returned to Bangladesh for some time, and whilst the submissions referred to a decision of Judge Baker, which is a decision promulgated on the 25 April 2019, First-tier Tribunal Judge Housego in that determination promulgated on 4 May 2021 makes a specific finding that the appellant will not face insurmountable obstacles to reintegration into

Bangladesh on the basis that he was a fit and healthy 48 years old, worked in kitchens for many years in Kuwait, has quite a large number of relations with whom he is on friendly terms and would not be returning to a country where he has no connection, his primary language is Bangladeshi (Sylheti), he grew up in Bangladesh, and would have no difficulty in reintegrating. That judge found the appellant has at least one friend there as somebody sent him a photograph recently.

81. It is not made out the appellant will not have a reasonable opportunity to be accepted and to be able to reintegrate into society; especially with the contacts as previously found. It is not made out the appellant would not be able to secure employment in an area of work with which he is familiar i.e. restaurants or in the thriving food industry for even if background checks are made it is not made out that such checks made in Bangladesh would have access to the UK PNC or any database showing the nature of the appellant's conviction. Similarly the appellant has not committed a sexual offence in Bangladesh which may lead him to fall foul of their domestic laws. The majority of those in Bangladesh will be unaware of the nature of the appellant's conviction unless he tells them which he is not likely to do. The appellant claims that news of his conviction got around his local Bangladeshi community but, as noted above, it was not made out the appellant will be unable to relocate to a place where there will be greater opportunity for employment and no evidence that anyone would be aware of his background.
82. Whilst the appellant was convicted in 2017 it is that that makes him liable for deportation. Consideration has been given to the lack of offending since and the efforts the appellant has made to address issues of alcohol which he claims led to the index offence. If he claims to be genuinely free of alcohol than he is not likely to resort to drinking alcohol even in Bangladesh.
83. Rehabilitation cannot in itself constitute a very compelling circumstance and the cases in which it could make a significant contribution are likely to be rare - see *Velasquez Taylor v Secretary of State for the Home Department* [2015] EWCA Civ 845 [§21], although I have treated it as a relevant factor capable of attracting some weight as part of the holistic assessment.
84. The impact upon the appellant of his deportation to Bangladesh and availability of services to address his mental health needs has been commented on above.
85. I have taken into account the observation made by the appellant's wife that she would like him to return to the family home for the sake of the children which is a factor in the appellant's favour.
86. There is a very strong public interest in this case based upon the nature of the offence as noted in the Sentencing Remarks. Any form of spousal violence within a relationship is unacceptable including sexual violence in any form, especially against the will of the victim has happened in this case. There is a strong public interest in deterring anybody who may believe such conduct is appropriate or acceptable

to realise it is not, in the immigration context and otherwise, and whether they have consumed alcohol or not.

- 87. The appellant has not demonstrated an ability to satisfy any of the exceptions to deportation which set out the statutory basis on which a person falling within the medium range of offenders, as does this appellant, can establish that the Secretary of State's decision is not proportionate. In this case the appellant cannot do so.
- 88. Having carefully considered the competing interests with the required degree of anxious scrutiny I find the appellant has not made out his case and that the Secretary of State has made out to the required standard that deportation of the appellant from the United Kingdom is proportionate. Accordingly, I dismiss the appeal.

Decision

- 89. **I dismiss the appeal.**

Anonymity.

- 90. The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....
Upper Tribunal Judge Hanson
Dated 4 April 2022