IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-002840

First-tier Tribunal No: PA/53241/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 24 October 2024

Before

UPPER TRIBUNAL JUDGE RASTOGI

Between

AB
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr A. Arafin, Counsel instructed by Shahid Rahman Solicitors
For the Respondent: Ms R. Arif, Senior Home Office Presenting Officer

Heard at Field House on 7 October 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant and any member of her family is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant and her family. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The appellant appeals, with limited permission, the decision of First-tier Tribunal Judge Hickey ("the judge") dated 24 April 2024 in which he dismissed the appellant's appeal against the respondent's decision of 24 May 2023 to refuse her protection and human rights claim.
2. The appellant challenged the decision on five grounds, but First-tier Tribunal Judge Dainty only granted permission in relation to three of them, as follows:

> "It is arguable that insufficient consideration has been given to and insufficient reasons
> provided as to the role that the expert report plays in assessing credibility. It may well be that the oral or documentary evidence is more significant but that needs to be explained. It is arguable that the approach to sufficiency of protection and internal relocation is too cursory and that the judge has not applied the correct test. It is also arguable that it was an error not to give fuller reasons in respect of article 8 as to the availability of mental health facilities by reference to the mental health CPIN".

3. The appellant relied on the original grounds and the skeleton argument Mr Arafin prepared which I received on the morning of the hearing. The respondent had not filed a Rule 24 response. The hearing took place on CVP and I had the benefit of a 594 consolidated appeal bundle ("AB"). I heard submissions from both parties and at the end of the hearing I reserved my decision.

4. The centre piece of the appellant's claim for international protection is her Christian faith. She is a Bangladeshi national but has been in the United Kingdom since 2007, initially arriving with the benefit of a student visa. She says she left Bangladesh in 2007 with her husband and daughter who was 10 years old at the time, due to problems arising as a result of their Christianity and specifically because of problems the appellant's husband (Mr B) had with a former business partner, Mr Hussain. Mr B claimed asylum on this basis in 2011 but his appeal was dismissed by First-tier Tribunal Judge Williams on 24 November 2011. The appellant claimed asylum in 2017 but her claim was refused then dismissed on appeal on 8 December 2021 by First-tier Tribunal Judge Robertson.

5. In both of the previous appeals, the judges were satisfied that the appellant and Mr B were Christians and that Mr B had been in business with Mr Hussain but not that any problems emerged as a result of that or that they were at real risk of persecution in Bangladesh for that reason or on grounds of their religious beliefs. In both cases, the judges found there to be sufficient protection and if necessary an internal relocation option available and neither judge found that the respondent's decision would amount to a breach of either the appellant or Mr B's rights under Article 8 of the ECHR.

6. In his decision, the judge identified the previous decisions as his starting point applying the principles set out in Devaseelan (Second Appeals) [2002] UKIAT 00702 [9-10]. However, matters had moved on by then because the appellant produced new evidence that her husband was the defendant in a civil land dispute case in Bangladesh which the appellant said was religiously motivated. She also submitted a report from an expert, Saqeb Mahbub, dated 3 November 2023 who had verified the existence of the suit (referred to as a 'plaint' in the papers and by the judge) and also provided expert evidence of the prevalence of land grabs being motivated by religion including against Christians in Bangladesh. The other additional factor was that the appellant provided evidence of her mental health conditions and diabetes and claimed that she would be unable to access adequate treatment for those conditions in Bangladesh thereby putting her life at risk or making return very difficult.

7. The judge rejected the bases of all these claims.

8. The primary challenge to the judge's decision is found at Ground 1. In his skeleton argument Mr Arafin summarised the challenge at paras. 14-17 and in essence submitted that the judge failed to consider the expert report or the additional country evidence sufficiently or at all; failed to give adequate reasons for rejecting the expert and country evidence then failed to consider all of the appellant's evidence holistically. In oral submissions Mr Arafin further submitted that the judge had treated Devaseelan as determinative and that the whole approach was flawed as the judge appeared to adopt a higher standard of proof than required.

9. Having considered the judge's decision carefully and in light of these submissions, I cannot agree. It is clear that the judge was aware that the previous decisions were his starting point [18] and that new evidence was now available [19]. It is also abundantly clear that the judge was aware of the expert report and its contents as he relied on it to find as fact that Mr B is a named defendant in the plaint [20]. He then went on to accept that corroboration for the appellant's claim that false cases are brought in Bangladesh and that it is sometimes done against members of religious minorities was found in both the expert report and the respondent's own 'Country Policy and Information Note, Bangladesh: Religious Minorities and atheists' Version 3.0 March 2022 ("the CPIN") [21;25].

10. The judge proceeded to examine whether there was sufficient evidence before him to demonstrate that *this* land dispute was one such case. In my judgement it was incumbent upon the judge to do that. The country evidence can only take things so far. The expert in this case did not contain evidence that this plaint was religiously motivated or otherwise false and, as the judge recognised at [21], the expert was not able to comment on the likelihood of success of the plaint. Therefore, the judge examined the documents for himself and noted at [22] that they did not name Mr Hussain as a plaintiff. He then evaluated the evidence Mr B gave as to why he believed Mr Hussain was nonetheless behind it [23]. Of particular concern to the judge was the evidence Mr B gave about his own actions in relation to the plaint which was in direct conflict with the evidence in the expert report about Mr B having submitted a witness statement within the proceedings. Mr B claimed to know nothing about that and said someone must have done it on his behalf. The judge gave reasons which were open to him as to why he rejected as incredible Mr B's claimed lack of awareness of the statement, not least because the evidence about it was contained within the appellant's own report [24]. Finally, the judge noted at [27] that Mr B was also found to lack credibility before Judge Williams and at [28] that the appellant had by Judge Robertson and she too claimed to know nothing of Mr B's witness statement in relation to the plaint. The judge found the appellant's credibility damaged by operation of section 8 of the Asylum and Immigration (Treatment of Claimants) Act 2004 and also because her account of why she was unable to produce original documents to Judge Robertson did not stack up [30]. On the basis, partly, of these credibility findings (none of which were challenged in this appeal in their own right) the judge rejected the appellant's claim that the land grab was religiously motivated [23] and that Mr Hussain was influential or part of a gang [33].

11. There is no basis, in my judgement, to conclude that the judge arrived at these findings without having considered the extent to which the core of the claim was consistent with the background evidence contained in the bundle. He was patently aware of it but the nexus between that evidence as to the general position, and the situation in the appellant's case, was broken by the adverse

credibility findings and the lack of supporting evidence within the plaint documents. The judge adequately reasoned his findings and in my judgement they were findings open to him on the evidence. The appellant's challenge as contained within Ground 1 amounts to little more than a disagreement.

12. Given that Ground 1 does not reveal an error of law and as the appellant is not permitted to argue Grounds 2 and 3, the impact of the judge's decision that the appellant had not satisfied him that there was religious motivation underlying the plaint or that she was at risk from Mr Hussain, is that risk on return could only be considered on the general grounds of the appellant's Christianity.

13. The appellant's case was never brought on the basis that this factor alone was sufficient to give rise to a real risk of persecutory mistreatment. That was not noted as an issue before the judge and neither was it a feature of the skeleton argument ("ASA") presented to the judge [AB25]. At para. 3 of the ASA, her protection claim was presented as "her and her family's faith as Christians which has instigated religious persecution and has attracted them to the Bangladeshi extremists". It is that latter part which was rejected by the judge. At no point in the ASA was there a separate claim to be at risk in the alternative (in other words, that she was at risk even if the her claim that the plaint was religiously motivated and that she has come to the attention of extremists was rejected).

14. For that reason, the judge did not need to go on to consider sufficiency of protection or internal relocation but he nevertheless did so at [32]-[34]. Insofar as sufficiency of protection is concerned, the judge considered the background material [32] applied his findings [33] and decided there was sufficient protection. I am not persuaded the judge erred in his approach here, the background material does not reveal that the judge was wrong in this finding and in any event, any error would be immaterial bearing in mind his findings and the way the case was presented.

15. The point about materiality applies equally to the judge's findings on internal relocation. The judge recognised that internal relocation was possible "if necessary". Of course, on his findings it was not necessary. Whilst I accept the assessment on internal relocation was limited and this might amount to an error of law, for the reasons stated it is not material so I take it no further.

16. For these reasons I am not satisfied Ground 4 is made out.

17. That leaves the judge's assessment of the appellant's claims under Articles 3 and 8, including Appendix Private Life (Ground 5).

18. Here, Mr Arafin submits in his skeleton argument that the judge failed to have regard to the appellant's medical evidence and the country evidence as to the lack of adequate medical treatment in Bangladesh when assessing whether the appellant is a "seriously ill person" (AM (Zimbabwe) [2020] UKSC 17) and when assessing her ability to integrate in the way envisaged in Kamara [2016] EWCA Civ 813.

19. The difficulty with that submission is that the medical evidence was lacking. As the judge identified at [38]-[39] it was somewhat out of date, failed to state her current state of mental health and was silent on whether she is receiving any "medication such as anti-depressants or currently receiving any therapy". It is clear from those paragraphs that the judge noted the diagnoses which had been

made and that on 24 June 2023 she overdosed and had suicidal thoughts. Therefore at [40] the judge said even if he was wrong about the appellant not being a seriously ill patient, as the appellant had not adduced evidence of treatment, he was not satisfied the appellant was at real risk upon return because of an absence of appropriate treatment. This was manifestly a finding open to the judge and there is no error of law as regards the judge's decision on Article 3 grounds.

20. Turning to Article 8, the judge may not have referenced Kamara, but he set out the test to be met [42] and noted that notwithstanding Judge Robertson's decision the threshold was not met, he needed to consider the matter afresh [42]. In my judgement he considered all the relevant factors necessary to assess the extent of obstacles the appellant would face on return to Bangladesh including the appellant's health and the position of her adult daughter (and the daughter's health). The appellant has failed to satisfy me that the judge fell into error in this part of his analysis.

21. Much the same applies to the Article 8 proportionality assessment. In fact, the judge set out what may be considered an exemplary balance sheet approach taking into consideration all the relevant factors in the appellant and her family's case, attributing weight and balancing those against the factors on the respondent's side [48]-[53]. The appellant has not satisfied me there was any error in that approach.

22. Whilst I can understand entirely the appellant and her family's desire not to leave the United Kingdom after a residence here of many years and faced with the choice their daughter will have to make about whether to leave with them, I find that Ground 5 amounts to no more than a disagreement with the judge's decision. I can only consider setting the decision aside if that decision contained errors of law which are material and justify doing so. For the reasons I have given, I do not find that to apply here.

Notice of Decision

The decision of the First-tier Tribunal does not contain any material errors of law and shall stand.

SJ Rastogi
Judge of the Upper Tribunal
Immigration and Asylum Chamber
23 October 2024