IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-003072
First-tier Tribunal Nos:
HU/56937/2021
IA/16072/2021

Extempore decision

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 18 March 2024

Before

UPPER TRIBUNAL JUDGE STEPHEN SMITH

Between

MD NURUL ALOM
(NO ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Z. Hussain, Solicitor, Zyba Law
For the Respondent: Mr E. Terrell, Senior Home Office Presenting Officer

Heard at Field House on 6 March 2024

DECISION AND REASONS

1. This is an appeal against a decision of the Secretary of State dated 26 October 2021 to refuse a human rights claim made by the appellant on 24 December 2020. The appeal is brought under Section 82(1) of the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act").

2. This appeal against the Secretary of State's decision was originally heard and dismissed by First-tier Tribunal Judge Sweet by a decision promulgated on 17 June 2023. By a decision promulgated on 17 December 2023, sitting on a panel with Deputy Upper Tribunal Judge Bowler, I set the decision of Judge Sweet aside,

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preserving certain findings of fact, and directed that the matter was to be reheard in this Tribunal acting under section 12(2)(b)(ii) of the Tribunals, Courts and Enforcement Act 2007. It is in those circumstances that the matter has resumed before me, sitting alone. A copy of the error of law decision may be found in the **Annex**.

Factual background

3. The appellant is a citizen of Bangladesh born in 1964. He is now 59. He arrived in the United Kingdom in September 2008 with leave as a visitor valid until 1 March 2009. He overstayed. In 2010 he attempted, unsuccessfully, to regularise his status. He has been invited to claim asylum by the Secretary of State but has chosen not to do so. It was against that background that the appellant made the human rights claim to the Secretary of State on 24 December 2020.

4. The basis for the appellant's human rights claim was set out in a cover letter dated 10 February 2021 submitted by Zyba Law Solicitors, who continue to represent the appellant. At that date, the appellant had accrued twelve years and three months' residence in the United Kingdom. The basis of the claim was that he had established significant private life ties in the United Kingdom. He would face very significant obstacles to his integration in Bangladesh, and had demonstrated a significant positive contribution to UK society, for example through assisting in the leadership and teaching at various mosques. There were exceptional circumstances such that it would be unjustifiably harsh for the application to be refused.

5. By a letter dated 7 September 2021, the Secretary of State encouraged the appellant to make an asylum claim on the basis that some of the matters he claimed to fear upon his return to Bangladesh could amount to a claim for asylum. By a letter dated 30 September 2021, Zyba Law stated that the appellant did not intend to pursue an asylum claim. The decision of the Secretary of State refusing the human rights claim concluded that there were no very significant obstacles to the appellant's reintegration in Bangladesh. There were no exceptional circumstances such that it would be unduly harsh for him to be removed for the purposes of Article 8 of the European Convention on Human Rights. The claim was refused and the appellant appealed.

6. By the time the matter was litigated before Judge Sweet, the appellant's case had evolved. In the witness statement prepared for those proceedings, which he relied on before me, the appellant contended that he was the victim of a property dispute in Bangladesh, that he would be denied justice, and that the very significant obstacles he would inevitably face would be augmented on that account. Although he did not make an asylum claim based on those facts, he stated that he wanted those matters to be considered within the Article 8 paradigm. He also submitted before Judge Sweet that due to his age he would be unable to secure work. He experiences depression, diabetes and has traits of dementia in the form of memory loss. He has high blood pressure. By contrast, in the United Kingdom the appellant enjoys an extensive support network and is deeply committed to serving at the mosque and within the wider Bangladeshi community. It would be disproportionate for him to be removed.

7. In the error of law decision, a number of findings of Judge Sweet's were preserved. Those findings were set out at para. 18 of that decision and were as follows:

(a) First, that the appellant was adamant that he did not wish to pursue an asylum claim.

(b) Secondly, that the appellant's GP had confirmed that he suffers or experiences diabetes and dementia.

