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

Appeal Number: AA/02243/2015

**THE IMMIGRATION ACTS**

Heard at Taylor House  
On 13 October 2015

Decision & Reasons Promulgated  
On 19 October 2015

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE A M BLACK**

**Between**

**SA  
(ANONYMITY ORDER MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms Qureshi, Counsel.

For the Respondent: Ms Brocklesby-Weller, Home Office Presenting Officer.

**DECISION AND REASONS**

1. The appellant is a citizen of Bangladesh born on 8 June 1987. He appealed against a decision of the respondent dated 23 January 2015 to refuse to vary leave to remain in the United Kingdom and to remove him by way of directions under Section 47 of the Immigration, Asylum and Nationality Act 2006. His appeal came before Judge of the First-tier Tribunal A J M Baldwin ("the FTTJ") who in a decision promulgated on 24 June 2015 dismissed his appeal on asylum and human rights grounds and under the Immigration Rules.

2. The appellant sought permission to appeal. It was granted by Judge of the First-tier Tribunal R A Cox on 16 July 2015 who considered it was arguable that the FTTJ had failed to give adequate reasons for his findings under the Refugee Convention and in respect of Article 8; he also considered it arguable that the FTTJ had made certain material errors of fact. Thus the appeal came before me.

### Submissions

3. For the appellant, it was submitted that the FTTJ had been provided with a considerable number of documents yet had only taken into account information relating to the charges against the appellant. Furthermore, the FTTJ had misinterpreted one of the documents such as to give rise to an error of fact which impacted on the credibility findings. It was submitted that there had been insufficient consideration of the documentary evidence which, if considered, would have shown the appellant was still at risk because of his role in the party. This failure, together with the factual error, constituted a material error of law. It was also submitted that the FTTJ's adverse credibility findings on risk on return had tainted his assessment of the Article 8 claim.
4. It was submitted for the respondent that the FTTJ had made a fair reading of the arrest warrants which were fundamental to the assessment of risk. She submitted that other documentary evidence was of limited relevance. She agreed with the appellant's counsel that the adverse credibility findings as regards risk on return had impacted on the FTTJ's assessment of his private and family life but averred that the appellant's fiancée's oral evidence that she would return to Bangladesh with the appellant overrode this.

### Discussion

5. In the words of the FTTJ (paragraph 16), the appellant provided "a very large number of documents". These are listed in the decision but are not all analysed by the FTTJ.
6. The FTTJ accepted that the appellant's party was known to the authorities and that members had attracted adverse interest. He also found (at paragraph 25) that the "Appellant was a key figure" in that party. However, he identified a number of concerns about the content of the official documents produced by the appellant at the hearing and found "it would appear **more likely than not** that the persons(s) [sic] who completed these Warrant Forms is not one familiar with the task" (my emphasis). Furthermore, he concluded, having set out his analysis of some of the evidence, including the documentary evidence of charges against the appellant, that the appellant was "**unlikely** to be regarded as a threat to the Ruling Party". The standard of proof for an asylum appeal is lower than the balance of probabilities (**R v SSHD ex p Sivakumaran [1998] AC 958**). As was said by Lord Simon Browne in **Ravichandran [1996] Imm AR 97**, "the question whether someone is at risk of persecution for a Convention reason should be looked at in the round and all the relevant circumstances brought into account". In **PS (Sri Lanka) v SSHD [2008] EWCA Civ 1213** the Court of Appeal said that the single test of whether a fear of persecution or ill treatment was well founded was whether on the evidence there

was a real risk of its occurrence or re-occurrence. In the present case, the wording employed by the FTTJ leads me to conclude that he has applied the wrong standard of proof in reaching his conclusion on the evidence, particularly that some of it is “of very doubtful authenticity”.

7. The FTTJ goes on to conclude in paragraph 25 that the appellant “has not, I find, proved to the required standard that he faces a well-founded fear of persecution for the reasons claimed”. Given the FTTJ’s earlier reference to the wrong standard of proof, his conclusion that the Refugee Convention is not engaged is not sustainable.
8. Furthermore, in relation to the Article 8 claim, the FTTJ took note of his earlier adverse credibility findings. He states at paragraph 26 “Given the doubts I have as to the Appellant’s credibility and his keenness to remain in the UK for reasons not proven to be those he has proffered, I find his intentions are probably not genuine”. Thus I am satisfied that the findings of the FTTJ on the Article 8 issues are similarly not sustainable, being tainted by the adverse credibility findings made earlier in the decision.
9. For these reasons, the decision of the First-tier Tribunal contains an error of law in the assessment of the evidence and the FTTJ’s decision must be set aside in its entirety. All parties were agreed that, in such circumstances, it was appropriate for the appeal to be decided afresh in the First-tier Tribunal.

### **Decision**

10. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law. The decision is set aside. The appeal is remitted to the First-tier Tribunal, to be dealt with afresh, pursuant to Section 12(2)(b)(i) of the Tribunal Courts and Enforcement Act 2007 and Practice Statement 7.2(v), before any judge aside from FTTJ A J M Baldwin.
11. The anonymity direction made in the First-tier Tribunal is maintained.

*A M Black*

Deputy Upper Tribunal Judge

Dated:

### **Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

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

*A M Black*

Deputy Upper Tribunal Judge

Dated:

**DIRECTIONS**

1. Any further documentary evidence relied upon by either party is to be filed with the Tribunal and served upon the other party by no later than 14 days before the date of the hearing in the First Tier Tribunal.
2. The appeal is listed at Taylor House with a time estimate of three hours to be heard at 10.00 am on .....
3. A Bengali interpreter is required.

*A M Black*  
Deputy Upper Tribunal Judge

Dated: