IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-001946
First-tier Tribunal No:
HU/54992/2023
LH/01310/2024

THE IMMIGRATION ACTS

Decision and Reasons Issued:
On the 08 August 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE MALIK KC

Between

MD MORSALINE MIA
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE
FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: Mr Chowdhury Rahman, Counsel, instructed by Zyba Law
For the Respondent: Mr Tony Melvin, Senior Presenting Officer

Heard at Field House on 21 June 2024

DECISION AND REASONS

Introduction

1. This is an appeal by the Appellant from the decision of First-tier Tribunal Judge Groom promulgated on 4 March 2024. By that decision, the Judge dismissed the Appellant's appeal from the Secretary of State's decision to refuse his human rights claim based on Article 8 of the European Convention on Human Rights.

Factual background

2. The Appellant is a citizen of Bangladesh and was born on 24 May 1990. He arrived in the United Kingdom on 29 August 2009 as a student and then overstayed. His leave to remain expired on 6 June 2014. He subsequently made several unsuccessful applications. Ultimately, on 4 March 2022, he made an application for leave to remain on the grounds of his privately and family life. He relied on the life in the United Kingdom, medical condition and lack of meaningful ties in Bangladesh. The Secretary of State refused his application on 25 March 2023 and held that his removal from the United Kingdom would not be incompatible with Article 8. The Judge heard his appeal from the Secretary of State's decision on 27 February 2024. The Appellant gave oral evidence before the Judge and was cross-examined. The Judge promulgated their decision on 4 March 2024 and dismissed the appeal. Permission to appeal from the Judge's decision was granted on 29 April 2024.

Grounds of appeal

3. The primary ground of appeal is that the Judge failed to treat the Appellant as a vulnerable witness and thereby erred in law.

Submissions

4. I am grateful to Mr Chowdhury Rahman, who appeared for the Appellant, and Mr Tony Melvin, who appeared for the Secretary of State, for their assistance and able submissions. Mr Rahman developed the pleaded grounds of appeal in his oral submissions. He invited me to allow the appeal and set aside the Judge's decision. Mr Melvin resisted the appeal and submitted that there was no error of law in the Judge's decision. He invited me to dismiss the appeal and uphold the Judge's decision.

Discussion

5. There was evidence before the Judge as to the Appellant's health in the form of his witness statement and from Dr Nosa-Ehima, Dr Farooqui and the NHS. The Appellant has been diagnosed with Hepatitis B. He is under specialist care and require lifelong monitoring. He has mental health issues and received support from a consultant psychiatrist. He is said to be under a great deal of stress effecting his mental and physical health and is on antidepressants. It is tolerably clear that he is a vulnerable individual.

6. The Judge, with respect, simply failed to address the issue as to the Appellant's vulnerability. There is nothing in the Judge's decision to show that they followed *Joint Presidential Guidance Note No 2 of 2010: Child, vulnerable adult and sensitive appellant guidance* ("the Presidential Guidance Note"). The Court of Appeal in *AM (Afghanistan)*

v Secretary of State for the Home Department [2017] EWCA Civ 1123 [2018] 2 All ER 350, at [30], noted that such a failure "will most likely be a material error of law".

7. The Presidential Panel in *SB (vulnerable adult: credibility) Ghana* [2019] UKUT 398 (IAC), at (2), noted that two aims are achieved by applying the Presidential Guidance Note. First, the judicial fact-finder will ensure the best practicable conditions for the person concerned to give their evidence. Second, the vulnerability will also be taken into account when assessing the credibility of that evidence. There is nothing in the Judge's decision indicating that best practicable conditions were secured for the Appellant to give his evidence. The Judge, in any event, has not taken into account the Appellant's vulnerability in assessing his account.

8. Mr Rahman submitted that there was a failure on part of those representing the Appellant below to recognise that he was a vulnerable witness and to make the relevant application before the Judge. I agree. Mr Melvin adduced a note of the hearing below confirming that the Judge was not asked by the Appellant's team to treat him as a vulnerable witness. This is unfortunate and regrettable. As paragraph 5 of the Presidential Guidance Note provides, "the primary responsibility for identifying vulnerable individuals lies with the party calling them". The fact that there was a breach of that primary responsibility is relevant but not determinative. The Presidential Guidance Note, at paragraph 5, also alerts judges that the "representatives may fail to recognise vulnerability". A failure by the representatives does not absolve the Judge of the obligation to follow the Presidential Guidance Note and the case-law as to vulnerable witnesses. I am satisfied that the Judge erred in law in failing to do so.

9. I entirely accept that I should not rush to find an error of law in the Judge's decision merely because I might have reached a different conclusion on the facts or expressed it differently. Where a relevant point is not expressly mentioned, it does not necessarily mean that it has been disregarded altogether. It should not be assumed too readily that a judge erred in law just because not every step in the reasoning is fully set out. Experienced judges in this specialised field are to be taken to be aware of the relevant authorities and to be seeking to apply them without needing to refer to them specifically. The Appellant has a troubling immigration history. His vulnerability is not a trump card in this context and his medical condition does not mean that his removal from the United Kingdom would necessarily be unlawful. I must, however, bear in mind that I am not sitting as a first instance tribunal making findings of fact. My task is to decide whether the Judge erred on a point of law such that the decision should be set aside. I find that the error made by the Judge was material to the outcome and constituted an error of law. I cannot rule out the possibility at this stage that a properly directed judge may find that

Article 8 is engaged and that the Secretary of State's decision is incompatible with it.

Conclusion

10. For all these reasons, I find that the Judge erred on a point of law in dismissing the Appellant's appeal and the error was material to the outcome. I set aside the Judge's decision and preserve no findings of fact.

11. Having regard to paragraph 7.2 of the Senior President's Practice Statement for the Immigration and Asylum Chambers, and the extent of the fact-finding which is required, I remit the appeal to the First-tier Tribunal to be heard afresh by a judge other than First-tier Tribunal Judge Groom.

Decision

12. The First-tier Tribunal's decision is set aside and the appeal is remitted to the First-tier Tribunal for a fresh hearing.

Anonymity

13. I consider that an anonymity order is not justified in the circumstances of this case having regard to the Presidential Guidance Note No 2 of 2022, *Anonymity Orders and Hearing in Private*, and the overriding objective. I make no order under Rule 14(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Zane Malik KC
Deputy Judge of Upper Tribunal
Immigration and Asylum Chamber
Date: 31 July 2024