(c) Thirdly, that the appellant had been engaged in voluntary activities in respect of prayers at the mosque in different parts of the country.

8. The reason Judge Sweet's decision was set aside was due to an insufficiency of reasoning in relation to whether the appellant would face very significant obstacles upon his return to Bangladesh in what was otherwise an admirably brief decision.

The law

9. The sole ground of appeal is that it would be unlawful for the purposes of section 6 of the Human Rights Act 1998 for the appellant to be removed to Bangladesh. The essential question for my consideration is whether it would be disproportionate for the purposes of Article 8(2) of the European Convention on Human Rights for the appellant to be removed. That issue is to be assessed primarily by reference to the Immigration Rules and also outside the rules. The relevant rule in these proceedings is para. 276ADE(1)(vi) (very significant obstacles to integration). In relation Article 8 outside the rules there are a range of statutory public interest considerations which I must take into account: see section 117B of the 2002 Act.

10. The burden of establishing that Article 8 is engaged is the appellant's. There is in these proceedings no dispute that it is engaged. It is for the Secretary of State to establish that any interference with the appellant's Article 8 rights would be proportionate within the terms of Article 8(2). The Secretary of State does so by pointing to the requirements of the Immigration Rules and the statutory considerations contained in Section 117B; taken together, and applied to the context of these proceedings, that means that, in practice, the appellant bears the burden to the balance of probability standard demonstrating that the requirements of the Immigration Rules are met, or that it would be unjustifiably harsh on some other basis for him to be removed from the United Kingdom.

The hearing

11. The hearing took place at Field House on a face-to-face basis. The appellant participated through a Sylheti interpreter, who appeared through a remote link (another interpreter had attended the hearing but head to leave suddenly, apparently due to a personal emergency, and a remote interpreter was all that could be arranged under the circumstances; I was satisfied that the appellant and the interpreter were abe). There was a bundle prepared by the appellant for the Upper Tribunal which relied primarily on the materials prepared for the proceedings before the First-tier Tribunal, with the addition of a letter from his GP from March this year.

12. The Secretary of State relied upon a skeleton argument prepared by Mr Wain dated 16 February 2024. In addition, the appellant relied on a skeleton argument dated 19 February 2024.

13. The appellant gave evidence and adopted his witness statement dated 29 January 2023 and was cross-examined. During evidence-in-chief the appellant appeared to struggle to recall some features of the contents of his statement. When asked by Mr Hussain whether he could recall giving the statement, he initially explained that he could not remember the statement and gave the impression of not understanding what the proceedings concerned or why he was here. That naturally gave rise to some cause for concern on my part. I discussed with both representatives whether any capacity concerns presented. Mr Hussain's continued examination-in-chief and Mr Terril's cross-examination were both admirable for the clarity and simplicity with which they each put their questions to the appellant. Having had the benefit of seeing the appellant give evidence pursuant to those questions, and considering the lucid and in-depth answers that he gave once he had 'got going', I am satisfied that he did have capacity to take part in these proceedings and that no capacity issues therefore arose.

No very significant obstacles to the appellant's integration in Bangladesh

14. The first question for my consideration is whether the appellant will experience "very significant obstacles" for the purposes of para. 276ADE(1)(vi) of the Immigration Rules. That is a concept which has been the subject of a number of authorities. The leading authority is *Kamara v Secretary of State for the Home Department* [2016] EWCA Civ 813. At para. 14 Lord Justice Sales, as he then was, summarised the essential concept at the heart of that rule in the following terms:

> "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."

There are a number of other authorities to which I have been referred. I confirm that I have considered all of them but, as Sales LJ himself noted in *Kamara*, it is important not to subject the test of "very significant obstacles" to any gloss and allow the concept to speak for itself. It is for that reason that I do not propose to engage in a detailed exegesis of those other authorities. I therefore turn to my essential reasoning.

15. I make a number of preliminary observations. The appellant has a number of medical conditions. So much is clear from the findings preserved from the hearing before Judge Sweet. However, as was realistically accepted by Mr Hussain, the evidence concerning the appellant's claimed medical conditions is rather thin. The most recent evidence is in the form of a letter from the appellant's GP dated 1 March 2024. The letter states that the appellant experiences a number of memory conditions and that in 2022 he attended a

clinic for memory loss. Although Mr Hussain said that his understanding was that the appellant also is receiving counselling and undergoing CBT treatment, there was no reference to such treatment in the letter from the appellant's GP and no other documentary evidence pertaining to those matters. Indeed, as I have observed, the only reference is to treatment being received by the appellant was that which he attended in 2022. There is no more up-to-date evidence than that. That said, it is important to bear in mind that there are clearly some memory difficulties that the appellant experiences. He experiences depression and he takes Sertraline. He has diabetes and, in his own words, his health is beginning to trouble him.

16. In his skeleton argument Mr Hussain submitted that there is no evidence concerning the medical treatment that would be available in Bangladesh. The implication of that submission was that it somehow falls to the appellant to benefit from the absence of evidence in that respect. It is of course for the appellant to establish that the requirements of the Immigration Rules are met. This is not an Article 3 health claim and so the appellant does not benefit from the lower standard of proof applicable to such claims. It is his case to demonstrate to the balance of probabilities standard that the medical conditions he experiences are such that they would perform a significant role in placing very significant obstacles to his integration in Bangladesh. In isolation, the medical evidence is unable to achieve that objective. Of course, the medical evidence is one factor which I am required to consider when addressing all other matters in the round. It is to those matters that I now return, before reaching my overall holistic assessment.

17. As Mr Terrell submitted, the appellant lived in Bangladesh until he was 44 years old. He is active within the Bangladeshi diaspora and does not speak English (he had, of course, to give evidence in this Tribunal through a Sylheti interpreter). He relied on an extensive number of references and letters of support that were prepared for the proceedings before the First-tier Tribunal. They are overwhelmingly from other members of the Bangladeshi community. He has a number of distant relatives and cousins in the United Kingdom, and has integrated within and amongst the Islamic community, staying in around eight to nine mosques throughout the period of time for which he has been resident here. He explained in his evidence that the mosques have supported him through the provision of donations for clothing. They fed him, they provided him with accommodation and some of his students in the Islamic classes that he has assisted in teaching in the mosques have provided him with small amounts of money by way of gifts in the past.

18. Looking at those factors together, it is plain that, despite being an individual with no leave to remain since March 2009, the appellant is someone who has been able to establish himself in the United Kingdom, to survive without the right to work, and to have established himself within his own community such that he received an extensive range of letters of support and commendations ahead of the proceedings before the First-tier Tribunal. Significantly, the appellant also revealed in his evidence that some of the students he has taught during Islamic classes at mosques are the children of people that he knew, and therefore remembered, from his time in Bangladesh. That is significant because it demonstrates that the links the appellant has in this country in the Bangladeshi diaspora are not solely confined to the United Kingdom, but draw on the links

that he had whilst still living in Bangladesh and which, I find for the reasons I will come to shortly, he still has in that country.

19. The appellant explained in his evidence that he was married in Bangladesh that he has a wife and a child, albeit that he is estranged from his family, and that because of a land dispute he will be homeless. The difficulty with the appellant's evidence concerning his wife and child is that this appears to be the first time he has mentioned the existence of those close family members. His witness statement is silent as to this. His evidence before Judge Sweet, insofar as it was recorded in Judge Sweet's decision, was silent as to that issue, and there was no criticism by the appellant at the error of law stage of Judge Sweet's decision on account of the judge's failure to summarise or otherwise refer to the appellant's evidence in that regard. I therefore find that this is the first time he has mentioned his wife and child and claimed estrangement. That affects the appellant's credibility, since a significant feature of his family narrative in Bangladesh has been omitted from his applications to the Secretary of State, and his written and oral evidence before the First-tier Tribunal. It was not until his evidence at the hearing before me that he referred to these issues.

