



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

Appeal Number: PA/00515/2015

**THE IMMIGRATION ACTS**

**Heard at Field House**

**Determination  
Promulgated**

**On Friday 22 July 2016**

**On Friday 29 July 2016**

**Before  
UPPER TRIBUNAL JUDGE SMITH**

**Between**

**MR E H  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr S Mustafa, Solicitor, MAC solicitors

For the Respondent: Mr T Wilding, Senior Home Office Presenting Officer

**Anonymity**

*Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008*

Although an anonymity order was not made by the First-tier Tribunal, as this is a protection claim and in light of my decision, it is appropriate to make that order.

**DECISION AND REASONS**

**Background**

1. The Appellant appeals against a decision of First-Tier Tribunal Judge Raymond promulgated on 25 April 2016 (“the Decision”) dismissing the Appellant’s appeal against the Secretary of State’s decision dated 1 July 2015 refusing his protection and human rights claims.
2. The Appellant is a national of Bangladesh. He came to the UK as a student in 2010 with leave which expired in October 2011. Thereafter he remained unlawfully as an overstayer until he was encountered in April 2015 whereupon he made his asylum claim.
3. The Appellant claims to be an active member of Jamiatul Ulama which goes by a number of names and which I refer to hereafter as JUI. The Appellant claims that he became involved with JUI as a student and became the secretary of the local union. JUI is one of a number of opposition parties in Bangladesh. The Appellant says that he and other JUI supporters are harassed and persecuted on account of their views. He claims that his name is on a list held by the authorities in Bangladesh of senior members of the party and that the authorities will detain him on return.
4. The Appellant’s asylum claim developed following his asylum interview and I will need to deal with that below. The Appellant also claims that he and his family were involved in a land dispute with neighbours who were claiming ownership of land to which they were not entitled. He says that in light of his religious and political affiliations, he would not be assisted by the authorities in relation to that claim and that, generally, as an opposition supporter he, as many others, is deprived of his rights unless he pays a bribe. The final basis of the original asylum claim is that the police in Bangladesh had prevented JUI holding meetings on a number of occasions to prevent them attracting support. As a result, on at least one occasion they were denied access to a mosque where a meeting was to be held.
5. The Appellant’s human rights claim centres on his relationship with his brother and sister-in-law who live in the UK and his links with the community and charities in the UK. He terms himself a Muslim priest and in that capacity, it is said, he has helped young people with his teachings.
6. Permission to appeal was granted by Upper Tribunal Kebede on 17 June 2016 on the basis that the Judge was arguably influenced by extraneous matters in making the adverse credibility findings which he did and that this may have arguably materially affected his findings on all matters. Accordingly, the permission grant was not limited. The matter comes before me to decide whether the Decision contains a material error of law and, if so, to re-make the decision or remit the appeal for rehearing to the First-Tier Tribunal.

## **Submissions**

7. Mr Mustafa focussed his submissions on the protection claim. He submitted that the Judge's judgment was clouded by the sentiments and presumptions expressed in the Decision. He pointed me in particular to what is said at [124] and [125] of the Decision which, he submits, has nothing whatsoever to do with the Appellant's case. He also pointed me to [110] where he submitted that what was said by the Judge was contradicted by the background evidence. That evidence showed that, as a person with more than low level affiliations to JUI, the Appellant would be at risk on return from the authorities.
8. In relation to the finding at [113] in the context of the human rights claim, that the Appellant had fabricated his asylum claim, that was not explained and the Judge had failed to deal properly with the documents which the Appellant provided in support of his claim. He also pointed me to [122] where the Judge purported to find that the Appellant should be excluded from the Refugee Convention under Article 1F(c) by reason of his extremist views. He submitted that the Judge had failed to provide reasons for this finding.
9. In summary, he submitted that the Judge had failed to consider relevant factors and had taken into account irrelevant factors. No proper account was taken of the circumstances in Bangladesh and accordingly I should find there to be an error of law and should remit the appeal for redetermination (as the adverse credibility findings are the basis of the challenge).
10. Mr Wilding accepted that the Decision was very dense in its consideration of the claim and did at times stray into extraneous matters. He submitted though that the findings in relation to the asylum claim contained in the section from [73] to [122] could be insulated from the remainder of the Decision and that was therefore not infected by the taking into account of factors which may be irrelevant.
11. In response to a question from me concerning the apparent contradiction between what is said at [90] of the Decision with the background evidence set out at [20], in particular the citation from that evidence at [1.3.11], Mr Wilding submitted that this needed to be considered in the context of the subjective evidence. In that context, the Appellant was found to be a low level supporter for reasons given at [93] of the Decision. His attempt to elevate the risk by reason of his appearance as referred to at [94] was not accepted. The Judge held against the Appellant the delay in claiming asylum as he was entitled to do.
12. There was also a delay in referring to certain aspects of the claim until after the interview ([95] to [98]). Contrary to Mr Mustafa's submissions, Mr Wilding submitted that the Judge had dealt with the

documentary evidence but had given reasons why those documents were rejected as not being genuine.

