Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/08639/2015

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 27th May 2016	**On 04th July 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

MR NAZAMUL ISLAM
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Barrett, Counsel
For the Respondent: Mr T Wilding, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant claims to be a citizen of Burma (Myanmar) and is believed by the Secretary of State to be a Bangladesh national. His date of birth is 1st January 1985. The Appellant arrived in the UK in February 2008 on a false passport and claimed asylum on 18th December 2014. The basis of the Appellant's asylum application was that he claimed to have a well-founded fear of persecution in Burma (Myanmar) on the basis of his ethnicity as a Rohingya. The Appellant's application for asylum was refused by asylum decision dated 20th May 2015.

2. The Appellant appealed and the appeal came before Judge of the First-tier Tribunal Dean sitting at Taylor House on 2nd March 2016. In a decision and reasons promulgated on 10th March 2016 the Appellant's appeal was allowed on asylum grounds. On 16th March 2016 Grounds of Appeal were lodged to the Upper Tribunal. The Secretary of State maintained two grounds. Firstly, the Secretary of State notes that the Appellant claims he lived in Burma for the first seven years of his life with his parents and family and allegedly spoke Rohingya. He also claims he spent the next seven years in a camp with other Rohingya refugees in Bangladesh. It is noted that the Appellant claims at the age of 14 he finally left the camp and survived in Bangladesh for the next nine years at a camp before coming to the UK. The Secretary of State contends that the judge had failed to take into account and resolve the fact that the Appellant allegedly spent therefore the first fourteen years of his life with his immediate family members and other members of the Rohingya, all of whom would have spoken Rohingya, i.e. the claim he only speaks a little bit and has forgotten the language lacks all credibility and is a very important issue that the judge had failed to consider and deal with in his determination.

3. Secondly, the Secretary of State notes at paragraph 18 of the determination the judge deals with the Appellant's alleged nationality and deals with some of the answers the Appellant gave in his asylum interview and finds that it does not undermine the core of his claim to be Rohingya because of the age he left Burma and his subsequent immersion in life in Bangladesh. The Secretary of State submits that the judge failed to take into account and resolve the fact that the Appellant allegedly spent seven years (between the ages of 7 years and 14 years) at a refugee camp with his immediate family and other Rohingyas, i.e. the judge had failed to take this very important fact into account and his determination gives the impression that the Appellant immersed himself in Bangladeshi life from the moment he arrived there at the age of 7 which is certainly not the case.

4. On 18th April 2016 First-tier Tribunal Judge Holmes granted permission to appeal. The grounds are lengthy and Judge Holmes notes that at first sight the grounds appear to be no more than a disagreement with the judge's assessment of the weight to give to the evidence but arguably the judge's approach to the weight to give to the Appellant's evidence means that he reversed the burden of proof in two ways. Firstly, he considered the approach that the possession of the "family book" in which the Appellant claims his name was listed arguably did not follow the *Tanveer Ahmed* guidance as explained in *CJ (on the application of R) v Cardiff County Council [2011] EWHC 23*. He considered that arguably the objective evidence clearly established that very little weight could be given to such a document and that should have been

the judge's starting point, and arguably he should then have considered the weight that could be given to the Appellant's claim to have come into its possession by stealing it from his own father only then to carry it for nine years while destitute in Bangladesh before contriving to travel to the UK and again bring it with him. Secondly, he considered that the approach taken to the Appellant's admission that he could speak little or no Rohingya was arguably similarly flawed. Thus the real issue for the judge was whether a child of 14, fluent in the language of his birth, would genuinely have forgotten so much of that language in the following nine years that he could demonstrate so little knowledge when interviewed in the UK. Judge Holmes considered that arguably these points were rather more than a simple disagreement with the judge's assessment of weight although the grounds could have been better drafted.

5. It is on that basis that the appeal comes before me to determine whether or not there is a material error of law in the decision of the First-tier Tribunal Judge. For the purpose of continuity throughout the appeal process, albeit that this is an appeal by the Secretary of State, the Secretary of State is referred to herein as the Respondent and Mr Islam as the Appellant. No Rule 24 response appears to have been filed or served by Mr Islam's legal representatives. Mr Islam appears by his instructed Counsel Mr Barrett. The Secretary of State appears by her Home Office Presenting Officer Mr Wilding.