20. The appellant has a clear motive to downplay the extent to which he would enjoy support upon his return to Bangladesh. If, as Mr Hussain realistically recognises through his submissions on this point, the appellant did have a wife and daughter or child in Bangladesh from whom he was not estranged, then that would undermine significantly his claim to face very significant obstacles upon his return. I find that the appellant has family in Bangladesh and still has other connections there, such as those whose children he has taught in mosques in the UK.

21. I also take into account the fact that the appellant was alerted in the Secretary of State's letter dated 7 September 2021 to the possibility of claiming asylum and that he has continued to decline to do so. Accordingly, the extent to which the appellant's claimed property dispute in Bangladesh, and its relevance to his wife and child having become estranged from him is significant. I find that the appellant does have family in Bangladesh and that he would be able to secure some assistance with accommodation and his initial integration. I take into account the fact that the appellant is a man who is nearly 60 and does have some memory problems, but I also view those facts alongside the reality of his extensive and lengthy UK based support. I find that the appellant's distant family members in the United Kingdom and other supporters would be willing and able to provide him with similar levels of support in Bangladesh to that which has clearly been provided throughout the fifteen and a half years the appellant has been residing in the United Kingdom. On the evidence before me, the appellant's memory difficulties are not such that he would face very significant obstacles on that account.

22. The appellant's evidence was also that, given the right to do so, he would wish to work in the United Kingdom, continuing the role within various mosques that he claims he has performed on a voluntary basis over previous years. I find there would be no barriers to the appellant obtaining such work upon his return to Bangladesh. He would not encounter the same legal obstacles which lie in the way of him working lawfully in the United Kingdom. He would return to Bangladesh as a citizen of the country, with the full knowledge of the language,

culture and customs of that country, all of which would assist him to integrate upon his return.

23. I also take into account that the Secretary of State will, upon application, make a relocation grant to a person in the appellant's position. While I accept what Mr Hussain submits that that would not provide permanent long-term assistance, I find that it would go a considerable way to providing an initial basis of support for the appellant in order to orientate himself in Bangladesh, assisted by his extensive links in the diaspora of Bangladesh in the United Kingdom and the links that I found that he still has in the country. Combined with his desire to obtain work and use the skills that he has developed whilst teaching in Islamic schools in the mosques in the United Kingdom, those factors all combine to lead to the conclusion that the required broad evaluative judgment concerning the appellant's ability to integrate is such that he would integrate. He would not fact very significant obstacles. I accept that there will be obstacles of a sort upon his return, but I do not accept that they would be very significant for the purposes of para. 276ADE(1)(vi) of the Immigration Rules.

24. On that basis the appellant cannot point to satisfying the Immigration Rules as a factor in his benefit.

Article 8 outside the rules

25. I now turn to a balance sheet exercise in order to address Article 8 outside the Rules.

26. On the Secretary of State's side of the scales are the following factors.

(a) First, the public interest in the maintenance of effective immigration controls. The appellant does not meet any requirements of the Immigration Rules in particular he will not face very significant obstacles to his integration in Bangladesh.

(b) Secondly, the appellant has resided for a considerable period while, at best and for a short period, only holding precarious leave to remain, and for most of the time he has resided in this country he has been here unlawfully. It follows that the private life he has established in the United Kingdom attracts little weight. It is also significant that he never intended to leave the United Kingdom upon his arrival as a visitor. As Mr Terril submitted, and as the appellant accepted under cross-examination, it was not his intention to leave. He planned to stay all along. That is a public interest factor in support of the Secretary of State.

(c) Fourthly, the appellant enjoys an extensive support network in the United Kingdom which I find would be willing to support him upon his return to Bangladesh.

27. On the appellant's side of the scales are the following factors:

(a) First, the length of residence in the United Kingdom is significant. The appellant has been here for fifteen and a half years. Were he to be here for another four and a half years he would reach the threshold prescribed by

the Immigration Rules for a grant of limited leave to remain on the basis of his long residence.

(b) Secondly, he is in poor health albeit that the evidence concerning that is minimal.

(c) Thirdly, I accept that he will have a degree of subjective fear in relation to his integration in Bangladesh which will make the experience of return and the obstacles that he will face more significant than they otherwise would be albeit not reaching the threshold of being very significant obstacles.

(d) Fourthly, I also take into account that he has a desire to work in the United Kingdom.

28. Setting the factors on the Secretary of State's side of the scales against those on the appellant's side of the scales I find that the Secretary of State's considerations outweigh those of the appellant. As Mr Terril submitted, in *Thakrar (Cart JR; Art 8: value to community)* [2018] UKUT 336 (IAC) it was held that for there to be a significant feature on the appellant's side of the scales relating to a positive contribution to society, the contribution must be very significant indeed. It is not the case that this appellant is able to point to contributions of that level of significance. The public interest on the maintenance of effective immigration controls is a weighty factor and is not outweighed, in my judgment, by the matters on the appellant's side of the scales. The appellant will have support to integrate in Bangladesh. His health conditions are not such that any obstacles he will face will be significant. His removal to Bangladesh would be proportionate for the purposes of Article 8(2) of the ECHR.

29. For those reasons this appeal is dismissed.

Stephen H Smith

Judge of the Upper Tribunal
Immigration and Asylum Chamber
6 March 2024
[Transcript approved on 13 March 2024]

Annex – Error of Law decision

IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-003072

First-tier Tribunal No: HU/56937/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:

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Before

UPPER TRIBUNAL JUDGE STEPHEN SMITH
DEPUTY UPPER TRIBUNAL JUDGE BOWLER

Between

Md Nurul Alom
(NO ANONYMITY DIRECTION MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:
For the Appellant: Mr Z. Hussain, Solicitor Advocate, Zyba Law
For the Respondent: Mr N. Wain, Senior Home Office Presenting Officer

Heard at Field House on 1 November 2023

DECISION AND REASONS

1. By a decision promulgated on 17 June 2023, First-tier Tribunal Judge Sweet ("the judge") dismissed an appeal brought by the appellant, a citizen of Bangladesh born on 10 April 1964, against the decision of the Secretary of State dated 28 October 2021 to refuse his human rights claim, made in the form of an application for leave to remain. The judge heard the appeal under section 82(1) of the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act").

2. The appellant now appeals against the decision of the judge with the permission of First-tier Tribunal Judge Hollings-Tennant.

Factual background

3. The appellant was admitted to the UK in September 2008 with leave as a visitor until 1 March 2009. He remained in the UK as an overstayer. He sought, unsuccessfully, to regularise his status in 2010. He appears to have commenced a claim for asylum which he subsequently abandoned. On 24 December 2020, the appellant made the present human rights claim to the Secretary of State, and it was the refusal of that claim that was under appeal below.

4. In summary, the appellant's case before the judge was that he would face "very significant obstacles" to his integration in Bangladesh. He has no property, family, or support network there. Bangladesh is a lawless country and the authorities have allowed someone to take control of his house. Due to his age, he would be unable to secure work. He experiences depression, diabetes and has traits of dementia. He has high blood pressure. By contrast, in the United Kingdom he has an extensive support network. He is deeply committed to serving at the Mosque. It would be disproportionate for him to be removed.

5. In his decision, the judge summarised the appellant's case, outlined his written and oral evidence and directed himself as to the applicable law. The judge's operative reasoning was at para. 11:

> "It is accepted that the appellant has been engaged in voluntary activities around the UK in respect of prayers at mosques, and he has family and friends in the UK, but this is not sufficient to mount a successful claim for leave to remain on the basis of his private life. I do not accept that there are very significant obstacles on integration on return, nor are there exceptional circumstances which would render refusal of leave to remain in unjustifiably harsh consequences for the appellant. In respect of Article 8 ECHR outside the Immigration Rules, immigration control is in the public interest, and I do not accept that there are any significant countervailing factors which would render refusal of this appeal to a breach of his Article 8 ECHR rights. It is not disproportionate for this appeal to be refused."