13. The core finding in relation to the Appellant's claim based on his membership of JUI is set out at [98] where the Judge accepts that he may have an allegiance to JUI and may even have had an executive role at local level. However, the Judge did not accept that he would thereby come to the attention of the authorities as the key planks of his claim in that regard were found to be not credible.
14. The Judge's main findings are set out at [105] to [110]. The Judge had given clear reasons for those findings. In relation to Article 1F, although Mr Wilding accepted that the Judge did not actually need to consider this at all given his findings that the Appellant could not qualify for refugee status, he pointed out that there is nothing in the case law relating to Article 1F which prevents a Tribunal from making that finding even though the Secretary of State has not taken the point. Insofar as that was an error by the Judge given his earlier findings, it was not material.

### **Discussion and conclusions**

15. As I noted at the hearing, I have concerns about the way in which the Judge has expressed some of his views in the Decision which may tend to suggest that his opinion was clouded by what he considered to be the extreme views as expressed by the Appellant in evidence and the concern that the Appellant might have communicated those views to young people in the UK which may run contrary to their interests. Mr Wilding accepted that he could not see a basis in law for the Judge's direction that the Decision be communicated to various bodies as an indication of the Judge's concern.
16. However, the question for me is whether, as Mr Mustafa submitted, the Judge has allowed those sentiments to infect his reasoning on the core elements of the protection and human rights claims.
17. I start by considering the human rights claim as Mr Mustafa (rightly in my view) did not pursue this in argument. The position of the Appellant, as the Judge notes, is as a person who has lived in the UK for less than twenty years (in fact only about six years), continues to have family and friends in Bangladesh and has studied and worked in that country. Absent success in the protection claim, it is difficult to see what factors could lead to a successful outcome of the Article 8 claim. He has a brother and sister-in-law here but also has family in Bangladesh. He has supporters in the UK but equally maintains contact with his friends in Bangladesh. The consideration of the human rights claim is short ([113] to [120]). However apart from a submission that the finding against the Appellant is based in part on him fabricating his asylum claim, there is nothing in that section which is open to criticism

on the basis of the factors taken into account. There is nothing which could there give rise to a successful human rights claim. Even in relation to the finding that he has fabricated his asylum claim, this can only have any material impact if the Appellant's claim is in fact found credible, in which case he would not be removed in any event. I find that there is no material error of law in relation to that aspect of the Appellant's claim.

18. I therefore turn to consider the Judge's approach to the asylum claim and, in particular the adverse credibility findings.
19. The Judge has set out at [4] to [7] and [20] of the Decision the background evidence relating to the Appellant's case. I have carefully considered the background evidence in the Appellant's bundle. Those paragraphs contain a fair summary of that evidence.
20. The Appellant's asylum claim was made late in the day - nearly four years after his leave expired. The Judge explains at [24] to [25] the reasons given by the Appellant for that delay. The Judge did not accept that explanation as credible [95].
21. However, more damaging to the Appellant's credibility by far was his complete failure to mention at his asylum interview the key bases of the claim on which he now relies. I have already noted at [3] and [4] above, the bases on which the Appellant made his initial claim. However, by the time that the matter came to hearing, the Appellant had elaborated on his case significantly. The initial claim was based on a land dispute with neighbours which he could not report to the authorities, a denial of his rights arising from his religious and political persuasion (including the denial of a right to hold meetings) and the fact that he said his name appeared on a "list" held by the authorities of prominent JUI supporters which would lead to his arrest on return.
22. Following the interview, the land dispute had developed into a case that his neighbours had filed a complaint against him and two other individuals (including it appears his brother) for a violent assault which led to a warrant against him due to his absence. I note that his brother, along with his mother, continue to live in Bangladesh at the same address as previously. The claim that his name appeared on a list of JUI supporters wanted by the authority merely because of their involvement with that party became a claim that he was wanted for an attack on a passenger bus (which he apparently did not deny) and that his friend, Foyzal Ahmed, had been detained (although later bailed).
23. The Appellant also claimed that he was in hiding before coming to the UK in order to avoid arrests for those incidents said to have occurred in early 2010 whilst he was still in Bangladesh. Not only did he not mention that earlier but it also runs contrary to his evidence that he always intended to return to Bangladesh after his studies but was

prevented from doing so by the worsening situation there. It also further undermines the Appellant's credibility in relation to the delay in claiming asylum.

24. The Judge dealt with the substantial inconsistency in the Appellant's claim at [73] to [90] of the Decision. As the Judge points out, not only do the documents relied on deal with incidents which the Appellant had completely failed to mention at interview but the documents themselves gave rise to further discrepancies which led the Judge to reject them ([85] to [89]).