Submissions/Discussion

6. There is unanimity in the view of both legal representatives that the grant of permission is not written in the clearest of terms and to a certain extent is a rambling monologue by the judge. Mr Wilding however submits that the language issue which effectively is the first point in the Grounds of Appeal, i.e. that the Appellant would have spoken Rohingya, addresses the views expressed by the judge at paragraphs 17 to 20 of his determination. In particular he refers me to paragraph 17 pointing out that the finding by the judge that it is credible that he would now only remember a "little" Rohingya and is more proficient at Bengali, ignores the fact that the Appellant spent a further seven years in a refugee camp speaking Rohingya and that the judge fails to consider this. Therefore he submits that the starting point for credibility is immediately undermined and that that therefore taints the findings at paragraphs 18 to 20.

7. Secondly, he addresses the issue of how the Appellant obtained the refugee family book and submits that as a result the analysis and findings made by the judge at paragraphs 22 to 24 are infected. He thinks that the judge granting permission was correct in submitting that little weight should be given to the presence of the book considering the background material and submits that there is a failure to take into account both the above factors in making the judge's findings on credibility thus constituting an error of law.

8. Mr Barrett submits that what is being advanced is little more than disagreement and that there is no error of law. He submits that the Secretary of State's argument is

mere supposition and that there is no merit in the contention that the judge has purportedly failed to grapple with the case. He indicates this applies to both issues. He asked me to find that there is no material error of law and to dismiss the appeal of the Secretary of State.

The Law

9. Areas of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational conclusions on fact or evaluation or to give legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.

10. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue of argument. Disagreement with an Immigration Judge's factual conclusion, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence which was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration Judge concludes that the story is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

Findings

11. The proper approach to credibility requires an assessment of the evidence and of the general claim. In asylum claims, relevant factors are firstly the internal consistency of the claim; secondly, the inherent plausibility of the claim, and thirdly, the consistency of the claim with external factors of the sort typically found in country guidance. It is theoretically correct that a claimant needs to do no more than state his claim but that claim still needs to be examined for consistency and inherent plausibility.

12. It is against this general background that I consider the issues that are before me. The challenges are to the assessment of credibility made by the First-tier Tribunal Judge. The contentions of the Secretary of State turn very largely on a submission firstly that the judge has failed to give due and proper consideration to the fact that the Appellant spent a further seven years in a refugee camp speaking Rohingya and making his assessment as to his ability to speak the Rohingya language and, secondly, as to the weight that should be given as to how the Appellant obtained the refugee family book. The issue before me is whether or not there is a material error of law in the decision of the First-tier Tribunal. I am not rehearing this matter and it

is necessary to distance myself as to whether I would have come to the same decision myself. Judge Dean heard the evidence. He has analysed the evidence in considerable detail and has made findings of fact between paragraphs 17 and 28 that he was entitled to. He has actually thoroughly looked at the issues. As to the assessment as to whether the Appellant should or should have not spoken Rohingya, the judge has given this considerable thought and addressed it fully at paragraphs 17 to 20. The challenge amounts to little more than disagreement.

13. Secondly, the judge has looked at the issue of the refugee hand book at paragraph 13 and has gone on in subsequent paragraphs, in particular paragraphs 22 to 24, to analyse the position and to say why he considers the Appellant's account is credible with regard to the refugee book. Further, so far as the language point is concerned, the Appellant's evidence was that the Appellant sought to learn Bengali and that the judge has accepted this.

14. In such circumstances it is not for the Upper Tribunal to interfere with the judge's finding of credibility based on the documentary and oral evidence that was before him and his analysis unless he has materially erred in his approach. He has not done so. He has heard the evidence and made findings which he was entitled to. In such circumstances the decision of the First-tier Tribunal discloses no material error of law and the appeal of the Secretary of State is dismissed and the decision of the First-tier Tribunal Judge is maintained.

Decision

15. The decision of the First-tier Tribunal discloses no material error of law and the appeal is dismissed

16. No anonymity direction is made.

Signed Date: 4th July 2016

Deputy Upper Tribunal Judge D N Harris

TO THE RESPONDENT
FEE AWARD

No application is made for a fee award and none is made.

Signed Date: 4th July 2016

Deputy Upper Tribunal Judge D N Harris