6. The judge dismissed the appeal.

Issues on appeal to the Upper Tribunal

7. There are two grounds of appeal which are, as Judge Hollings-Tennant observed, essentially different facets of the same underlying complaint, namely that the judge failed to give sufficient reasons for his findings that the appellant would not face very significant obstacles. The judge failed to conduct the required "broad, evaluative assessment", pursuant to *Kamara v Secretary of State for the Home Department* [2016] EWCA Civ 813; [2016] 4 WLR 152, and, in turn, failed properly to assess the proportionality of the appellant's removal.

The law

8. Para. 276ADE(1)(vi) of the Immigration Rules is no longer in force, but it applied to the consideration of the appellant's human rights claim. It provided, where relevant:

> "276ADE (1). The requirements to be met by an applicant for leave to remain on the grounds of private life in the UK are that at the date of application, the applicant:
>
> […]
>
> > (vi) subject to sub-paragraph (2), is aged 18 years or above, has lived continuously in the UK for less than 20 years (discounting any period of imprisonment) but there would be very significant obstacles to the applicant's integration into the country to which he would have to go if required to leave the UK."

9. This is a reasons-based challenge. There are many authorities summarising the approach to be taken to hearing such appeals. The principles were recently summarised in the Annex to *TC (PS compliance - "issues-based" reasoning) Zimbabwe* [2023] UKUT 164 (IAC):

> "(1) Reasons can be briefly stated and concision is to be encouraged but FTT decisions must be careful decisions, reflecting the overarching task to determine matters relevant to fundamental human rights and /or international protection.
>
> (2) The evidence relevant to the issues in dispute must be carefully scrutinised but there is no need to set out the entire interstices of the evidence presented or analyse every nuance between the parties.
>
> (3) The reasons for a decision must be intelligible and adequate in the sense that they must enable the reader to understand why the matter was decided as it was, and what conclusions were reached on the 'principal important controversial issues'.
>
> (4) It is not necessary to deal expressly with every point, but enough must be said to show that care has been taken in relation to each 'principal important controversial issue' and that the evidence as a whole has been carefully considered."

10. A finding that a first instance trial judge has not given sufficient reasons should only be reached where the parties, with their knowledge of the background issues and evidence before the tribunal, can demonstrate that they have been "genuinely and substantially prejudiced by the failure to provide an adequately reasoned decision" (*South Bucks County Council v Porter* [2004] UKHL 33; [2004] 1 WLR 1953 at para. 36).

Insufficient reasons given by the judge on the principal controversial issue

11. It was common ground before us that the judge's decision was minimally reasoned and, at two and a half pages long, brief. Mr Wain's submission was that despite its brevity, the decision was nevertheless sufficiently reasoned. He submitted that, in principle, the judge undertook the broad, evaluative assessment required by *Kamara* in which Sales LJ (as he then was) summarised the task of determining the presence of "very significant obstacles" to integration in the following terms, at para. 14:

> "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."

12. In our judgment, the judge's decision failed to provide sufficient reasons as to why the appellant would not face very significant obstacles in Bangladesh. While the judge found that there was no evidence that the appellant would not be able to access suitable treatment for diabetes and dementia in Bangladesh (para. 10), he did not expressly address the appellant's prospective integration from any other perspective. He did not consider the appellant's case concerning the absence of a support network, his prospective employability, accommodation, nor the impact of his claimed integrative circumstances on his ability to access medication. Nor did the judge address the impact, if any, of the appellant's claimed dementia on his prospective integration.