25. The Judge pointed out that, if the documents relating to the Appellant's friend, Foysal Ahmed, were genuine, those showed that Mr Ahmed had been bailed and therefore not unfairly treated (even though Mr Ahmed had completely failed to make any reference to being arrested or bailed in his letter of support which might have been expected). The Judge also went on to note that, if the Appellant were involved in the two incidents of violence which the documents suggest, then the authorities would be justified in seeking him out for the criminal offences which those documents disclose. However, that does not alter the Judge's primary finding that the documents are not reliable ([99]).

26. Although the Judge may appear to contradict himself at [100], my reading of that paragraph in context is that the Judge accepted that the incidents referred to in the documents were consistent with the violent incidents in which the background evidence shows JUI to be involved. The Judge's conclusion though remains that the claim based on the documents showing the Appellant as subject to one or more arrest warrants was not credible. As the Judge observed at [93]:-

"In this context it should be noted that the appellant, according to his own evidence, has only played a quite modest role in JUI at a local level, which had to be dragged out of him during his oral evidence and this does not tend to suggest that he is not someone involved with JUI who the AL authorities would bother targeting (see paragraph 27 above). That he could have been arrested on one occasion as a result of committing acts of violence in public with fellow JUI members, or from a personal dispute which got out of hand, is an entirely different matter. Although the appellant even tried to make a very tenuous link in my view between the land dispute and his JUI affiliations."

27. The Judge goes on to consider therefore whether he accepts that latter facet of the Appellant's claim. He rejects it due to the late making of the asylum claim and the even later elaboration of the claim as discussed above. Based on evidence cited at [43] about the ease of obtaining forged documents together with the Judge's consideration of the documents at [45] to [48] which, as I have already noted, the Judge rejects as not genuine, the Judge concludes as follows [98]:-

“I consider that the cumulative weight of these serious evidential fault lines in the asylum narrative of the appellant leads me to conclude that, whilst he may well have had an allegiance to JUI, even possibly taking the form of an executive role at a local level, he has fabricated the key elements constituting that narrative.”

28. It is in the context of the claim as accepted at [98] that the risk on return falls to be considered. I noted above my concern that the Judge may have reached a finding which contradicted the background evidence relating to risk on return for JUI supporters. That is set out at [20] as follows:-

“1.3.11 Perceived political opponents whose fear is of serious harm at the hands of the state on account of their political opinion or activities and who have come to the attention of the authorities would be unable to avail themselves of protection from the authorities.” [my emphasis]

29. The Appellant’s initial claim as outlined in interview was that he had not been arrested by the police. His claim to be on a “list” has not been corroborated; the Judge rejected any suggestion that this was consistent with the arrest warrants finding that the Appellant would know the difference between being on a list and being subject to an arrest warrant. The Judge was entitled to find against the Appellant’s later claim to be subject to arrest warrants for reasons which are explained in some detail. The claim which the Judge had to consider therefore was one of being at risk on account of being a low level supporter of JUI (which is recorded at [27] of the Decision as being his oral evidence) and importantly one who had not individually at least come to the attention of the authorities. The finding that he would not be at risk on that account is not inconsistent with the background evidence as cited above.

30. For the above reasons, I do not doubt that if the Judge had confined himself to a consideration of the evidence before him, he could have found the Appellant not to be credible for the reasons given. However, he has not so confined himself. The Judge was entitled to make comment on what he perceived to be the Appellant’s extreme views of Islam and to express his concerns about whether a person like this Appellant ought to be allowed to pass on those views to young people in the UK. The Judge though, at [9] to [17], [61] to [65] and [123] to [130], goes beyond simply passing comment. I cannot, as Mr Wilding invites me to do, insulate the Judge’s adverse credibility findings from the very clear dislike which the Judge has formed of the Appellant as expressed in those paragraphs. I cannot exclude the possibility that the Judge has allowed himself to be influenced in those findings by his own sentiments about the Appellant’s religious views. It is also unclear whether the Judge has in expressing those views allowed himself to be deflected from considering the central question of whether this Appellant would be at a real risk on return and has rather focussed on whether this Appellant is a danger to the community in the UK. This is

particularly apparent in the Judge's reference to events which are, on their face, completely irrelevant to this Appellant's case, at [124] and [125]. I am therefore satisfied that the Decision contains an error of law.

31. Whilst, for the reasons set out at [19] to [29] above, it may well be the case that another Judge could reach the same view in relation to the credibility of the Appellant's claim, I cannot exclude the possibility that another Judge could reach the opposite view having heard the Appellant give evidence and discounting the impact of the Appellant's extreme views on the question of his credibility. I am therefore satisfied that the error of law is material.

32. Both parties agreed that, if I were to find a material error of law, the appropriate course would be to remit the appeal to the First-tier Tribunal since what is here under challenge is the Judge's adverse credibility findings. I agree that this is the appropriate course and I therefore remit the appeal for re-hearing by a different Judge.

**DECISION**

**I am satisfied that the Decision contains a material error of law. The decision of First-tier Tribunal Judge Raymond promulgated on 25 April 2016 is set aside. The appeal is remitted to the First-tier Tribunal for re-hearing before a different Judge.**

Signed



Date 28 July 2016

Upper Tribunal Judge Smith