13. While it could be said that the judge's decision must be read as though incorporating the Secretary of State's written reasoning (see, e.g., *English v Emery Reimbold & Strick Ltd. (Practice Note)* [2002] EWCA Civ 605 at para. 118), those reasons do not address the full spectrum of the matters raised by the appellant at the hearing. They focussed on the appellant's ability, as a citizen of Bangladesh, to return to the country he lived in for the first 44 years of his life, and did not address the broader matters outlined above. It is not clear, for example, whether the judge rejected the appellant's evidence as lacking credibility, or accepted that the appellant had subjective fears, but that mitigation strategies could have been put in place, or that there would be some other basis upon which the judge reached his conclusion. While reasons may be stated briefly, there must nevertheless *be* reasons. Such reasons must enable the parties to understand what the tribunal's reasoning on the principal controversial issues was.

14. We therefore reject Mr Wain's submission that the judge's substantive analysis made good any failure expressly to refer to *Kamara*. With respect to this experienced judge, his otherwise admirable brevity failed to set out his substantive reasoning. While we agree that there is no need to refer to every authority (indeed, in *Kamara* itself at para. 14, Sales LJ cautioned against subjecting the "very significant obstacles" test to a gloss and said that "it will usually be sufficient for a court or tribunal simply to direct itself in the terms that Parliament has chosen to use"), the substantive analysis performed by the judge was not set out. It may well have been *Kamara* compliant, but we do not know what it was.

15. It follows that we accept the appellant's submission that the decision of the judge was insufficiently reasoned in relation to whether he would encounter very significant obstacles to his integration. In turn, the proportionality assessment of Article 8 ECHR outside the rules was insufficiently reasoned, as it was premised on the footing that the appellant would not face very significant obstacles to his integration in Bangladesh, that finding being insufficiently reasoned.

16. In our judgment, the failure to give sufficient reasons goes to the heart of the judge's decision.

17. We have considered whether, notwithstanding the errors identified above, we should allow the decision to stand. In order to adopt that approach, we would have to be confident that the judge had, in any event, considered the matters that were not reasoned in the decision, and back-fill his reasoning. We have decided against that approach for it would be improperly speculative. As presently constituted, our jurisdiction is not to reach findings of fact (see *MA (Iraq) v Secretary of State for the Home Department* [2021] EWCA Civ 1467 at para. 85). Our jurisdiction is only to decide whether the decision of the First-tier Tribunal involved the making of an error of law.

18. We therefore set aside the decision of the judge, subject to the following findings of fact being preserved:

    (a) The appellant was adamant that he did not wish to pursue an asylum claim (para. 9);

    (b) The appellant's GP had confirmed that he suffers from diabetes and dementia (para. 10);

    (c) The appellant had been engaged in voluntary activities in respect of prayers at mosques around the country.

19. We have considered para. 7.2 of the *Practice Statements of the Immigration and Asylum Chambers of the First-tier Tribunal and the Upper Tribunal*. Where the Upper Tribunal has set aside a decision, it is "likely on each such occasion to proceed to remake the decision instead of remitting the case to the First-tier Tribunal." Two exceptions apply. The second is relevant, namely where "the nature or extent of any judicial fact finding" is such that it is appropriate for the appeal to be remitted, having regard to the overriding objective. We do not consider that this is a case where the nature and extent of the fact-finding required is such that the case should be remitted to the First-tier Tribunal. We have preserved certain findings of fact. The overriding objective includes avoiding delay, insofar as compatible with the proper consideration of the issues. Retaining the proceedings in the Upper Tribunal is consistent with the *Practice Statements* and the overriding objective of this tribunal, since it will lead to the final disposal of the matter in less time than would be the case if the matter were remitted to the First-tier Tribunal.

20. We therefore direct that the matter will be re-heard in the Upper Tribunal, acting under section 12(2)(b)(ii) of the Tribunals, Courts and Enforcement Act 2007.

Notice of Decision

The decision of Judge Sweet involved the making of an error of law and is set aside, subject to the findings of fact outlined at para. 16, above, being preserved.

[Directions omitted from this version]

Stephen H Smith

Judge of the Upper Tribunal
Immigration and Asylum Chamber

9 November 2023